

# THE CTBT SPECIAL CONFERENCE ON ENTRY INTO FORCE

by **John V. Parachini with Tom Birmingham**

*John V. Parachini is a Senior Associate at the Center for Nonproliferation Studies of the Monterey Institute of International Studies. Tom Birmingham served as a Scoville Fellow at the Monterey Institute of International Studies' Washington, DC, office.*

The adoption of the Comprehensive Nuclear Test Ban Treaty (CTBT) by the UN General Assembly in September of 1996 reflected nearly four decades of efforts aimed at bringing an end to nuclear testing. Upon its opening for signature, President Clinton described the CTBT as “the longest sought, hardest fought prize in arms control history.”<sup>1</sup> His words effectively captured both the amount of effort devoted to and the importance of the CTBT; yet in the two years since President Clinton’s speech, the fight to secure a lasting comprehensive test ban remains woefully unfinished. Only a fraction of the requisite states parties have deposited their instruments of ratification. The 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) mandated the conclusion in 1996 of negotiations on the CTBT.<sup>2</sup> While the negotiations were completed in the requisite time, actual implementation of the treaty is unlikely in the short term and uncertain in the long term. The international community should take the lesson that mere negotiations of arms control agreements is not enough. The standard of commitment should be actual implementation, if not effective implementation.

The CTBT serves as a key bridge from one international security order to another. As one commentator has noted, “Building down one security order requires a commensurate building up of alternative orders if stability is to be safeguarded.”<sup>3</sup> The CTBT contributes sig-

nificantly to efforts to create a new global security order based on arrangements that are universal in scope and employ extensive verification measures. Many hope that such a new order will involve dramatic reductions and even elimination of nuclear weapons. These worthy goals are probably unattainable if the international community cannot bring the CTBT into force and implement it effectively. Failure to put this bridge in place will seriously jeopardize any prospects for more ambitious steps to diminish nuclear weapons as instruments of statecraft.

Due to the uniquely cumbersome entry-into-force (EIF) provision for the CTBT, some states anticipated this problem and, at Canada’s suggestion, pushed for inclusion in the treaty text of a provision for a “Special Conference” to facilitate entry into force. Such a conference is likely to take place this fall. The objective of this report is to adumbrate the main procedural elements of the conference and review some courses of action that states parties could undertake to achieve effective implementation of the accord.

For the CTBT to enter into force, Article XIV of the treaty stipulates that a group of 44 states possessing nuclear power or research reactors, identified by name and listed in Annex 2 of the CTBT, must first ratify the treaty.<sup>4</sup> Critics argue that the treaty’s entry-into-force provision is unduly tortuous and grants an effective veto

to each of the countries listed in Annex 2, as they can prevent implementation simply by withholding their ratification.<sup>5</sup> If one or more of the states listed in Annex 2 fail to ratify the CTBT within a three-year period following its signature, the treaty states that a simple majority of the states that have ratified the treaty may call a conference to consider what actions might be taken to accelerate its entry into force. Given that a number of the states required for ratification—including Russia, China, Israel, North Korea, India, Pakistan, and the United States—had failed to ratify the CTBT by 180 days before the three-year signature anniversary, September 24, 1999, the accord will not enter into force as called for in the treaty text and the states parties will call for a Special Conference to facilitate the treaty's entry into force.

Given the long history of international interest in securing a comprehensive nuclear test ban, the current paucity of interest in effective implementation of the treaty is somewhat surprising. While Canada and Austria have prepared "non-papers" or working papers on the Special Conference, with the conference less than six months away, most states have given the conference little if any attention.<sup>6</sup> Some CTBT supporters had hoped that the test ban would be a significant topic of discussion at the May 1999 NPT Preparatory Committee (PrepCom) meeting in New York. But given the multitude of other issues on the agenda related to preparing for the 2000 NPT Review Conference, it was not possible to devote much official consideration at the meeting to how to implement the CTBT.<sup>7</sup>

Naturally, a genuine crisis such as the conflict in the Balkans that developed in spring 1999 requires a response entailing considerable political capital and energy that might otherwise be dedicated to longer-term challenges. Getting the Clinton administration and other key governments to adequately prepare for a high-profile, ministerial-level conference on an arms control treaty consecrating an existing voluntary moratorium is probably unlikely. However, a failure on the part of the international community and the United States, which significantly influences the multilateral arms control process, to dedicate time and resources to the Special Conference risks squandering the opportunity to push the treaty and could lead to a crippled meeting that might even retard the effort to bring it into force.

## **PROGRESS TOWARD ENTRY INTO FORCE**

As of May 26, 1999, 152 countries had signed the CTBT, but only 36, or 19 percent, had ratified the treaty. Although relatively few states have thus far deposited their instruments of ratification, the executive secretary of the Preparatory Commission for the CTBT Organization (CTBTO), Wolfgang Hoffman, said he expected 50 percent of the signatories to have ratified the treaty prior to the convening of a conference.<sup>8</sup> As for the 44 countries whose ratifications are required for the treaty to enter into force, 41 had signed, with 18, or 41 percent, having deposited their instruments of ratification (See Table 1 for the status of each of the 44). India, North Korea, and Pakistan remain the only countries of the 44 listed in Annex 2 that have yet to sign the treaty.

Of these three countries, North Korea has not given any indication of its intention to sign or ratify the treaty.<sup>9</sup> India and Pakistan, however, have given mixed signals on their willingness to sign and ratify the treaty in the near future. On September 23, 1998, Pakistani Prime Minister Nawaz Sharif told the United Nations General Assembly that his country was "prepared to adhere to the CTBT" prior to the 1999 EIF conference.<sup>10</sup> Two months later, Sartaj Aziz, Pakistan's foreign minister, also said that Pakistan would likely sign the CTBT, cautioning however that Pakistan's signature was still some time away.<sup>11</sup> One day after Sharif addressed the UN General Assembly, Indian Prime Minister Atal Behari Vajpayee appeared before the Assembly and announced that India was "prepared to bring...discussions to a successful conclusion so that entry into force of the CTBT is not delayed beyond September 1999."<sup>12</sup> In a speech before India's lower house of parliament, Vajpayee reiterated his country's willingness to work toward the treaty's entry into force.<sup>13</sup> Although no dates for their signature have been set, separate negotiations between representatives of the United States and both Pakistan and India continue. Given the fall of the Vajpayee government and the uncertain future of any new government, the Indian position on CTBT will likely remain unclear for the foreseeable future. The political instability in India may diminish Pakistan's willingness to sign the accord as well.<sup>14</sup> If these two countries indeed sign the treaty prior to September, it is unclear whether they will ratify the treaty prior to the opening of a conference.

**Table 1: CTBT Ratification Status: 44 States Required For Entry Into Force  
(as of May 26, 1999)**

| STATE              | DATE OF SIGNATURE | DATE OF RATIFICATION |
|--------------------|-------------------|----------------------|
| ALGERIA            | 10/15/96          |                      |
| ARGENTINA          | 09/24/96          | 12/04/98             |
| AUSTRALIA          | 09/24/96          | 07/09/98             |
| AUSTRIA            | 09/24/96          | 03/13/98             |
| BANGLADESH         | 10/24/96          |                      |
| BELGIUM            | 09/24/96          |                      |
| BRAZIL             | 09/24/96          | 07/24/98             |
| BULGARIA           | 09/24/96          |                      |
| CANADA             | 09/24/96          | 12/18/98             |
| CHILE              | 09/24/96          |                      |
| CHINA              | 09/24/96          |                      |
| COLOMBIA           | 09/24/96          |                      |
| DEM. REP. OF CONGO | 10/04/96          |                      |
| EGYPT              | 10/14/96          |                      |
| FINLAND            | 09/24/96          | 01/15/99             |
| FRANCE             | 09/24/96          | 04/06/98             |
| GERMANY            | 09/24/96          | 08/20/98             |
| HUNGARY            | 09/25/96          |                      |
| INDIA              |                   |                      |
| INDONESIA          | 09/24/96          |                      |
| IRAN               | 09/24/96          |                      |
| ISRAEL             | 09/25/96          |                      |
| ITALY              | 09/24/96          | 02/01/99             |
| JAPAN              | 09/24/96          | 07/08/98             |
| MEXICO             | 09/24/96          |                      |
| NETHERLANDS        | 09/24/96          | 03/23/99             |
| NORTH KOREA        |                   |                      |
| NORWAY             | 09/24/96          |                      |
| PAKISTAN           |                   |                      |
| PERU               | 09/25/96          | 11/12/97             |
| POLAND             | 09/24/96          | 05/25/99             |
| ROMANIA            | 09/24/96          |                      |
| RUSSIAN FED.       | 09/24/96          |                      |
| SLOVAKIA           | 09/30/96          | 03/03/98             |
| SOUTH AFRICA       | 09/24/96          | 03/30/99             |
| SOUTH KOREA        | 09/24/96          |                      |
| SPAIN              | 09/24/96          | 07/31/98             |
| SWEDEN             | 09/24/96          | 12/02/98             |
| SWITZERLAND        | 09/24/96          |                      |
| TURKEY             | 09/24/96          |                      |
| UKRAINE            | 09/27/96          |                      |
| UNITED KINGDOM     | 09/24/96          | 04/06/98             |
| UNITED STATES      | 09/24/96          |                      |
| VIETNAM            | 09/24/96          |                      |

To date, two of the five *de jure* nuclear weapon states (NWS) designated in the NPT, France and the United Kingdom, have deposited their instruments of ratification. Whether the three NWS that have not yet ratified the treaty—China, Russia, and the United States—will

be among Ambassador Hoffman's 50 percent remains unclear. In November, Russia issued a joint declaration with Japan indicating the willingness of both countries to ensure the early entry into force of the CTBT.<sup>15</sup> However encouraging the statement may be, concrete action

by the Russian Duma on START II, let alone a treaty that they have not considered at all such as the CTBT, seems highly unlikely. Moreover, the economic crisis that grips the country, the conflict in Yugoslavia, and Boris Yeltsin's continuing political and health problems only add to the arms control paralysis that bedevils Russia. And finally, Russia's upcoming presidential election scheduled for next year might serve to distract the country's decisionmakers from consideration of the nuclear test ban.

Unlike Moscow, Beijing appears to be working towards ratification of the CTBT. The director-general of China's Department of Arms Control and Disarmament, Ambassador Sha Zukang, announced in January that China was accelerating its preparatory work on the CTBT and plans to submit the treaty to the People's Congress for ratification during the first part of this year. Ambassador Sha added that this was to be done in the hope of securing ratification prior to September of this year.<sup>16</sup> At the Conference on Disarmament in Geneva, Chinese President Jiang Zemin indicated that the Chinese government "will soon officially submit the treaty to the National Peoples Congress for ratification."<sup>17</sup> Even after the accidental bombing of the Chinese embassy in Belgrade, a senior Chinese official indicated that China would still proceed with CTBT ratification. While China may ratify the accord, several Chinese scholars outside the government expect that China will not move to deposit its instruments of ratification until after the United States does so.<sup>18</sup>

As for the United States, President Clinton used the 1999 State of the Union address to call upon the Senate to ratify the CTBT this year. Several key cabinet members have indicated that the administration would make an effort to obtain advice and consent prior to the opening of the Special Conference on entry into force.<sup>19</sup> However, despite the Clinton administration's good rhetorical intentions, spending the political capital to get the Senate to hold hearings and bring the treaty up for a vote will be difficult.

If the US Senate were to hold a vote on the CTBT, it would likely receive the required votes for ratification. However, several key Republican senators opposed to the treaty will use their leadership positions to stall consideration of the accord. Similar to when the Senate considered the Chemical Weapons Convention (CWC), Senate Majority Leader Trent Lott (R-MS) must make

the calculation that the CTBT is valuable enough to the country and his fortunes in the Republican party to push the treaty over the opposition of several key senators in the Republican caucus. In the case of the CWC, Lott pushed for ratification even though the chairs of the Foreign Relations, Armed Services, and Intelligence Committees all opposed it.<sup>20</sup> In the case of the CTBT, Senator Jesse Helms (R-NC), the chair of the Senate Foreign Relations Committee, which has primary jurisdiction over treaties, has indicated his opposition. This committee must hold hearings and vote a recommendation before the full Senate can consider the treaty. Yet Senator Helms and his staff are not inclined even to hold hearings on the CTBT, let alone bring it before the committee for a vote. Senator Helms is holding up consideration of the CTBT to force the Clinton administration to submit the ABM protocol agreement with Russia to the Senate for consideration.<sup>21</sup> Senator Richard Shelby (R-AL), chair of the Intelligence Committee, has not indicated his position, but he is expected to oppose the treaty based on concerns about verification.<sup>22</sup> The new Armed Services Committee chair, Senator John Warner (R-VA), has yet to indicate his position, but it is unlikely that he will fight Senator Helms on the issue.

While opinion polls have consistently indicated considerable public support for a test ban, concerns over Chinese espionage on US nuclear weapons labs only serve to complicate the political environment in which the treaty might be considered.<sup>23</sup> The many criticisms of the Clinton administration's handling of the charges of Chinese espionage complicate matters more. And finally, the Clinton administration's CTBT ratification effort will be influenced by the prior confirmation process for a number of key foreign policy appointments, including Richard Holbrooke as UN ambassador and John Holum as under secretary of state for arms control and international security/political-military affairs. Rejection or prolonged review of either of these nominees may delay the administration's CTBT ratification efforts.

Table 2 shows the ratification status of the CTBT as of May 26, 1999. Although more countries will ratify the treaty before September 24, securing the required 44 ratifications seems virtually impossible. Thus, it is anticipated that those signatory states that have ratified the treaty will convene the Special Conference outlined in paragraph 2 of Article XIV as a means to further the EIF process.

Table 2: CTBT Ratification Status (as of May 26, 1999)

|  | NUMBER<br>SIGNED | PERCENT<br>SIGNED | NUMBER<br>RATIFIED | PERCENT<br>RATIFIED |
|--|------------------|-------------------|--------------------|---------------------|
| <b>REQUIRED STATES<br/>(44 STATES)</b> | 41               | 93%               | 18                 | 41%                 |
| <b>WORLD TOTAL<br/>(192 STATES)</b>    | 152              | 79%               | 36                 | 19%                 |

### BASIC PROVISIONS OF THE CTBT ENTRY-INTO-FORCE CONFERENCE

Paragraph 2 of Article XIV of the treaty outlines the basic objective of the conference. Convening the Special Conference requires a majority of the states that have ratified the treaty to call upon the Depository of the instruments of ratification, in this case the UN Secretary General, to convene a "Special Conference." The task of the conference is to "consider and decide by consensus what measures consistent with international law may be undertaken to accelerate the ratification process in order to facilitate the early entry into force of" the CTBT.

Whether or not the Special Conference fulfills its purpose will ultimately depend on persuading some of the required 44 states to ratify the CTBT. What the EIF effort lacks is a clear sense of legal or political urgency. The United States as well as other governments responded to a looming deadline in the case of the CWC. Countries that failed to deposit their instruments of ratification prior to April 29, 1997, would not have been able to participate in key decisions regarding the implementation of the treaty or the staffing of the implementing organization.<sup>24</sup>

There is no equivalent deadline for the CTBT. Thus, a sense of urgency must be created by raising the profile of the unimplemented accord on the agendas of the signatory states in general, and of six key states in particular (United States, Russia, Israel, North Korea, India, and Pakistan) that are the most influential or problematic of those whose ratification is required for EIF. The Special Conference can raise the political salience of the CTBT in four ways: by holding the meeting at a senior political level, by achieving attendance that is broad in scope, by garnering media attention, and by issuing declarations that strongly affirm the international norm against nuclear testing. Unfortunately, due to the 1998

Indian and Pakistani nuclear tests, the political paralysis in Russia, and the failure of the US Senate to consider the CTBT for ratification, EIF of the accord is stalled. Securing CTBT entry into force will require a renewed effort by a group of key states, and the Special Conference presents an opportunity to kick-start the process. Making the conference a success will require making wise choices about venue, participants, alternative routes to EIF, and measures to broaden norms concerning nuclear weapons. Subsequent sections take up each of these issues in turn, discussing how the choices that are made will affect the political salience of the CTBT among non-signatory and non-ratifying states.

### Conference Venue

Several ratifying states have written the UN Secretary General regarding a Special Conference on CTBT entry into force. Most states anticipate that such a conference will occur in late September or early October 1999. The two venues being considered as locations for the meeting are New York and Vienna. Interested states are currently discussing who will serve as the conference chair and who will serve as a secretary for the conference. Some observers believe that if it is held in New York, UN Under Secretary General for Disarmament Jayantha Dhanapala will serve as secretary of the conference, with CTBTO Executive Secretary Wolfgang Hoffman serving as secretary if Vienna hosts the conference. While many believe that an appropriate chair of the conference would be a foreign minister, and the foreign ministers of Canada and Australia have been suggested as candidates for the chairmanship, doubts exist about the possibility of securing such a senior official to chair the conference.

Compelling reasons exist for choosing both New York and Vienna as conference sites, although indications from the May 1999 NPT PrepCom are that Vienna

is the more likely venue. How the CTBT states parties and signatories reach a final decision on venue may provide an important short-term indication of their commitment to and the prospects for implementation of the accord. At the moment, the signs are not encouraging.

The specific date of the conference may bear to some degree on the venue for the conference. The UN General Assembly (UNGA) may convene the week of September 27th in New York and run until late November or early December. If the CTBT entry-into-force conference were to be convened near the start of the UNGA in order to ensure ministerial level attendance at the meeting, it would probably start on Monday, October 4th. The UN First Committee on Disarmament will probably convene shortly after the start of the UNGA, and many foreign ministers will participate in its session. Since most of the ratifying states at this time are European, their foreign ministers may prefer to return to their capitals for the weekend and attend a special conference held in Vienna, where the treaty implementing body is located, rather than remain in New York over the weekend. Most European officials can reach Vienna and return to their home capitals within the same day. While mere travel details seem unimportant when discussing the future of an international agreement more than forty years in the making, as anyone knows who has managed the schedules of senior leaders, simple logistics do matter.

Securing ministerial-level attendance at the Special Conference would raise the political profile of the effort to secure entry into force of the CTBT. While one might think that convening the conference in New York immediately following UNGA offers the best chance of getting foreign ministers to attend the meeting, the schedule works against this outcome. The question is whether it is easier to get foreign ministers to add time on to their scheduled trips to New York or to arrange for them to make a special trip to Vienna. On the downside, not all CTBT signatories have representation in Vienna that can effectively represent them at a multilateral arms control meeting. In contrast, virtually all nations have a greater presence in New York and are likely to be able to send representatives to a conference held there. Many developing countries lack such a presence in Vienna, and the costs associated with sending a delegation to Vienna could serve to deter some countries from attending, particularly those that might have signed but not ratified the treaty.

Whether the states parties choose New York or Vienna may affect the profile of representatives in attendance as well as who will chair the conference. If Vienna, as home to the Comprehensive Test Ban Treaty Organization, hosts the conference, countries may send lower-level technical officials that they maintain in Vienna to deal with the CTBTO rather than higher-ranking political figures. If countries preferring Vienna as the Special Conference site are unable to secure the attendance of many foreign ministers, it is unlikely that as many upper-level policymakers would make the effort to be in Vienna. On balance, a meeting in New York would probably involve a greater number of high-ranking officials.

A further benefit to holding the conference in New York is that it is more likely to garner media coverage. Getting media coverage of international meetings not laden with conflict between major states is always difficult, but at least most media organizations have a presence in New York to cover the United Nations. Holding the conference in New York thus offers more opportunity for drawing international media attention and raising the overall profile of the conference, whereas holding the conference in Vienna increases the chances that the event will receive only limited press coverage.

If the Special Conference is held in New York immediately following the UNGA there will also be an opportunity for foreign ministers to mention the CTBT in their statements before the General Assembly. Even if foreign ministers choose not to meet in New York for the conference, convening the Special Conference in New York in order to make it easier for more foreign ministers to attend probably increases the chance of media coverage of the Comprehensive Test Ban Treaty at the UNGA if not at the conference itself.

Convening the Special Conference in New York immediately following the UNGA also increases the chances that the CTBT will be a subject of discussion during the many bilateral and sidebar meetings that always occur during UNGA meetings. If the states parties are sufficiently organized prior to September, a number of countries leading the effort to achieve the entry into force of the CTBT can make approaches to key countries yet to ratify the accord.

The UN Secretary General may also engage foreign ministers on this issue more easily if the meeting is held in New York. Secretary General Kofi Annan and the Under Secretary for Disarmament Affairs Jayantha

Dhanapala are both strong advocates of the CTBT. Given the considerable demands on their time, Annan and Dhanapala are more likely to use their good offices to urge ratification of the CTBT if the Special Conference is held in New York, where they will likely be during the UNGA and the First Committee meeting. And finally, if the conference is held in New York, it probably makes it easier for the UN Secretary General to attend part of the conference, which may again increase the likelihood of press coverage.

A conference held in New York could also highlight how the United States has yet to ratify the treaty. Any media or political attention on the test ban in the United States increases its saliency as an issue for the Clinton administration and the US Senate to address. As indicated above, a number of countries are making their ratification contingent on prior US ratification of the accord. An important consideration for some senators during the CWC ratification debate was how the United States could not reject a treaty that it had pushed the international community to negotiate, because of the fear that other countries would not take the United States seriously as a negotiating partner in the future.<sup>25</sup> The same logic applies to the CTBT. Thus, any attention in the US media on how lack of Senate action on this popular accord delays the wishes of the world would increase the incentives for key senators to support hearings and a vote on the agreement. However, a delicate balance must be struck. US senators may react negatively to what they perceive as foreign interference in a US political decision. Moreover, given the antipathy of many conservative Republicans towards the United Nations, international pressure being exerted from a UN-arranged meeting could create adverse reaction from Republican senators on both the CTBT and a range of UN issues.

Throughout the Clinton administration's tenure, the State Department has always shown considerable hesitancy to push the Congress aggressively on nonproliferation and arms control measures. This hesitancy probably stems from the administration's self-perceived weakness on security issues. A combination of factors lead to the Clinton administration's hesitancy in foreign and defense policy, most of which stem from the president himself: his lack of military service; the controversy in his first year in office over homosexuals in the military; a commitment to reorient US foreign policy to emphasize open and free international trade, rather than security policy, as the cornerstone of foreign policy; and

finally, a tendency on the part of the administration to fight for important legislation like NAFTA and the CWC only when it finds itself in a political do-or-die situation. Moreover, the president's year of scandal has further diminished the administration's inclination and ability to promote a robust legislative agenda with a Republican-dominated Congress.

Predictably, the State Department bureaucracy is conflicted on the best venue for the Special Conference. Secretary Albright has reportedly sent letters to several foreign ministers advocating New York as the best venue. Yet at the same time, some suggest that the State Department's legislative office prefers that the Special Conference be held in Vienna for fear of sparking a tactical backlash against the treaty by opponents such as Senator Helms. Throughout the Clinton years, the State Department's legislative affairs office has been reluctant to press boldly for any arms control measure. As time passes, the consensus opinion in the State Department is that the Special Conference will be held in Vienna despite the formal entreaties of Secretary Albright with her foreign counterparts.<sup>26</sup>

### **Provisions for Observers at the Conference**

In light of the objective of the Special Conference to facilitate the treaty's entry into force, the CTBT ratifiers shaping the modalities of the conference need to consider the provisions for observers at the conference. On the subject of observers to the conference, the treaty refers only to signatory states and is silent on the status of both non-signatory states whose participation in the accord is required for entry into force and non-governmental organizations. Paragraph 4 of Article XIV reads:

All States Signatories shall be invited to attend the Conference referred to in paragraph 2 and any subsequent conferences as referred to in paragraph 3, as observers.

The states parties must decide prior to the conference whether non-signatory states and non-governmental groups can attend as observers, and what rights to grant them. Greater state participation seems desirable as a way to raise the profile of the CTBT, create momentum for positive action, and increase the pressure on holdout states.

Several precedents exist to support the attendance of non-signatory states at the conference as observers. After all, the objective of this conference is to encourage

the non-signatory states to ratify. The more that non-signatory states participate in the processes of the treaty, the more likely they will ratify it and participate in its implementation once they do so. In 1997, the Conference of the States Parties of the Organization for the Prohibition of Chemical Weapons (OPCW) adopted its Rules of Procedure, which allow states that have not signed the CWC to apply for observer status at the Conference of States Parties. Under Rule 30, representatives of non-signatory states granted observer status may attend and participate in plenary meetings of the conference but may not vote in such meetings or attend private meetings of the conference. Non-signatories may also receive documents of the conference, yet, unlike signatory states, they are not permitted to deliver statements at plenary meetings or submit their views in writing to delegations at the conference.<sup>27</sup> During the most recent OPCW Conference of States Parties, Libya and Eritrea, both non-signatories to the CWC, participated as observers.<sup>28</sup>

The practices of the Preparatory Commission for the CTBTO offer another example for the conference to follow. Thus far the CTB PrepCom has invited all non-signatory states designated to have International Monitoring System (IMS) facilities on their territories to attend Preparatory Commission working groups.<sup>29</sup> While the PrepCom is a different venue with different objectives, encouraging participation in creation of the IMS helps acquaint states with aspects of the accord that should entice them to become full-fledged members of the system, so as to reap the full scientific, security, and political benefits.

One argument against inviting non-signatories to attend as observers is that it could potentially take away the incentive for states to sign the treaty by granting signatories and non-signatories many of the same benefits, without requiring the latter to ratify the treaty and deposit instruments of ratification. Yet, given the intent of the Special Conference, the modest cost of including a few free-rider states that have not been able to manage their domestic political operations such that they fulfill their international obligations in a timely manner is a small price to pay.

### **Participation of Non-Governmental Organizations**

Non-governmental organizations (NGOs) have become important players in fortifying the global non-proliferation regime. Article XIV of the CTBT does not

address the status of NGOs in regards to the Special Conference. Prior to the conference the rules covering non-governmental organizations need to be formulated.

In 1994, the PrepCom for the NPT Review Conference allowed NGOs to attend. Fifty-one NGOs chose to attend the PrepCom meeting, 30 of which chose to brief the PrepCom at a session arranged just for that purpose. NGOs were also permitted by the PrepCom to submit and receive documents during its session.<sup>30</sup> At the 1995 NPT Review Conference, NGOs were invited as observers and granted the right to attend meetings of the plenary and of the main committees. In addition, the organizations were entitled to receive documents of the NPT conference upon request.<sup>31</sup> NGOs were also given a limited time to speak at the NPT Review Conference; however, given time constraints, only 14 of the 120 NGOs made presentations.<sup>32</sup> More recently, representatives from 76 non-governmental organizations attended the May 1998 session of the NPT PrepCom for the NPT 2000 Review Conference. The PrepCom allotted time for 13 NGO representatives to present their views.<sup>33</sup>

As with the status of non-signatory states, the CWC offers guidance on how the states parties should proceed, although it is more restrictive than the NPT PrepCom meetings. Under the Rules of Procedure for the Conference of States Parties of the OPCW, representatives of NGOs may be invited to attend the plenary meetings of the conference.<sup>34</sup> Thus far, each of the three conferences held by the states parties under the CWC permitted NGOs to attend as observers and place materials outside conference meeting rooms, but denied them the privilege of addressing the conference.<sup>35</sup>

Since the CTBT text does not specifically address the modalities concerning NGOs, states parties to the accord are free to set the rules for their meeting. Given the objective of the Special Conference and the constructive role NGOs can play in promoting ratification of the accord in countries yet to do so, states parties should model their practices after those employed at the NPT PrepComs.

### **Alternatives for CTBT Entry into Force**

Turning from procedural matters to substantive questions, the first issue is whether the Special Conference can create alternative EIF procedures. Unfortunately, this appears unlikely. Article VII of the CTBT allows for amendments to the "Treaty, the Protocol, or the Annexes



to the Protocol” only after the treaty’s entry into force, and the article specifies that any amendment is to be “considered and adopted only by an Amendment Conference.”<sup>36</sup> This therefore precludes the Special Conference from using an amendment to alter or waive the Article XIV requirements as a means of bringing the treaty into force without ratification by all states listed in Annex 2.

Some have suggested that the treaty enter into force provisionally if the required number of states parties cannot be secured.<sup>37</sup> Proponents of provisional EIF point to the GATT agreement and the Conventional Forces in Europe (CFE) Treaty. From an American perspective, neither are good examples. The GATT agreement took effect via an executive branch action stemming from an agreement among the states parties, often referred to as contracting parties, rather than as a treaty requiring ratification by the US Senate or any other national legislative body.<sup>38</sup> Congress had given the president authority to negotiate such international commercial agreements when it passed the Reciprocal Trade Agreements Act of 1934. Furthermore, the provisional application of GATT was an agreement among 22 like-minded nations that sought provisional application of the agreement to quickly secure its benefits, not as a means to get around a lack of desired or required consensus. Similarly, in the case of the CFE Treaty, the president and both the chair and the ranking minority member of the Senate Foreign Relations Committee agreed to its provisional implementation prior to Belarus depositing its instruments of ratification with the full expectation that Belarus would do so soon. Once again, the CFE Treaty involved a much smaller number of states than the CTBT and a solid consensus behind the provisions of the treaty existed. The Belarusian difficulties in ratifying the accord in a timely manner stemmed from a domestic political complication unrelated to the CFE Treaty. Moreover, the concurrence between the executive and legislative branches in the United States on the value of these accords even in a provisional status was critical to the United States’ willingness to support provisional application of both treaties.

Some treaties, such as the Open Skies Treaty, do specifically provide for provisional implementation.<sup>39</sup> While provisional implementation was an option considered by the CTBT negotiators, sufficient support never existed to include it as part of the agreement.<sup>40</sup> Thus, none of the historical examples of provisional entry into

force seems appropriate for the CTBT at this time. A group of ratifying states may join together in a consensual arrangement to implement the treaty provisionally prior to actual EIF of the accord, but this would not serve as an adequate alternative to actual and effective implementation as currently called for in the text of the agreement.

### **SPECIAL CONFERENCE ACTIONS FOR STATES PARTIES TO CONSIDER**

Three papers with suggestions for the entry-into-force Special Conference are currently being circulated. All three make valuable contributions to the preparation for the conference. The Austrian government, a potential host for the Special Conference, has prepared a brief “Food for Thought” paper on the conference.<sup>41</sup> The Austrian paper notes that the Special Conference provides a good opportunity for the Provisional Technical Secretariat (PTS) to report on “the progress so far achieved in the build-up of the verification system as well as to outline the ‘fringe benefits’ which states parties can derive from the operation of the CTBT verification system (e.g. access to a wealth of scientific data relevant in a number of fields).” The Austrian paper also underscores the value of holding the conference at the ministerial level. In its section on decisions to be taken at the conference, the Austrian paper advocates a final declaration for adoption by all participating states that does the following: reiterates the need for no more nuclear tests; urges states to ratify the accord; calls for early completion of the verification system, for its value to the CTBT as well as its contribution to international scientific cooperation; suggests that “political missions” visit the countries yet to ratify whose instruments of ratification are required for EIF; and finally, suggests that the next Special Conference be convened in 2001 in Vienna if the treaty has still not entered into force.<sup>42</sup> Austria played a constructive role throughout the CTBT negotiations and continues to do so with this “Food for Thought” paper. As the host for the PTS and the potential host of the first Special Conference for the CTBT, Austria has an interest in progress at the conference and in effective implementation of the treaty.

Canada sponsored inclusion of Article XIV.2 in the treaty text and it continues to demonstrate considerable leadership in the effort to achieve entry into force, including the preparation of its paper on the Special Conference. The Canadian paper outlines the elements of

the Article XIV.2 and some steps to consider for the conference.<sup>43</sup> As a first step, the conference should benchmark the extent to which the treaty has failed to gain the required country ratifications and the prospects for doing so in the future. With an understanding of the progress toward achieving the required number of ratifying states for CTBT implementation, the states participating in the conference can then concentrate their efforts on “cooperative measures to promote and encourage steps by States to ratify the Treaty, thereby bringing it into force.” Cooperative measures suggested in the Canadian paper include helping states yet to ratify with the drafting of domestic implementing legislation and regulations to make ratification easier, conducting workshops on aspects of the accord related to domestic implementation, and general advocacy on behalf of the treaty designed to facilitate ratification.

The Canadian paper also reviews several “measures consistent with international law” that might facilitate bringing the treaty into force. The measures reviewed are provisional application of the treaty, a separate agreement by states desiring early entry into force short of the requirement in the treaty, and finally amending the existing treaty. While the Canadian paper points out that the treaty is already being provisionally applied in the form of the PTS and the construction of the global verification network, it also points out that the treaty does not really speak to many issues stemming from provisional entry into force. Many questions would need to be addressed by the states parties in order to make this option at all viable. Any agreement on provisional application at the conference must also survive the decision-by-consensus process established by the treaty, which is unlikely to occur. If all but one or two of the required 44 countries had ratified the treaty, including all the nuclear weapon states, provisional application of the CTBT might stand as a realistic option. Given the opposition to provisional application already expressed by Pakistan and the difficulties the United States would face in building the domestic political consensus behind provisional application of the treaty, provisional application of the treaty seems like a dead end.

Amending the treaty is also an unlikely route because, while amendments are envisioned in the treaty, it must enter into force before an Amendment Conference can be convened. According to its own provisions, the treaty cannot be amended without first coming into force. The Canadian paper sums up the difficulty of this option by

pointing out that “particularly difficult and far-reaching questions would arise in discussing this option, especially scope and mechanisms.”

The alternative the Canadian paper suggests is an agreement that the treaty could enter into force for those states that favor early entry into force. The states that have already ratified the accord would agree to implement the agreement themselves and not wait for formal EIF. These states would presumably agree to abide by the requirements of the treaty without it actually being a formal international law. However, states would need to decide how far they would go in implementing the accord. For example, would they agree to pay any activities of the PTS arising from the agreement to implement the treaty outside the formal provisions of the accord? What value would their agreement to early entry into force have if none of the on-site verification provisions could be implemented due to issues of cost or legal liability? Thus, although the Canadian paper goes beyond the options the Austrian paper suggests and raises options for bringing the treaty into force, it seems to assume that the EIF requirement as currently configured will not be achieved any time soon. Though the assumption may be correct, the avenues considered for getting around the cumbersome EIF formula may be equally cumbersome.

A trio of non-governmental experts have authored a useful report, which they presented in a briefing for participants at the May 1999 NPT PrepCom, entitled “Accelerating the Entry into Force of the Comprehensive Nuclear Test Ban Treaty: The Article XIV Special Conference.”<sup>44</sup> Noted American legal scholar George Bunn; Rebecca Johnson, the premiere independent chronicler of multilateral nuclear arms negotiations; and Daryl Kimball, director of the US-based Coalition to Reduce Nuclear Dangers, describe the basic meaning of Article XIV and make suggestions on issues concerning the Special Conference, such as location, timing, and measures to be taken by the states parties. The great value of this report is that it makes concrete suggestions for the content of statements that might be issued by all the participating states. Bunn, Johnson, and Kimball note several declaratory, implementation-related, and punitive measures conference participants should consider. The authors argue a valuable first step would be declarations by the Special Conference affirming the importance of the CTBT, referring to is overwhelming support in the UN General Assembly in commending the

CTBTO's preparation to implement the accord. George Bunn recently articulated a strong case for the value of international norms that are established by actions other than international laws,<sup>45</sup> and the authors extend this in compelling detail to the CTBT. The authors also echo suggestions made in the Austrian paper, including the need for depositary states to assist signatory states yet to ratify the CTBT, the value of committing to a future Special Conference in 2000, and the importance of sending emissaries to states yet to ratify the accord.

More daring than the papers prepared by national governments are the trio's suggestions of punitive measures the conference should consider. These include applying sanctions against any state that conducts nuclear tests in the future, denying states that conduct nuclear tests leadership positions at upcoming international meetings, and discouraging international financial institutions from providing them with economic support. States are unlikely to endorse these types of measures at this early stage in the CTBT implementation process, but they are worthy of consideration and discussion. The reluctance of the international community to apply strong sanctions against India and Pakistan after they conducted nuclear tests, and to keep sanctions in place, provides a measure of how severe the situation needs to be in order for states to apply punitive measures that might curb state behavior. Moreover, from the Indian and Pakistani perspectives, these measures may seem coercive and consequently backfire. Nevertheless, these independent analysts make a valuable contribution by articulating these punitive options. If at some point in the future international political conditions change, these options are available in the tool kit of states parties.

### **Building the CTBT Culture**

Raising the profile of the unfinished business of implementing the CTBT is the primary goal of the conference, which is an important step in the process of moving from international cultural norm to international legal regime. The longer signatory states eschew nuclear testing, the more the norm against testing becomes part of the fabric of the international nonproliferation regime. The Special Conference is a political conference aimed at securing the required number of ratifications to bring the treaty into force. However, beyond the valuable political role of the conference, in the short term it provides an opportunity to buttress the norm against nuclear testing. An important synergy exists between the ever-

strengthening norm and the erection of a legally binding treaty regime.

A variation on the declarations that states parties can issue at the Special Conference, which is not explicitly mentioned in the papers reviewed above, would build on the comity exhibited by the declared nuclear weapon states at the last successful NPT PrepCom, in 1997.<sup>46</sup> For the first time, the five permanent states (P-5) of the UN Security Council issued a joint statement as part of the NPT review process. In the past, these NWS had issued similar statements, but separately and not as a group. Countries may issue the same statements separately to indicate how they have a different interpretation of the same text. The statements affirming their common understanding on security assurances at the 1995 NPT Review and Extension Conference are an example. Jointly signed statements, in contrast, imply greater consensus on the interpretation of the statement. For example, the final statement of the 1997 NPT PrepCom included a statement from the P-5 that was unique. This same group of states could issue a statement independent from (since not all have ratified the CTBT), but during, the Special Conference, affirming once again their commitment not to conduct any activities that would contravene the terms of the CTBT.

The Special Conference declaration could then reference this independent but parallel statement as an indication of good faith by states that have previously conducted nuclear explosions for the purpose of testing nuclear weapons. This set of declarations would not be legally binding, but it would publicly reaffirm once again before the international community the intent and desire of states that have conducted nuclear tests in the past to eschew them in the future. Every time states recommit to not conducting nuclear tests it becomes harder to break out of the no-testing posture and go against a public commitment. This is yet another formula for states to publicly indicate their commitment to cease nuclear testing.

Implementing the CTBT verification system in itself also helps build the CTBT culture. Already the International Monitoring System provides considerable information that becomes a complicating factor in any state's consideration of conducting nuclear tests. However, the verification system's capability will be critically enhanced when the United States, Russia, and China ratify the accord. When these three countries ratify the CTBT,

financing, area coverage, and technical capability of the monitoring system will increase considerably. Ambassador Hoffman argued that the monitoring system will proceed to a significant stage as long as the United States provides financial support.<sup>47</sup> While the United States can provide financial support without having actually ratified the accord, the US Congress will probably not indefinitely fund a treaty monitoring system in which the United States is not a formal, legal participant.

Even if the treaty lacks support from other key countries required for entry into force, the extension of the International Monitoring System's capabilities over time will in many respects implement the agreement *de facto*. The missing capabilities of the system will be the right to conduct on-site inspections and an accepted, legally defined process for reviewing a country's activities of concern and applying sanctions if cause is found. While this is an important gap if countries break the current international taboo against nuclear testing, as long as the norm holds for the declared nuclear powers that have conducted most of the tests in the nuclear age and others with nascent capabilities show restraint, even a partially implemented treaty will help reinforce the norm against nuclear testing. Thus, the Special Conference must give careful thought to how to encourage the United States, Russia, and China to ratify the accord. Since these are three major military powers with great power perspectives, undue criticism or chastisement is probably not the best approach. Finding the constructive tone at the Special Conference that urges these states to ratify the agreement and at the same time affirms the international antipathy towards nuclear testing should be the objective of states leading the preparations for the conference.

## CONCLUSION

A lesson the international community needs to take away from the current difficulties of implementing the CTBT is that merely negotiating arms control agreements is not enough. Actually implementing treaties has become as difficult as negotiating them. This does not mean that treaties should be avoided as tools of international security, as some have suggested.<sup>48</sup> Seeking enhanced security by consciously avoiding negotiated agreements is only a short-term and reversible approach. Much more attention needs to be dedicated to implementation of negotiated agreements both during negotiations and afterwards.

Treaties are but one tool to address collective security challenges. Cooperative Threat Reduction programs in countries of the former Soviet Union, a variety of military-to-military exchanges, and a host of so-called track one and a half and track two dialogues created by non-governmental parties for the benefit of nation-states are but a few practical steps to reducing the international security dangers posed by biological, chemical, and nuclear weapons. If arms control treaties are to continue to contribute to the strengthening of this growing tool kit of activities that reduce the dangers of weapons of mass destruction, serious international attention must be devoted to sustaining support after the completion of negotiations, and not just to the negotiation of agreements themselves. The daily mundane business of implementing arms control agreements is when arms control really begins.

Regrettably, the difficulties of bringing the CTBT into force demonstrate how the importance of international arms control on the global agenda has fallen. The Special Conference is designed to raise the treaty on the global priority list. Avoiding a repeat of the experiences at the NPT PrepCom in April 1998 and the Biological and Toxin Weapons Convention ministerial meeting in October 1998 is critical (the first meeting failed to achieve consensus on a meaningful statement, and the second failed to achieve the level and scope of participation desired). Aside from a few states and the CTBTO staff in Vienna, the international community is not preparing for the CTBT Special Conference, which does not bode well for avoiding the fate of these two recent meetings. However, the basic tools for the conference as outlined in several publicly available documents provide a good basis to start preparations. States parties and signatory states must now seize opportunities to begin the preparation required to make the Special Conference a success.

<sup>1</sup> The White House, Office of the Press Secretary, "Remarks by the President in Address to the 51st General Assembly of the United Nations," September 24, 1996, <<http://www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1996/9/25/2.text.1>>.

<sup>2</sup> NPT/Conf.1995/32/Dec.2

<sup>3</sup> Lawrence Scheinman, "Challenges and Opportunities in the Post-NPT Environment," in J. Marshall Beier and Steven Mataija, eds., *Verification, Compliance and Confidence-Building: The Global and Regional Interface, Proceedings of the Thirteenth Annual Ottawa NACD Verification Sympo-*

sium, Center for International and Security Studies, York University, Toronto, Canada, 1996, p. 7.

<sup>4</sup> The list of countries is defined as those countries that formally participated in the work of the 1996 session of the Conference on Disarmament and are identified by the International Atomic Energy Agency as possessing nuclear power reactors or research reactors.

<sup>5</sup> Michael Krepon, "Troubled Treaties: CTBT Deadline Nears," *The Bulletin of the Atomic Scientists* 55 (March/April 1999), p. 19.

<sup>6</sup> Austrian Government, "CTBT Conference according to Article XIV: Food for thought paper"; Canadian Working Paper, "CTBT Article XIV Conference: Conference Focus and Discussion of Measures Consistent with International Law," January 1999.

<sup>7</sup> For a review of the issues that were on the 1999 PrepCom agenda, see Tariq Rauf and John Simpson, "The 1999 NPT PrepCom," *The Nonproliferation Review* 6 (Winter 1999), pp. 118-133.

<sup>8</sup> Wolfgang Hoffman, Executive Secretary of the Comprehensive Test Ban Treaty Organization, presentation to NGO representatives, Washington, DC, October 21, 1998.

<sup>9</sup> The author interviewed a number of Chinese arms control specialists in August 1998 who indicated that they did not believe that North Korea would be an impediment to implementation of the CTBT. However, in a February 1999 author's interview with a US government official involved in the negotiations with North Korea, the official considered North Korean cooperation on CTBT unlikely.

<sup>10</sup> Nawaz Sharif, address to the 53rd session of the United Nations General Assembly, September 23, 1998, <[http://pak.gov.pk/govt/pmspeech\(un-98\).html](http://pak.gov.pk/govt/pmspeech(un-98).html)>.

<sup>11</sup> Christopher Kremmer, "We won't if you don't, says Pakistan on arms deployment," *Sydney Morning Herald*, November 12, 1998, <<http://www.smh.com.au:80/news/9811/12/text/world2.html>>.

<sup>12</sup> Atal Behari Vajpayee, address to the 53rd session of the United Nations General Assembly, September 24, 1998, <<http://www.india.gov.org/speeches/unspeech.htm>>.

<sup>13</sup> "India Nearing CTBT Signing," *BBC News*, December 15, 1998, <<http://news.bbc.co.uk:80/>>; Reuters, "Indian PM Says Still Committed to Treaty Deadline," December 15, 1998, <[http://cnn.com:80](http://cnn.com:80/)>.

<sup>14</sup> Celia W. Dugger, "Likelihood That India Will Sign Nuclear Test Ban Wanes," *New York Times*, May 9, 1999, p. 4.

<sup>15</sup> Itar-Tass News Service, "Russia, Japan for Ban on Weapons of Mass Destruction," November 13, 1998, <<http://customnews.cnn.com>>.

<sup>16</sup> Sha Zukang, "Some Thoughts on Non-Proliferation," address to The 7th Carnegie International Non-Proliferation Conference, Washington, DC, January 12, 1999, <<http://www.ceip.org/programs/npp/sha.htm>>.

<sup>17</sup> Jiang Zemin, President of the Peoples Republic of China, "Promote Disarmament Process and Safeguard World Security," address at the Conference on Disarmament, Geneva, March 26, 1999, <<http://www.clw.org/coalition/jiang99.htm>>.

<sup>18</sup> Author's interviews with Chinese scholars, Beijing, August 30 to September 2, 1998.

<sup>19</sup> William Jefferson Clinton, State of the Union Address, January 19, 1999, <<http://www.whitehouse.gov/WH/New/html/19990119-2656.html>>. See also, Bill Richardson, address to The 7th Carnegie International Non-Proliferation Conference, Washington, DC, January 12, 1999, <<http://198.124.130.244/news/speeches99/janss/carnegie.htm>>; Samuel R. Berger, address to the 7th Carnegie International Non-Proliferation Conference, January 12, 1999, <<http://www.ceip.org/programs/npp/berger99.htm>>.

<sup>20</sup> John Parachini, "CWC Ratification: Lessons for the CTBT," *The Nonproliferation Review* 5 (Fall 1997), pp. 62-72.

<sup>21</sup> Jesse Helms, "Amend the ABM Treaty? No Scrap It," *The Wall Street Journal*, January 22, 1999, as posted on the web site of the Coalition to Reduce Nuclear Dangers, <<http://www.clw.org/coalition/helm0199.htm>>.

<sup>22</sup> Author's interview with senior Republican Senate staff person (name withheld by request), March 25, 1999.

<sup>23</sup> For a variety of opinion polls on the CTBT, see Coalition to Reduce Nuclear Dangers website: <<http://www.clw.org/coalition/polling.htm>>.

<sup>24</sup> Sheila R. Buckley, "The International Repercussions of Senate Inaction," in *The U.S. Senate and the Chemical Weapons Convention: The Price of*

*Inaction*, Henry L. Stimson Center Report No. 18, Washington, DC, October 1995, pp. 13-17.

<sup>25</sup> Parachini, "CWC Ratification."

<sup>26</sup> Author's interviews with State Department officials (names withheld by request), May 17, 1999.

<sup>27</sup> Rules of Procedure of the Conference of the States Parties of the Organization for the Prohibition of Chemical Weapons, <<http://www.opcw.org/ci/ci-3.htm>>, Rule 29, Rule 30.

<sup>28</sup> Decision: Attendance of Non-Signatory States at the Third Session of the Conference of States Parties, C-III/DEC.2, November 16, 1998, Annex 1: Non-Signatory States Which Have Applied To Attend the Third Session of the Conference of the States Parties, <<http://www.opcw.org/ci/iii/ciidec2.htm>>.

<sup>29</sup> Wolfgang Hoffman, "Ensuring the CTBT's Implementation," *Disarmament* 20, no. 1 (1997), p. 8.

<sup>30</sup> "Strengthening the Non-Proliferation Treaty: Decisions Made, Decisions Deferred," *Acronym* 4, September 1994, p. 15.

<sup>31</sup> Rule 44 (4), "Materials from the 1995 NPT Conference," in Darryl Howlett and John Simpson, eds., *Briefing Book Volume II: Treaties, Agreements and Other Relevant Documents*, 5th ed., (Southampton, UK: The Mountbatten Centre for International Studies, 1997), p. B-11.

<sup>32</sup> Author's interview with The Hon. Lawrence Scheinman.

<sup>33</sup> United Nations Press Release DC/2607, "Preparatory Committee for Review Conference of Parties to Non-Proliferation Treaty Concludes Second Session," May 19, 1998, <<http://www.un.org/News/Press/docs/1998/19980519.dc2607.html>>.

<sup>34</sup> Rules of Procedure of the Conference of the States Parties of the Organization for the Prohibition of Chemical Weapons, Rule 33, <<http://www.opcw.org>>.

<sup>35</sup> Decision: Attendance at the First Session of the Conference by International Organisations, Specialized Agencies, Other International Bodies and Non-Governmental Organisations and Status of Non-Governmental Organisations, C-I/DEC.1, May 6, 1997, <<http://www.opcw.org>>.

<sup>36</sup> Comprehensive Nuclear Test-Ban Treaty, Article VII (1), (2).

<sup>37</sup> Wolfgang Hoffman, Executive Secretary of the Comprehensive Test Ban Treaty Organization, presentation to NGO representatives, Washington, DC, October 21, 1997.

<sup>38</sup> Protocol of Provisional Application of General Agreements of Tariffs and Trade, October 30, 1947, 55 UNTS 308. See also, Gerard and Victoria Curzon, "GATT: Trader's Club," in Robert W. Cox and Harold K. Jackson, eds., *The Anatomy of Influence: Decision Making in International Organization* (New Haven: Yale University Press, 1974). My understanding of GATT history has been greatly enriched by Professor Jeffrey Dunoff, Temple University.

<sup>39</sup> Open Skies Treaty (1992), Article XVIII, Section I, paragraph 2.

<sup>40</sup> During the negotiations, some draft texts for Article XIV addressed the provisional application of the treaty after a set period of time. Austria, for example, submitted two drafts—one in 1995 and one in 1996—that included provisional application proposals. These, however, never gained wide support. See Rebecca Johnson, "Comprehensive Test Ban Treaty: The Endgame," *Acronym* 9, April 1996, <<http://www.gn.apc.org/acronym/acro9.htm>>; Rebecca Johnson, "Comprehensive Test Ban Treaty: Signed but not Sealed," *Acronym* 10, May 1997, <<http://www.gn.apc.org/acronym/acro10.htm>>.

<sup>41</sup> Working document entitled, "CTBT Conference according to Article XIV: Food for Thought Paper by Austria," not dated.

<sup>42</sup> Article XIV of the Treaty actually states that a Special Conference be convened every year until EIF is achieved unless the ratifying states choose not to do so.

<sup>43</sup> Canadian Working Paper, "CTBT Article XIV Conference: Conference Focus and Discussion of Measures Consistent with International Law," January 1999.

<sup>44</sup> George Bunn with Rebecca Johnson and Daryl Kimball, "Accelerating the Entry into Force of the Comprehensive Nuclear Test Ban Treaty: The Article XIV Special Conference," A Coalition To Reduce Nuclear Dangers Report, Washington, DC, May 1999.

<sup>45</sup> George Bunn, "The Status of Norms against Testing," *The Nonprolifera-*

*tion Review* 6 (Winter 1999), pp. 20-32.

<sup>46</sup> Statement made by H.E. Mrs. Joelle Bourgois, Head of French delegation, on behalf of the delegations of France, the People's Republic of China, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, on nuclear nonproliferation and disarmament, Preparatory Committee for the 2000 Review Conference of the Parties to the Treaty on The Non-Proliferation of Nuclear Weapons, April 8, 1997.

<sup>47</sup> Wolfgang Hoffman, Executive Secretary of the Comprehensive Test Ban Treaty Organization, presentation to NGO representatives, Washington, DC, October 21, 1998.

<sup>48</sup> George Bunn and John B. Rhineland, "The Duma-Senate Logjam on Arms Control: What Can Be Done If It Continues?," *The Nonproliferation Review* 5 (Fall 1997), pp. 73-87.