

New text for a Comprehensive Test Ban Treaty

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On 28 May, Ambassador Jaap Ramaker (the Netherlands), Chairman of the ad hoc Committee on a Nuclear Test Ban of the UN Conference on Disarmament (CD), tabled a Draft Comprehensive Nuclear Test Ban Treaty (CD/NTB/WP.330, 28 May 1996). He hopes this text will provide the basis for future negotiations at the CD. The current rolling text contains over 1000 bracketed words and phrases (words and phrases proposed by parties but not agreed). The Chairman's draft CTBT demonstrates how a compromise on treaty language can be reached and moves the previously deadlocked negotiations forward. Ramaker's next step will be to appoint moderators, each responsible for a particular issue, who will attempt to find consensus around the compromises in the new text.

Negotiations on a CTBT have been taking place since January 1994. At the 1995 nuclear Non-Proliferation Treaty (NPT) Conference, parties agreed in the Principles and Objectives document to complete a CTBT in 1996. That commitment was reaffirmed at the 1995 UN General Assembly, with a deadline of reaching agreement in time for signature this September at the UN. Negotiators in Geneva have agreed that a 28 June deadline for agreement on the text is necessary in order to reach the September goal.

Several key compromises are made in Ramaker's text. These include parts of the preamble, the scope, entry into force, the use of information gathered from national technical means in calling for on-site inspections (OSIs) and how OSIs are formally initiated, and in the review of the Treaty. A key question is how much support exists for Ramaker's choice on entry into force.

Preamble

Non-aligned states want the preamble to set the treaty in the context of nuclear disarmament. Nuclear-weapon states (NWS) oppose references to a time-bound framework for the elimination of nuclear weapons and to specifying treaty objectives. Ramaker's preamble includes language which draws a balance between these positions. Importantly, the preamble is specifically mentioned as an item for discussion in the reviews of the treaty, which ensures that its principles will be kept alive.

The key paragraph reads:

Convinced that the cessation of all nuclear weapon test explosions and all other nuclear explosions, by constraining the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons, constitutes an effective measure of nuclear disarmament and non-proliferation in all its aspects

It does not describe ending the qualitative improvement and development of nuclear weapons as the "principle objective" of the treaty, a phrase strongly opposed by the UK in particular, but puts in the sense of US Ambassador John Holum's statement in January 1996 that the treaty will end, rather than simply constrain, the development of advanced nuclear weapons. This language is considerably stronger than that NWS have supported to date.

The preamble does not include references to the total elimination of nuclear weapons within a "time-bound framework" which had been proposed by India. Nor does it include references to the cessation of nuclear testing "within the framework of an effective nuclear disarmament process", another compromise for the non-nuclear weapon states (NNWS).

For NNWS, it includes the conviction that "the present international situation provides an opportunity to take further effective measures towards nuclear disarmament and against the proliferation of nuclear weapons in all its aspects" and declares the intention of States Parties to "take such measures". It also includes text from the Australian model text, put down in February 1996, that the CTBT "will constitute a meaningful step in the realization of a systematic process to achieve nuclear disarmament".

The preamble also restates language from the NPT Principles and Objectives stressing

“the need for continued systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons, and of general and complete disarmament under strict and effective international control”. This would for the first time commit non-NPT signatories such as India, Pakistan and Israel to this language and put these NPT Principles and Objectives commitments in a legally binding document.

In response to demands from India, all direct reference to the NPT and calls for NNWS to join the NPT have been removed. The treaty now welcomes “international agreements and other positive measures” on nuclear disarmament and prevention of nuclear proliferation and underlines the “importance of their full and prompt implementation”. Description of recent reductions in arsenals of nuclear weapons as “deep” has been dropped.

China has sought language allowing peaceful nuclear explosions (PNEs), a position no other state supported. The preamble includes language, previously bracketed, which clearly rules out PNEs. However, the article on Review of the Treaty, discussed below, provides a slight concession to the Chinese on this. The preamble also excludes language proposed by China urging the NWS to conclude international agreements on no threat or use of nuclear weapons against NNWS or nuclear-weapon-free zones and on no-first-use of nuclear weapons against each other.

Scope

Ramaker retains the scope formulation originally proposed by Australia in March 1995. France, followed by the US, the UK and recently Russia have all now given their support to this “zero yield” formulation. With the exceptions of China, which is still holding out for PNEs, and India, which has proposed more complex language in an attempt to prohibit laboratory testing, the Australian formula has the support of the vast majority of states.

Entry into Force

On Entry into Force, Ramaker discards all the previous formulations in favour of a new approach based on the practical requirements of the treaty’s verification regime. Article XIV specifies that the treaty would enter into force 180 days after instruments of ratification have been deposited by all states which have seismological stations comprising the primary network for verification and all states which have radionuclide laboratories. This is a total of 37 states listed in the protocol to the treaty and includes all five NWS and the three “threshold” states, India, Pakistan, and Israel. Russia and the UK have insisted that all eight countries must be included before the treaty can enter into force.

This compromise may prove to be controversial. While it avoids the difficulties of singling out the eight nuclear and threshold states, it makes the treaty hostage to ratification by any of the 37 states. The United States, for example, has supported requiring the five nuclear-weapons states plus an additional number of states to ratify. Other states, including Australia, have supported using a simple number, similar to the provision in the Chemical Weapons Convention.

By requiring all 37 countries to ratify, Ramaker’s proposal will encourage countries to agree to the treaty, because each knows it can hold up entry into force if it wants. Countries that then sign the treaty will also be bound by the spirit of it, even before it enters into force. The question remains whether these reasons will build support for Ramaker’s proposal.

National Technical Means and On-Site Inspections

The use of information obtained by national technical means (NTM) to trigger an on-site inspection has been a key demand of the US and other Western states. This has been strongly opposed as discriminatory by states like China, India, and Pakistan, and generally opposed by most non-aligned states, although there have been signs of flexibility in recent weeks. The language proposed by Ramaker seeks a two-part compromise. It states first that “the on-site inspection request shall be based on information collected by the International Monitoring System, on any relevant technical information obtained by national technical means of verification in a manner consistent with generally recognised principles of international law or on a combination thereof”. The inclusion of the phrase on “international law” is intended to address the concerns of China and other non-aligned states about the use of NTM while still allowing it. For example, Pakistan wanted specifically to prevent the use of human intelligence, and the international law reference can be seen as serving that purpose.

US preferences that an OSI can begin almost immediately after a request based on NTM are tempered. In Ramaker’s text, preparations for an OSI can begin as soon as the Director-General certifies the request, but a majority of the Executive Council must approve it within 72 hours. China and Pakistan has sought at least a two-thirds majority vote from the Council to approve an OSI. This compromise seems to satisfy to both sides.

Review

Article VIII on Review of the Treaty specifies that the review conference of States Parties to the treaty will “review the operation and effectiveness of this Treaty, including its Preamble, with a view to ensuring that its object and purpose are being realised. Such review shall take into account any new scientific and technological developments relevant to this Treaty”.

Having the Preamble specifically included in the scope of the review goes further than many previous arms control treaties and gives it greater than usual status, satisfying the Indian proposal that reference to the Preamble be included in the review section of the treaty. This is also to the advantage of NNWS which would then be able to address in the forum of the review conference whether the strong commitments on nuclear disarmament, constraining development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons have been fulfilled.

There had been some discussion of mentioning PNEs in the Amendments section of the treaty. However, because of strong opposition from several countries, particularly Canada, Ramaker omitted specific mention of PNEs entirely. However, the language on “scientific and technological developments” is meant to provide reference to the possibility of PNEs without mentioning them explicitly.

Conclusion

Chairman Ramaker has clearly listened carefully to the concerns expressed by all parties to the CTBT negotiations and worked hard to find areas of common ground and possibilities for compromise. As Chairman of the Nuclear Test Ban Committee, his draft CTBT has greater salience than previous model texts from Australia and Iran. It is a welcome step forward.

By the nature of a fair compromise, most states will find formulations in the draft CTBT with which they agree and others with which they do not. Australia recently chose to drop text on the environmental benefits of the treaty despite its national position of support, on grounds that it was opposed by some and “not . . . essential in the context of this treaty”. Indonesia dropped its proposal on scope. For the sake of the CTBT others must now follow these examples. A great deal of work and expertise has gone into drafting a text

which represents the best deal available at this time. The negotiators must now decide whether they truly want a comprehensive test ban treaty, or whether they do not.

Note

This analysis was done within two days of the release of Ambassador Ramaker's text. Additional issues are likely to emerge, and there will be further developments on the issues discussed in this paper.

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