CHAPTER II

THE POLITICS OF SCOPE

This chapter examines the various processes through which the nuclear powers coordinate their efforts to achieve consensus on the contentious issue of scope. The focus primarily will be on the politics of the five nuclear powers, as they had a determinate influence in achieving the treaty. However, the roles of other states will also be highlighted. As we shall see, the three years of negotiations can broadly be divided into three distinct phases. This chapter, hence, is organised in three sections, dealing with each phase. During the first phase, there is no significant movement on the positions of the nuclear powers. Indeed, the emphasis is more on identifying and examining the broad parameters of scope. During the second phase, at least three nuclear powers- the US, Britain and France- used various manipulative tactics, within the CD as well as domestically, to converge on scope. Elements of bargaining, compensation, concession and reciprocity marked this phase. Finally, during the last phase, the two remaining nuclear powers- Russia, China- adapted to the position on scope arrived at by the other powers.

PHASE I OF NEGOTIATIONS: THE BEGINNING

Reversing their initial opposition to a test ban, the US President Bill Clinton and the Russian President Boris Yeltsin agreed, in April 1993, at the
Vancouver Summit meeting, to commence negotiations on a multilateral nuclear test ban. Subsequently, on August 10, 1993, the Geneva based Conference on Disarmament (CD) adopted a resolution to establish an Ad Hoc Committee on a Nuclear Test Ban to negotiate the treaty. Three months later, on December 16, 1993, the United Nations General Assembly (UNGA) further endorsed this resolution. As a result, the negotiations began at the CD in January 1994.

From the beginning, until the signing of the treaty, the issue of scope remained contentious. What should the treaty ban? The non-aligned members of the CD, including India, wanted to see an all-encompassing scope: prohibition all nuclear test related activities. This was intended to force the nuclear powers to commit to complete disarmament. The nuclear powers, however, had different stakes. They were unanimous in wanting to retain their nuclear weapons and the necessary capabilities to maintain them. But, for political and technological reasons, they had disagreements amongst themselves on the type of activity to be prohibited or permitted under a test ban. This complicated the issue of scope.

On January 25, 1994, the CD began negotiations to conclude a comprehensive test ban treaty (CTBT). At this early stage, none of the five nuclear powers (P5) questioned the wisdom of a test ban, although they disagreed on the broad parameters and contents of the scope. The CD mandate, adopted earlier, called upon the states to negotiate a treaty that may contribute to the prevention of nuclear proliferation and lead towards
nuclear disarmament. This, ideally, meant ceasing all nuclear testing and test-related experimentation techniques like the inertial confinement fusion, hydrodynamic experiments, hydronuclear experiments, computer simulations and so on. However the P5, while unanimous on the need to retain all experimentation techniques, also wanted low yield explosions to be exempted from the treaty. Perhaps for bargaining purposes and to have greater flexibility during the talks, three nuclear powers adopted a delay tactics. In this sense, the start of the negotiations was shaky. However, this initial phase, beginning January 25, 1994 through September 1994, prepared ground for examining a range of political and technical questions. This phase, then, was a search for basic principles. And, it prepared a basis for further negotiations.

On the opening day of the Conference on Disarmament (CD), the United States made a strong start. John Holum, Director of the US Arms Control and Disarmament Agency (ACDA), represented it. By being represented on the first day by a senior Washington official rather than the Geneva Ambassador, Stephen Ledogar, the US administration signalled the highest level of commitment for a comprehensive test ban (CTB). In his opening remarks, Holum emphasized the relevance of a test ban. He asserted, "in the aftermath of the cold war, a CTBT becomes even more important. It will be an important part of our efforts to prevent proliferation of

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nuclear weapons and will place a major restraint on the nuclear-weapon states".  

The US he assured the world will be "out front pulling" to negotiate the treaty "at the earliest possible time".

Holum did not set a deadline for the treaty conclusion. But he noted that the U.S. wanted the treaty to be concluded before the Non Proliferation Treaty (NPT) Review and Extension Conference. He had earlier, on December 13, 1993, said "we can try hard to push the process with a sharp eye towards the 1995 NPT Conference and that is what we will do". This Conference was scheduled in New York between April 17-May 12, 1995.

The reasons for this extraordinary US hurry are not hard to find. Since the early 1990s, the US was concerned about the potential proliferation risks, posed by the Soviet collapse. As President Clinton asserted, "no national security issue is more urgent than the question of who will control the nuclear weapons and technology of the former Soviet empire. Those weapons pose a threat to every American, to our allies and the republics themselves".

In this context, the President urged "a comprehensive test ban would strengthen our vital efforts to stop the spread of nuclear weapons to other countries which may be our greatest security threat". Moreover, for similar

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3 Ibid.


6 Ibid., p.7
reasons, NPT extension also was equally desirable for the US. But progress towards the CTBT had become a litmus test of NPT performance.\footnote{On the issue of linkage between the NPT and the CTBT see Darryl Howlett and John Simpson, "The NPT and CTBT: Linkages, Options and Opportunities", \textit{Arms Control}, April 1992. Also see, William Epstein, "The Linkage Between a Nuclear Test Ban and Nuclear Non-Proliferation: Legal Perspective" in M.P. Fry, N.P. Keating and J. Rotblat (eds.), \textit{Nuclear Non-Proliferation and the Non-Proliferation Treaty} (Heidelberg: Springer Verlag, 1990).} At the 1980 and 1990 NPT Review Conferences, the CTBT issue was responsible for the failure to achieve a final document.\footnote{Savita Pande, "CTBT and NPT: A Study in Linkages", \textit{Strategic Analysis}, December 1994, p.1069.} Also, during the 1990 Review Conference, an unsuccessful attempt was made by the non-aligned states to make the indefinite extension of NPT in 1995 conditional upon implementation of a CTBT by that date.\footnote{Ibid.} Since the US was also keen to get the NPT indefinitely extended in 1995, it wanted some progress on CTBT. Hence, a call for an early treaty.

There were domestic reasons, as well.\footnote{For the US domestic debate see, Christopher E. Paine, \textit{The U.S. Debate Over a CTBT} (Washington D.C: Natural Resources Defense Council, 1993). Also see, "The Administration, Congress and Nuclear Testing", \textit{Arms Control Today}, Vol.23, No.6, July-August 1993, pp.3-7. For a historical perspective, Glenn T. Seaborg and Benjamin S. Loeb, "Approaching a Comprehensive Test Ban: A United States Historical Perspective", \textit{Disarmament}, Vol.16, No.3, 1993, pp.35-55.} For the first time ever in the US history, the US Administration was constrained by the Congress to negotiate a test ban. After being convinced about the "safety" and "reliability" of the US nuclear stockpiles, the US Congress, on October 2, 1992, passed a highly cumbersome amendment. This was known as the Hatfield-Exon-Mitchell nuclear testing amendment. According to the
amendment provisions, the US Government was bound to negotiate a global CTB treaty, and work for a complete phase-out of US nuclear weapons testing by September 30, 1996. All US testing was to cease unless another nation tested after this date.

Finally, there is the matter of political will. President Clinton himself was keen to get an early test ban. As we shall see later, he remained firm on the issue despite various domestic inter-agency pressures against the treaty. Perhaps he wished to go down in history for what he later described as the "longest sought, hardest-fought prize in arms control", i.e. the conclusion of a test ban treaty. 11

With the exception of Russia, no other nuclear Power shared the US concern for an early treaty. In marked contrast, Britain, a close ally, also did not stand behind it. Even worse, Britain reversed the linkage between the CTBT and the NPT extension: the NPT extension should precede the CTBT conclusion. On January 25, 1995 the British Ambassador, Sir Michael Weston told the CD plenary:

We continue to believe that there is an overwhelming case for the Treaty's (NPT) indefinite extension irrespective of the progress we have been able to make on a CTBT. If the prospects of a CTBT being in place to complement the NPT's effectiveness serves to increase the confidence some parties have in the ability of the non proliferation treaty to stop proliferation - and if this prospect serves to encourage those parties to reaffirm their commitment to NPT through indefinite extension, we should welcome that. But an opposite relationship is also valid: that the prospects of indefinite extension of NPT will be an important factor in convincing us that we can confidently move towards

the conclusion of a CTBT.\textsuperscript{12}

This position clearly viewed a CTBT as a non-proliferation measure. That is, a test ban is useful because it would make it harder for the non-nuclear states to acquire weapons. It is also good because it enhances the credibility of the NPT. However, the majority within the CD believed that by adopting this position, Britain wanted the treaty to be delayed, or even sacrificed, in the absence of indefinite extension.\textsuperscript{13}

France also did not favour an early treaty. At the time of the CTBT negotiations, it was observing a nuclear testing moratorium. But there were internal pressures to resume testing. Moreover, France was also heading into a Presidential election in 1995, the year that the NPT extension was scheduled. It was widely believed that the new President might conduct a few tests before accepting a CTBT. For this reason French officials were very careful in articulating their policy on the test ban. Indeed, during the early months, France at the CD made no formal statement plenary. The probable French conditions for accepting a CTBT, as understood in January 1994, were (a) a test ban would only make sense in the context of a stable non-proliferation regime, with the NPT's indefinite and unconditional extension in 1995; (b) there must be an acceptable definition of “permitted” or “Treaty Compliant” activities, including a ceiling for energy yield in weapon related


\textsuperscript{13}Rebecca Johnson made this observation. She was witness to most part of the CTBT negotiations in Geneva in an unofficial capacity. See Johnson, n.1, p.17
experiments; and (c) the CTBT must be verifiable.  

China also had no desire for an early treaty. It was in the middle of its nuclear testing programme. Regardless of the US-Russian-French moratorium, it continued to explode nuclear devices at its Lop Nor test site during 1992-94. Hence, it had adopted a tactic to prolong the talks. Although it had earlier argued that a CTBT should be achieved “no later than 1996”. This position has been reiterated frequently, but is understood to mean no earlier than 1996. In sum, the achievement of an early test ban was limited by the stances of Britain, France and China. It can be argued, in retrospect, that they wanted to borrow time on the question scope.

Even though the nuclear weapon powers were reluctant to hurry the treaty process, the CD established the Ad Hoc Committee to draft the treaty provisions including the scope language. Officially known as the “Ad Hoc Committee on Nuclear Test Ban”, it was chaired by the Mexican diplomat, Miguel Marin Bosch. It is worth noting that the then 38 member CD was broadly organised into three groupings based on the Cold War structure: the

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15 Johnson, n.1, p. 20.
Western, Eastern and the G-21 (a group of 21 nonaligned states). Appointment to the Chair was made on the principle of rotation. Bosch was the G-21 nominee to the Chair. He was known to have unassailable disarmament commitments and was a strong supporter of a test ban. For this reasons Britain unsuccess fully opposed his nomination.

After assuming the Chair, Bosch convened the NTB meeting on February 1, 1994. He swiftly established the working groups. The working group on Legal and Institutional Issues with the Polish Ambassador Ludwik Dembenski as Chair dealt with the issue of scope. The major challenge for the Ad Hoc Committee, however, was: how to approach a draft treaty text? The task was further complicated by the fact that more than 200 working papers were submitted in the very first year. Most of them aimed to complicate the negotiations. From among those, which reflected seriousness, the positions were too conflicting and contradictory to evolve a

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17 The 38 member states of the Conference on Disarmament, by Groups are:

*Group of Western Countries*: Australia, Belgium, Canada, Germany, France, Italy, Japan, Netherlands, UK and USA;

*Group of 21 (non-aligned)*: Algeria, Argentina, Brazil, Cuba, Egypt, Ethiopia, India, Indonesia, Iran, Kenya, Mexico, Morocco, Myanmar (Burma), Nigeria, Pakistan, Peru, Sri Lanka, Sweden, Venezuela, Yugoslavia, Zaire;

*Group of Eastern European and Other States*: Bulgaria, Hungary, Mongolia, Poland, Romania, Russian Federation.

China did not officially belong to any political grouping, but often attended G21 meetings.

18 Johnson, n.1, p.3.

19 This observation is based on the writings of several key CD official. For details, see Miguel Marin Bosch, "Comprehensive Nuclear Test Ban Treaty: Negotiations in the Conference on Disarmament", *Disarmament*, Vol. 18, No.1, 1995, pp.55-69. Also see Ludwik Dembenski and Henryk Pac, "Legal and Institutional Aspects", *Disarmament*, Vol.18, No.1, 1995, pp.87-97.
consensual language. In this regard two draft treaty texts assisted the drafting of the “rolling text”. A rolling text is an official draft treaty text, with square brackets i.e. contested phrases and various text options and alternatives, which sets the stage for further negotiations. The first draft treaty text was sponsored by Sweden and the other one by Australia.

For several years Sweden had been tabling a draft CTB in the CD. The recent Swedish draft was presented on December 6, 1993. The Swedish draft scope language was significant in the sense that it prohibited even “preparing... any nuclear explosion”. This position, which prohibits test “preparations”, was supported by many other CD members including Germany, the Netherlands, Japan and many members of G-21. Most of them argued that banning pre-testing activities would mean preventing rather than just monitoring test violations. The Swedish Ambassador Lars Norberg, clarified though that “preparations” would indeed mean direct preparations leading up to a nuclear test. The idea, however, was rebuffed by three of the five nuclear powers: the US, Russia and Britain. The reason was that a ban on preparatory activities would make verification of a future treaty significantly complicated and expensive. Moreover, the Swedish draft called for prohibiting test ‘preparations’ whereas its verification protocol provided for the detection and identification of the explosions themselves, not the

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In an attempt to further streamline discussions of scope, Australia, on March 30, 1994, presented its own working paper. Titled "Australian Resource Paper on Draft Treaty Elements", this paper drew heavily on the 1991 Swedish draft, and the verification provisions of the 1992 Chemical Weapons Convention. However, its scope language did not prohibit test preparations. Its article on basic obligations reads:

(a) Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent such explosions at any place under its jurisdiction or control.

(b) Each State Party undertakes, furthermore, to refrain from causing, encouraging, assisting, permitting or in the carrying out anywhere of any nuclear weapon test explosion or any other explosion.

Moreover, the commentary accompanying the Australian draft asserted that test preparations remain practically banned by using other language like, 'refrain from causing' without legally defeating the object and the purposes of the treaty. In one sense, the Australian draft was thought to be an advance towards evolving a consensus on the scope language.

While the two draft treaties did play some crucial role in focussing the debate on scope, the Chair's "rolling-text" was not presented until September 1994: the closing of the final CD session of that year. Proposals to

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24 Ibid.
bring out the Chairs' text earlier, in June, had to be shelved after stiff opposition from Britain, France and China. France went to the extent of threatening to walk out from the talks, if such a text was placed. The French Ambassador, Gerald Errera, went so far as to say that Bosch was trying to force France out of the negotiations by tabling a fait accompli.  

Ironically, three of the NWSs; the UK, France and China, along with the US and Russia, were engaged in confidential talks to agree on what they termed as "activities not prohibited" by the treaty. As is commonly understood, a "nuclear explosion" involves the release of fission energy, measured in terms of yields. Such an explosion could be for both military and civilian purposes. If a nuclear explosion involves an object usable as weapon, then it is called a "nuclear weapon test explosion". Among the earlier arms control treaties, the 1963 Partial Test Ban Treaty (PTBT) prohibits both -"nuclear weapon test explosion" and "nuclear weapon explosion" - in all environments, except underground. The 1974 Threshold Test Ban Treaty (TTBT) sets a permissible ceiling of 150 kt. on underground explosions. None of the above mentioned treaties, however, legally defines the term "nuclear explosion" or "nuclear weapon test explosion", per se. A comprehensive test ban treaty, therefore, was thought to cease all nuclear testing, in all environments. However, the P5 wanted an exception to conduct low yield


explosions. They wanted an understanding exclusively amongst the P5. It should not be a part of the treaty. However, it could be put on the negotiating record under the rubric of “activities not treaty prohibited”. This understanding was ostensibly meant to protect hydronuclear experiments (HNEs) from being prohibited by the treaty. HNEs are not deemed as explosions although they release small amounts of energy.\textsuperscript{27} They can be conducted in laboratories. However, for practical and safety reasons, scientists prefer to use facilities at the test sites. Among the P5, the US, Russia and Britain are known to have developed an HNE programme. France and China, however, lag behind in this technology.

On the basis of its testing experience, the US HNEs can release up to 1.8-kg energy.\textsuperscript{28} Hence, the US had therefore proposed to exempt 1.8 kg yields from the CTBT. In fact, the US administration was under pressure from its then Defence Secretary, William Perry, and the Joint Chief of Staff (JCS) Chairman, John Shalikashvili, to retain the HNEs. Russia, Britain and France, however, wanted higher yields exempted from the treaty. Russia had proposed 10 tons, Britain 40-50 kg and France 100-300 tons exemptions. China wanted either to ban HNEs completely or a very high yield exemption.\textsuperscript{29} This debate contributed to further delay of the “rolling-text”


\textsuperscript{29} Ibid., p.703.
formulation.

It was only later, on September 5, 1994, therefore, that Bosch submitted the report of the Ad Hoc Committee along with a "rolling-text". This 95 page rolling-text was divided in three parts. The first part had achieved broad agreement, and hence had few brackets. The second part was heavily bracketed as it contained provisions, which needed extensive negotiation. The preamble and scope figured in this section of the rolling text. And, lastly, there was a list of documents containing proposals of the various delegations.

The final position of the P-5 on the issue of scope, as appeared at the end of the first phase, can now be summed up. At this stage the US is understood to have favoured a general scope for the treaty. This would leave no exceptions for safety tests. However, very small tests - upto 1.8 kg - could be exempted. The exemption was meant to protect HNEs. Moreover, it proposed an "easy exit" clause in the treaty by which any nuclear power could "elect to withdraw from the treaty" at a review conference held ten years after its entry into force.

Britain and France wanted the safety tests to be exempted under "exceptional circumstances". Furthermore, Britain was looking for a 40-50 kg of threshold exemption, and France favoured upto 100-300 tons. Russia had proposed a text which listed prohibited environment. Also, it wanted a yield

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exemption up to 300 tons. China had a different demand. It wanted the treaty to prohibit all nuclear weapon test explosions "which release nuclear energy". While, this would not prohibit 'Peaceful Nuclear Explosions' (PNEs) for civilian purposes, it could be interpreted as encompassing the HNE. It had also called for insertion of articles covering "security assurances" and "no first use".

PHASE II NEGOTIATION : THE SEARCH FOR CONVERGENCE

The Conference on Disarmament (CD) reopened on January 30, 1995. This marked the beginning of the second phase of the talks. In fact, the previous year of negotiations had almost belied the hopes of several states, especially the non-aligned members, of the CD to achieve a CTBT. Miguel Marin Bosch, now the former Chair, commented on the pace and purpose of the talk when, on January 30, 1995, he told the CD plenary:

> testing of explosions has lost much of its value, at least in [the US and Russia]... because of the scientific and technological advances in the field of computer simulations and so-called laboratory experiments. Hence their unilateral moratoriums and hence also their call for a CTBT. What is happening now with regards to nuclear testing, is no different than what has been happening in the disarmament field for years: the technologically more advanced nations reach a point where they can discard a certain weapon or weapon-related activity and then they move to ban that weapon or activity for the rest of the world through a multilateral treaty.31

During the second phase of talks, there was significant movement on the issue of scope. Three nuclear powers demonstrated greater flexibility on

31 Miguel Marin Bosch, 31 January 1995, CD/PV.693,
scope. Although insistent on retaining their nuclear arsenals, the US, Britain and France agreed on a true "zero yield" scope. This was interpreted to prohibit all nuclear explosions including the low yield hydronuclear experiments. In the process, the three powers used various manipulative tactics, both within the CD and even domestically.

On February 3, 1995, the CD reconstituted its Ad Hoc Committee on the Nuclear Test Ban. The Polish Ambassador, Ludwik Dernbenski, took over as the Chair. Thereafter, he established the working group on the Legal and Institutional Issues to consider the various scope options. This was chaired by Ambassador Jaap Ramaker of The Netherlands. The Ad Hoc Committee was expected to produce a revised treaty text by the end of April 1995. But the proximity of the NPT Extension Conference almost paralysed the CD from taking any significant political decisions.\(^\text{32}\) The NPT Extension Conference was scheduled between April 17 and May 12, 1995, in New York. For over the years, progress on a test ban had become a major determinant of the NPT's performance. Consequently, two major concessions on scope came from the Western powers. The first concession came from the United States, when it said it would drop its most unpopular ten year "easy-exit" clause. As earlier told, the US had proposed an "easy-exit" option by which any nuclear power can opt to withdraw from the treaty, ten years after its entry into force. The second came a little later, in April, when the UK and France renounced their demand to conduct safety tests in "exceptional circumstances". Both these

\(^{32}\) Johnson, n.16, p.8.
concessions, perhaps, were driven to give impetus to the CTBT process that might in turn lead to a successful NPT extension.

**Concessions**

On January 30, 1995, the US National Security Advisor, Anthony Lake, announced the US decision to drop the ten-year "easy-exit" clause. The US Department of Energy (DOE) was prepared to provide only a ten-year reliability assurance of the US stockpiles; hence the US had proposed a ten-year "easy-exit". According to the proposal, the nuclear powers could secure special rights to opt out of the treaty after ten years, if they so decide unilaterally. The proposal, however, was widely criticised. The majority opined that such a proposal would undermine the treaty's indefinite and universal character.

Announcing the withdrawal, Lake asserted that the US position on scope would be determined by three criteria. Firstly, the CTBT must be comprehensive and promote the US vital national interest in curbing the further proliferation of nuclear weapons. Secondly, the CTBT must not prohibit activities required to maintain the safety and reliability of US nuclear stockpiles. Finally, the CTBT must be signed by all declared nuclear weapon states and as many other nations as possible. Later on January 31, 1995, Ralph Earle, Deputy Director of ACDA, confirmed the US "easy-exit"

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34 Ibid., p.10.
withdrawal at the CD.\textsuperscript{35} How was this concession secured from an internally divided US bureaucracy?

The US bureaucracy was divided on the issue of "easy-exit" retraction. The US Department of Energy had earlier given a ten year "safety" certification to the US nuclear stockpile. As a result, the "easy-exit" was proposed. The Department of Defence and the Chairman of the Joint Chief of Staff, therefore, were adamant to retain it. They were of the opinion that the clause would serve as a safety valve to opt out from the treaty, if any safety problems arose in the future. Although most of the treaties have a "supreme national interest" clause whereby withdrawal from a treaty is made possible, the problem was: could "safety" problems be deemed to be a "supreme national interest" sufficient to merit withdrawal from the treaty?

In order to set the assent of the Defence Secretary and the Chairman, JCS, President Clinton had to make a public assurance that the maintenance of the safety and reliability of the nuclear stockpile was a supreme national interest of the United States.\textsuperscript{36} Moreover, in a secret quid-pro-quo, the White House had to pledge to the Joint Chiefs and the Secretary of Defence that they could reopen the question of the US position on the test ban treaty threshold once the NPT Review and Extension Conference was out of way.\textsuperscript{37}

The second concessions came from Britain and France, when they

\textsuperscript{35} Ralph Earle, 31 January 1995, CD/PV.693, p.20.
\textsuperscript{37} Ibid.
withdrew their earlier proposal that scope should exempt conducting nuclear explosions in “exceptional circumstances”. These explosions were ostensibly meant for weapons safety purposes. At a working group meeting, on April 6, 1995, the British Ambassador, Sir Michael Weston, announced that the UK (and by implication France) were “now prepared to withdraw the phrase on exceptional test”. He, however, added: “This in no way diminishes our responsibility to ensure the safety and reliability of our nuclear weapons. I would like to state for the record that we consider that the ‘scope’ Article should not be interpreted as prohibiting the UK, in common with other nuclear weapon states, from fulfilling its responsibilities to maintain the safety and reliability of its nuclear weapons”. The French Ambassador, Gerald Errera, later confirmed that France had concurred in this move.

There could be several explanations for the British concession. It is quite plausible that the proposed “exceptional clause” was merely a negotiating tactic, a device to gain bargaining strength and maintain flexibility. It is reported that Britain was during 1992-93 willing to conduct nuclear tests. Ironically, Britain uses the US test sites to conduct its own tests. However, the US test moratorium severely jeopardised British plans. In fact, the then British Defense Secretary Douglas Hurd had campaigned within

38 Johnson, n. 16, p.10.
39 Ibid.
40 Ibid.
the US to overturn the US test moratorium. In the process, he even
developed close links with the anti-CTBT lobby within the U.S. defence
establishment. This lobby was demanding a US test resumption. At the time
of the CD negotiations, Douglas Hurd was the British Foreign Secretary.
Perhaps the hope that the US would resume testing given its own domestic
pressures caused Britain to sponsor the "exceptional test" clause. But with
the Clinton Administration adamant on the issue, Britain had no choice but to
renounce it.

That Britain may have used the "exceptional test" issue for bargaining
also gains credence from the British negotiating behaviour. In the words of
Rebecca Johnson, British behaviour during the talks can best be described as
"schizophrenic". London very often came out with contradictory
statements. Indeed, the best example is the "exception clause" itself. From
the beginning, there was immense confusion as to what type of safety tests
were to be exempted under "exceptional circumstances". Would they be
full scale explosions or a low yield "one point safety tests". Furthermore, the
manner in which Britain was using "issues" to delay the talks further fuelled
the criticism that Britain was perhaps playing a double game along with
France and, at times, with China. Johnson notes that Britain's negotiating

41 Rebecca Johnson, Test Ban Verification Matters: Finalising the CTBT (London:
42 Johnson, n. 16, p.43.
43 Ibid.
44 Ibid.
stance was very often as one of "covert obstruction". With this behaviour, it is highly likely that Britain was using the issue of "exceptional clause" vis-à-vis the US to either pressure it to resume testing or to seek some concession elsewhere. There is also a second possibility that by this concession Britain may have hoped to influence the Non Proliferation Treaty Conference. Indeed, the concession was so timed on April 6, 1995, the eve of the NPT Conference, that it is hard to believe that it was mere coincidence. Thus, in this interpretation, the "exceptional clause" was a bargaining ploy, perhaps to mobilise wider support for the NPT extension. Hence the concession. The third possibility is that Britain may have sought some non-testing alternative and hence dropped the proposal. Indeed, during the May-June 1994 session of the British Parliament, statements made by the government indicated that such alternatives were been sought. However, this remains to be confirmed.

As for France, it can be recognised, in retrospect, that it may have sought concessions for dropping the "reliability test" demand. Perhaps, that concession was tacit permission by the other two Western nuclear powers to resume testing before acceding to the CTBT. Both, the British and the French concessions were further strengthened by their backing of the Australian text language on scope.

45 Ibid.
46 Arms Control Reporter, 1995, 608, B. 309.
The Australian text reads:

Each State Party undertakes not to carry out any nuclear weapon test explosion or any other explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control.

Each State Party undertakes, furthermore, to refrain from causing, encouraging, or in any way participating in carrying out of any nuclear weapon test explosion or any other explosion.47

This scope language remained the front-runner and was likely to emerge into the final text. Between April 17 and May 12, 1995, 175 states who were party to the nuclear Non Proliferation Treaty (NPT) met at the United Nations, New York. On May 11, 1995, they decided to extend the NPT indefinitely without conditions. In one of the decisions adopted during the Conference, the members called for the completion of a comprehensive test ban (CTB) treaty "no later than 1996".48 This decision along with the NPT indefinite extension gave a boost to the nuclear powers. Moreover, euphoria had now been generated, and a CTBT appeared imminent. As a result, China and France synergised their efforts to protect their nuclear arsenal from the effects of the treaty. On May 15, 1995, China conducted a nuclear explosion. It was France however, which took the world by surprise.

**France Resumes Nuclear Testing**

On June 13, 1995, shortly after Jacques Chirac assumed the French

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48 Decisions and Resolution Adopted by the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapon, mimeo, Department of State, Washington D.C., p. 5
Presidency, it announced that France would conduct eight tests between September 1995 and May 1996. Amidst strong protests, six tests were conducted over four months. The first had a modest 8-ton yield and was conducted at Mururoa Atoll on September 5, 1995. The final test was conducted at Frangataufa Atoll on January 27, 1996 and was approximately of 120-kt yield. With this, France accepted the Australian draft scope with a true "zero-yield" interpretation, which banned all nuclear explosions including low yield tests.

The French decision to resume testing was ostensibly driven by two purposes: need and safety. Firstly, Paris argued that it was necessary to update the current stock of aging nuclear weapons and to gather more data before shifting that physical to an entirely computerised simulation. On the second point, Paris argued that physical tests are the only way to verify the safety and reliability of weapon stockpile. 49

France had conducted approximately 200 nuclear explosions when in 1991 the then President Francois Mitterand announced a moratorium. These tests led to the development of a variety of weapon systems that constituted France's independent "force de frappe". By this time, about eight different types of nuclear warheads had been developed. However, when testing ceased in 1991, France was modernising its TN75 warhead, a higher version in the TN series, lighter, miniaturised with a hardened thermonuclear...

warhead. This warhead was thought to have a better penetration capability at the time of reentry.\footnote{David S. Yost, “France’s Nuclear Dilemmas”, \textit{Foreign Affairs}, January/February 1996, pp. 108-118.}

President Mitterand was not a peace activist: he had conducted some 75 nuclear tests in his 14 year Presidency. But, by 1991, he was convinced that the existing French warheads were sufficient and could be adapted to new delivery systems.\footnote{Thakur, n. 49, p. 473.} Announcing the moratorium, the then French Prime Minister Pierre Beregovoy described that “its purpose was to help stop overarmament [surarmement] and above all accumulation without end of atomic weapons.”\footnote{Beregovoy’s statement as quoted in David S. Yost, “Nuclear Debates in France”, \textit{Survival}, Vol. 36, No. 4, Winter 1994-95, p. 122.} Furthermore, the President was concerned about the proliferation risks posed by the Soviet collapse. He was in favour of tightening the non proliferation regime. As a consequence, France in 1992 finally joined the Non Proliferation Treaty. Later, in 1993, it joined the US to call for a CTBT.

Mitterand’s nuclear weapons policy, however, had few domestic takers. His Prime Minister, Edward Balladur had committed himself to testing to maintain the French deterrent. The Defence Minister Francois Leotard repeatedly stated that France would test again as and when necessary. Responding to the US moratorium, on March 18, 1994, he remarked: “I hope we will test again when we need to”.\footnote{Johnson, n. 1 p. 18} Jacques Chirac, who was then the
likely Presidential candidate for the rightwing had called for 20 test before France accepted a CTBT.

Even the two major French political parties, the Rassemblement pour la Republique (RPR) and the Union pour la Democratie Francaise (UDF) supported the view that France should have adequate capabilities for an independent deterrent before accepting a CTBT. In fact, the mainstream view was summed up in a December 1993 National Assembly committee report.\(^{54}\) This report concluded that France must ‘indisputably’ conduct approximately 20 more tests: about 10 tests for two modernisation programmes (a variable yield warhead for a longer-range air-launch missile and the new TN100 warhead for the M5 SLBM) and about 10 tests to calibrate simulation capabilities. This report also noted that the PALEN (Preparation a la Limitation des Essais Nucleaires) was originally conceived in 1991 as a means of coping with further limits our testing, and not as a means of foregoing tests entirely. This, by implication, meant that PALEN still lacked core technologies which could sufficiently serve it as a non-testing alternative. It has been elsewhere reported that PALEN still required new computers, radiographic equipment and lasers equipment.

With the growing pressure for the CTBT - after the NPT extension - the newly elected President Chirac announced the decision to resume testing. Justifying his decision, Chirac asserted that his predecessor had interrupted

\(^{54}\) Yost, n. 52, p. 125.
a critical series "a little too early" by declaring a moratorium. He further said that France had no choice but to complete its "experimental programme". Most of the tests conducted later were aimed towards this. For instance, the October 1, 1995 test at Fangataufa Atoll, with a reported yield of 110 kt, was a full scale test of the TN 75 warhead which was stalled by the 1991 moratorium.

For France's simulation requirement, it is reported that the US offered its simulation facilities. The process to strike such a US-French understanding had begun in 1994. As part of track-two diplomacy, the US weapon scientists Richard Garwin, Ray Kidder and Christopher Paine had, between November 2-7, 1994, visited Paris. During this visit they had indeed, explored the possibility of France availing such facilities. Later, on August 11, 1995, the special assistant to the US President Bill Clinton on defence matters Robert Bell, confirmed the US offer to share its facilities. Responding to a journalist's query, Bell noted:

Question: Has the US offered to share computer simulations with France so that France will not have to conduct its nuclear tests?
Mr. Bell: Yes

67 Ibid.
On the nature of US-French nuclear cooperation, Bell was even more explicit. He stated:

Well, we do have cooperation with France. It is not an issue of whether there's cooperation. The issue has always been what types of cooperation are appropriate. And we will be focusing our energy on cooperative efforts with the French on the ability to maintain confidence in the safety and reliability of nuclear weapons under a CTB that is a true zero-CTB.60

After having conducted a series of nuclear explosions and having secured access to the United States' facilities, the French Ambassador, August 10, 1995 announced at the CD that it was abandoning its push for a threshold ban declaring, that France envisaged a "truly comprehensive prohibition". France now endorsed the Australian scope language prohibiting "any nuclear weapon test explosion or any other nuclear explosion".

**France-US-Britain Go "True Zero"**

The next day, on August 11, 1995, President Clinton also committed to "a true zero yield ban" on all nuclear explosions.61 This decision by the US solved the major debate amongst the government agencies. In fact, as noted earlier, the various US government agencies were divided on the question of the CTBT. In the aftermath of the NPT Conference, the Pentagon had indeed reopened the question of a threshold ban, asking for exemption up to 500 tons yield.62 The US Department of Energy (DOE) and the Arms Control and

60 Ibid.

61 Statement by President Bill Clinton, mimeo, The White House, Office of the Press Secretary, 11 August 1995.

Disarmament Agency (ACDA), however, were opposed to it. Moreover, within the CD, the nuclear weapon states were also locked in disagreements over the permitted levels of energy release from a nuclear explosion.

In the confidential meeting between the NWSs, there was a general disagreement with the US proposed threshold of 1.8 kg. It was believed that the US technology was sophisticated enough to gain considerable design information, at this level through the HNEs. Russia wanted 10 tons and UK asked for 40-50 kg. France favoured a threshold of 100-300 tons. China was opposed to any threshold whatsoever and had proposed a scope language that would ban "any nuclear weapon test which would release energy". However, if there was to be a threshold, China is reported to prefer one much higher, in the hundreds of tons.63

Moreover, the non-nuclear weapon states were now getting jittery. Their main anger was over the secret P-5 debate over threshold. The domestic debate within the US for an exemption, fuelled their anger. In fact, to prevent a low yield test exemption, Indonesia and India both tabled their own scope proposals. The Indonesian approach was simple and straightforward: to prohibit all nuclear testing, explosive or non explosive.64

As per the Indian proposal, the scope language would read:

Each State Party undertakes to prohibit and to prevent, and not to carry out, any nuclear weapon explosion, or any explosion, or any release of nuclear energy caused by the (rapid) assembly or compression of fissile or fusion material by chemical explosive

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63 Ibid.
or other means at any place under or beyond its jurisdiction or control. Each State Party undertake, furthermore, to refrain from causing, encouraging, assisting or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion.\footnote{Conference on Disarmament Doc. CD/NTB/WP. 244.}

Clearly this Indian definition was aimed to tighten the treaty scope and to restrict all nuclear testing including laboratory testing. As argued by Indian Ambassador, Arundhati Ghose, the scope language should have "no loophole for activity, either explosive based or non-explosive based, aimed at the continued development and refinement of nuclear weapons".\footnote{Statement by Ms. Arundhati Ghose, Ambassador/Permanent Representative of India in UN Office at Geneva, in the Plenary of the Conference on Disarmament on 25 January 1996. See \textit{Statements by India on Comprehensive Nuclear Test Ban Treaty 1993-1996} (Ministry of External Affairs, New Delhi), p. 92.}

In this scenario, the US had a clear choice: Either to go down on scope, or to take the threshold level much higher, as was desired by the other nuclear weapon states. In that case, the question arose: how high should this threshold be?

After a careful cost-benefit, President Clinton, on August 11, 1995, announced:

The United States will now insist on a test ban that prohibits any nuclear weapon test explosion. I am convinced this decision will speed the negotiations so that we can achieve our goal of signing a comprehensive test ban next year.\footnote{Statement by the President, n. 61.}

With this decision, the US went down to a 'true-zero yield' scope. From the US point of view, going "zero" had minimal costs. In fact, to identify and,
assess the potential safety and reliability problems of the US nuclear weapons to be retained in an "enduring stockpile", under a CTBT, the US Department of Energy had earlier commissioned a scientific advisory group. This group, known as JASON of the MITRE Corporation, had been a long-standing scientific advisory group to the DOE. With Sidney Drell as the Chair, this group comprised of 14 security experts. Other members of the group were John Cornwall, Freeman Dyson, Douglas Eardley, Richard Garwin, David Hammer, John Kammerdiener, Robert LeLevier, Robert Peurifoy, John Ritcher, Marshall Rosenbluth, Seymour Sack, Jeremiah Sullivan, and Fredrik Zachariasen. After carefully examining the performance of each of the weapon types to be kept in the US stockpile, JASON submitted its report on August 3, 1995. This report concluded that the sub-kiloton test, including the US defined 1.8-kg level for hydronuclear experiment (HNEs), would marginally improve US weapon safety. Moreover, the proliferation risks in sanctioning them would be much higher. It, therefore, recommended its prohibition. To compensate for the US 'zero-yield' decision, JASON also called for six safeguards. These six safeguards, which were later adopted by the US administration, are as follows: First, the conduct of Science Based Stockpile Stewardship programme to ensure a high level of confidence in the safety and reliability of nuclear weapons in the active stockpile, including the conduct of a broad range of effective and continuing experimental programmes. Secondly, the maintenance of modern nuclear laboratory facilities and programmes in theoretical and exploratory nuclear technology
that will attract, retain and ensure the continued application of the US's human scientific resources to those programmes on which continued progress in nuclear technology depends. Thirdly, the maintenance of the basic capability to resume nuclear test activities prohibited by the CTBT should the United States cease to be bound to adhere to this Treaty. Fourth, the continuation of a comprehensive research and development programme to improve treaty monitoring capabilities and operations. Fifth, the continuing development of a broad range of intelligence gathering and analytical capabilities and operations. Finally, the understanding that if the President of the United States is informed by the Secretary of Defence and Secretary of Energy - advised by Nuclear Weapons Council, the Directors of DOE's nuclear weapons laboratories, and the Commander of the US Strategic Command - that a high level of confidence in the safety or reliability of a nuclear weapon type that the two Secretaries consider to be critical to the US's nuclear deterrent could no longer be certified, the President would be prepared to withdraw from the CTBT under the standard "supreme natural interest" clause in order to conduct whatever testing might be required.68

As a follow up to these safeguards, it is widely understood that Clinton promised at least 60 billion dollars by the year 2010 for the Stockpile Stewardship and Management Program (SSMP).69 This would be spent for

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modemising and building facilities at the DOE's three nuclear weapon laboratories - the Lawrence Livermore National Laboratory in California, and the Sandia and Los Alamos National Laboratories in New Mexico. As part of human resource development, at least six US universities are thought to be beneficiaries of the SSMP: The University of California, which administers the laboratories at Berkeley, Los Alamos and Sandia; and the California Institute of Technology, Stanford University, the University of Illinois, the University of Chicago and the University of Utah.

It was against this enormous domestic compensation, that the President was able to secure domestic support for a "zero yield" CTBT. Later, on at the August 17, 1995 plenary meeting at the CD, the US Ambassador, Stephen Ledogar, said that these safeguards were primarily "internal considerations". He also confirmed that the US would now, perhaps, stick to a "zero-yield" scope. A month later, on September 14, 1995, Britain also adopted the "zero-yield" concept. The Australian scope language was now reinterpreted by all states to mean "true-zero": inclusive of all nuclear explosions. This definition had gathered support form the other European states by this time. However amongst the P5, Russia and China had still not committed to the France-US-UK decision on scope.

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72 Ibid.
73 Ibid.
By the end of CD's 1995 session, Dembenski was able to present an updated "rolling-text". This 97-page text had 1200 pairs of brackets. However the major breakthrough was on scope. To sum up, the US had by now dropped its ten-year "easy-exit" clause. In the wake of that decision, the UK and France withdrew their demand for safety tests. France, the US and UK had committed to a "zero-yield" understanding on a nuclear threshold.

**PHASE III OF NEGOTIATIONS: TOWARDS AGREEMENT**

On January 23, 1996, the CD resumed talks on the CTBT. This marked the beginning of the final phase of negotiations. Earlier, the three nuclear powers had adopted the Australian scope formulation which prohibited "any nuclear weapon test explosion or any other explosion", with a true zero yield understanding. However, Russia and China had not yet adopted this language. With the opening of the CD session, Jaap Ramaker took over as the Chair. Ramaker had the support of the Western group. From the beginning, it appeared as if Ramaker had great clarity of purpose in terms of what ought to be done to get the CTBT ready by September 1996. Indeed, he had explicitly set a time table. As he said:

> I think that the objective should be that negotiations on a CTBT be concluded by June 1996 in order to allow still the fiftieth sessions of the General Assembly to consider the text. Therefore by the end of the current part of the Conference on Disarmament (29 March), delegations should have a clearer picture of what the treaty is going to look like. Given the current state of negotiations, that means that two things should be done. First, there has to be an updated rolling test reflecting the stage of negotiation at that time. Secondly, that would indicate the paths to follow in the search for the resolution of
major outstanding issues.\footnote{Jaap, Ramaker, 25 January 1996, Conference on Disarmament Doc.CD/PV722.}

Ramaker adhered to this timetable. As a result, private meetings intensified amongst the nuclear powers and they, started trading key positions. Moreover, a false sense of urgency was generated and each state’s position on scope started converging towards the US defined ‘zero yield’. The best observation on the CD’s negotiating environment was made by Pakistan’s Ambassador Munir Akram. As he put it at a plenary meet: “the discussions have lacked transparency, and texts produced have not entirely been product of these talks. More often, than not texts relating to vital parts of the treaty have ‘descended from heaven and elsewhere’”.\footnote{Munir Akram, 1 August 1996, Conference on Disarmament Doc.CD/PV743.}

Realising that the likely scope may not prohibit laboratory testing and computer simulation, India took a tough position. On January 25, 1995, the Indian Ambassador, Arundhati Ghose, made a fiery speech at the CD. She said that, “the CD should ensure that the CTBT leaves no loophole for activity, either explosive based or non explosive based, aimed at continued development and refinement of nuclear weapons”.\footnote{Statement by Ms. Arundhati Ghose, Ambassador/Permanent Representative of India in UN Offices at Geneva, in the Plenary of the Conference on Disarmament on 25 January 1996, n. 66, p. 92.} For the first time ever, during the talks, India linked up the treaty with a time bound commitment by the nuclear powers for global disarmament. As the Ambassador said, “the treaty should be securely anchored in a global disarmament context and be linked through the treaty language to the elimination of all nuclear weapons.
in a time bound framework."\textsuperscript{77} This position had the majority non-aligned state's support. However, most of it remained muted.

In a futile effort to evolve a middle ground amongst various contradictory positions, Iran, on February 22, 1996, tabled a draft treaty. The scope language of this draft prohibited all nuclear tests.\textsuperscript{78} This scope meant banning even laboratory testing and computer simulations. However, this position was completely unacceptable to the NWSs. In what was perhaps an orchestrated move, Australia - within a week - reintroduced its earlier draft treaty with a zero-yield understanding on scope. Its Secretary for Foreign Affairs and Trade, Michael Castello, said while tabling the draft that, "it was to demonstrate tangibly that a CTBT along the lines we have been negotiating here for two years is indeed within reach".\textsuperscript{79} But analysts believe that it was a move to deny an attempt to establish an alternative or a parallel negotiation.

As promised, Ramaker on March 28, 1996 presented his working paper titled "Outline of a Draft Nuclear Test Ban Treaty".\textsuperscript{80} This was different than a "rolling text". Almost structured as a draft treaty, with a preamble and 17 other articles, yet not cleaned of brackets.\textsuperscript{81} Moreover, where the individual proposals of various countries are hard fought - as in the case of scope issues

\textsuperscript{77}Ibid.
\textsuperscript{78}Islamic Republic of Iran, Draft Comprehensive Nuclear Test Ban Treaty, CD/1384.
\textsuperscript{79}Michael Costello, 29 February 1996, CD/PV.727, p. 9.
\textsuperscript{80}Outline of a draft Nuclear Test Ban Treaty, CD/NTB/WP.321, 28 March 1996.
\textsuperscript{81}Johnson, n. 64, p 6.
- Ramaker had presented a heavily-bracketed rolling text with an indication of a "clean" formulation that attracted the most support. Moreover, four bracketed articles appeared at the end. This included China's proposal on the PNE exemption, security assurances and so on. They were put at the end to indicate that there was no place for them in the final treaty. China had earlier proposed a scope language, which prohibited any weapon test explosion, which releases nuclear energy. This formulation was intended to prohibit all low threshold explosions including HNEs but exempt Peaceful Nuclear Explosions (PNEs). However on March 28, 1996, the day Ramaker presented his working paper, China withdrew this demand. However, China continued to press for exemption of peaceful nuclear explosions (PNEs).

**Peaceful Nuclear Explosions (PNEs)**

Ever since the beginning of the CTBT talks, China has been demanding the exemption of the PNEs from the treaty. The PNEs are supposedly explosions that can be exploited for civilian purposes: for conducting large excavation, incineration of waste, oil and petroleum exploration, amongst other things. It was first devised in the US in early the 1950s under the "Plowshares Programmes". However, owing to public outcry against environmental contamination, it was terminated in 1977. Until then, the US vigorously propagated it. Russia also had a

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82 Ibid, p. 7
83 Sha Zukang, 28 March 1996, CD/PV.733.
"Plowshares" counterpart, until 1985. China had never had a PNE programme, nor had any current plans. However, it seemed to be interested in retaining the option for the future. As one of the Chinese Ministry of Foreign Affairs (MFA) official asserted, "PNEs haven't been used much for reasons of cost effectiveness, but since CTBT will be indefinite we should not rule them out". 85

Over the years, the Chinese nuclear establishment had been advocating PNEs for oil and natural gas exploration. The reasons were: first, cost-effectiveness; second, due to the high level viscosity of Chinese oil, it was necessary to heat it before extraction. However, PNEs were not used "due to priorities of economic construction" 86. However, as the Chinese Ambassador Sha Zukang asserted, "any disarmament or arms control treaty should not hinder the development of science and technology for peaceful purposes. Therefore, it would be incorrect if (the) CTBT should ban PNEs." 87

For, indeed, as a populous and developing country, "China cannot abandon for ever any promising and potentially useful technology that could be suited to its economic needs" 88.

Many Western analysts did not believe China's share this official explanation. They believed that the PNE served Beijing's interests in

86 Ibid.
88 Ibid.
delaying an early treaty. As Rebecca Johnson puts it: "China's argument on PNEs was initially viewed as little more than a delaying tactic. Then it was judged to be a bargaining chip, for which Beijing might demand a high price elsewhere. However, as China combined to hold stubbornly to this demand, the fear has grown that it could be a 'treaty-breaker'." 89

It is hard to definitively establish what China's motives were in pushing the PNE exemption. There is evidence that Beijing had also advocated for PNEs cumbersome approval procedure and intensive verification. Arguably, there may have been 'genuine' domestic pressures for the PNE. But the 'delay' theory can still hold for several reasons. First, delay provided room to manoeuvre; during the negotiations, and China was not averse to it. Indeed, the following remark by China's Ambassador Sha reflects how China was willing to combine the element of pragmatism with flexibility during the CTBT negotiation Sha asserts, "China is willing to make compromises, on some issues, but that cannot be done on a unilateral basis". Secondly, delay can also provide room for "swaying" - which has been a marked characteristic of China's negotiating style. 'Swaying' is not directly related to the substance of the negotiation, nor is it intended to draw concessions from the other side. Rather, it aims to undermine the position and prestige of opponents to modify their outlook. 90 Finally, delay remained

89 Interview with Rebecca Johnson, New Delhi, 22 February 2000.
90 For the concept of "Swaying" in the Chinese case see Ogura Kazuo, "How the 'Inscrutables' Negotiate with the 'Inscrutables': Chinese Negotiating Tactics vis-a-vis the Japanese", The China Quarterly, Vol.79, September 1979, p.530
crucial for China's testing plans. China was a reluctant partner to the U.S.-
led test-ban exercise because it was in the process of miniaturising its
warheads. China's strategists are thought to have developed the concept of
"limited deterrence" (you xian weishe).\textsuperscript{91} This strategic posture, however,
demanded that Beijing develop the capability to hit a range of countervalue
and hard and soft counterforce targets. For this, China required a variety of
smaller, more accurate, survivable and penetrable ICBMs, SLBMs, and a
range of tactical and theatre nuclear weapons. China however lacked this
operational capability when the CTBT talks began. While new delivery
systems could be developed, the treaty would definitely restrict the ability to
develop a wider range of smaller warhead designs; for which Beijing had
planned a series of field tests. In the words of a senior researcher in the
Chinese Academy of Social Sciences, "China wants to lower the weight/yield
ratio for MIRVs".\textsuperscript{92} Hence, the delay.

The March 28, 1996, Ramaker working paper brought the PNEs in
focus. While the NWSs can easily set aside other states' concerns on scope,
China remained too important for it to be ignored. Furthermore, any
concession meant further complicating the treaty, especially its verification
clauses. However, from Beijing's point of view, PNEs had become a prestige
issue. Having invested much of its diplomacy in the PNEs, it was improbable
for it to concede without any reciprocal concession or a trade off. The

\textsuperscript{91} See Alastair Iain Johnston, "China's New 'Old Thinking': The Concept of Limited

\textsuperscript{92} Garrett and Glaser, n.85, p.56.
question remained: What could that trade-off be?

It has been reported that China had sometime in April/May 1996 proposed that it might be willing to renounce PNEs and to accept the Australian language on scope - which prohibited “any nuclear weapon test explosion or any other nuclear explosion - if the NWSs considered a sub-article, ‘Article II’, to be introduced under the basic obligations clause. The ‘Article II’ proposal would "not withstanding the provisions of article I", offer the possibility of permitting PNEs, provided a Review Conference of States Parties agreed to this by consensus. 93

This proposal was rebuffed by a majority of the delegates. However, the message was clear. Beijing was looking for a "face-saving" formula on PNEs, before it acceded to the treaty. Canada later took the initiative. Rather than introducing a fresh article under "basic obligation", it proposed alternative language under article VIII, which primarily dealt with the review of the treaty. The language was as follows:

On the basis of a request by any State Party, the Review Conference shall consider the possibility of permitting the conduct of underground explosions for peaceful purposes. If the Review Conference decides by consensus that any such nuclear explosions may be permitted, it shall commence work without delay, with a view to recommending to States Parties an appropriate amendment to this Treaty that shall preclude any military benefits of such nuclear explosions 94

China agreed to this very stringent clause, which involved a two-stage procedure to waive the PNEs if required in the future. Beijing had

93 Johnson, n. 87, p.27.
94 Ibid.
adapted to the U.S. defined zero-yield concept on scope with treaty language mooted by Australia in early 1995.

Russia was the only nuclear power left to accept the Australian scope language. Russia had earlier demanded that the scope text be based on the PTBT basic obligation, adding the term "underground" to the list of prohibited environments. This was preferred because the treaty might otherwise leave a grey area of explosions in laboratories. It was not until April 21, 1996, when the US President met the Russian President Boris Yeltsin, that Russia dropped its proposal. At a press conference, after the meeting, Clinton reiterated that "we have all agreed to go with the so-called Australian language which is a strict zero-yield comprehensive test ban treaty".96 Yeltsin also said, "that this year we've got to sign the treaty on banning... any size of test... forever". The Russian delegation at Geneva also confirmed later, in the month of May, that it would back the Australian scope language.96

On May 28, 1996, the Chair presented its "rolling text". Ramaker stressed this draft was to facilitate "the last and final stage of negotiations". The text carried the Australian draft language on scope which was incomprehensive. Even then, the non aligned states did not resist. Only India stood against the scope language. In fact, India was dismayed by the manner in which its disarmament and security concerns were not accounted for.

95 Ibid., p.24.
96 Ibid., p.25.
Reacting sharply on scope, the Indian Ambassador asserted:

the basic prohibitions, as drafted so far, which define the Scope remain very narrow and do not fulfil the mandated requirement of a comprehensive test ban. This approach would give us only a 'nuclear weapon test explosion ban treaty' and not a Comprehensive Test Ban Treaty. We are equally if not more concerned that any attempt to introduce substantive disarmament provisions in the treaty have been blocked by some delegations.97

However, ignoring Indian concerns, the focus of the talks had now shifted to issues like verification and entry into force. This scope language, without any debate in the CD, became an integral part of the absolute final treaty draft on June 28, 1996. It was finally adopted by the treaty as under:

Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such explosion at any place under its jurisdiction or control.

Each State Party undertakes, furthermore, to refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion, or any other explosion.

CONCLUSION

Since the negotiations began in January 1994, the issue of scope remained contentious. This was due to two reasons: political and technological. On the one hand, there were five nuclear power and, on the other, more than 30 non-nuclear countries. Secondly, there was a technological gap, even amongst the nuclear powers. The US and Russia were technologically superior to Britain, France and China. This led to a

97 Arundhati Ghose, n.66, pp. 102-3.
disparity amongst the states participating in the talks, thereby, complicating the issue. Since a test ban would cripple the ability to develop nuclear weapons, Britain, France and China were looking for alternatives which would compensate for the effects of a ban on their weapons. As a result, the initial phase, throughout 1994, merely was a search for the basic principles. The emphasis was on identifying and examining broad parameters of scope.

To give the negotiations momentum, at the beginning of the second phase of negotiations, the US came up with a concession by dropping its earlier proposed "easy exit" clause, by which the nuclear powers could opt out of the treaty, if they desired. This was however secured by the Clinton administration after a domestic deal with the anti-CTBT lobby. This gave Britain and France, a clear signal regarding the US motives to conclude a treaty. They also now followed the US, offered concessions; and dropped their demand to exempt safety tests from the treaty scope on the eve of the NPT Extension Conference. However, by this time, both Britain and France had decided to seek compensation for supporting a test ban. Britain was, unsuccessfully, engaged in bargaining with the US to let it conduct nuclear tests. France had already taken a decision to do so, which it did between September 1996 through January 1996. Moreover it also sought a bilateral deal with the US to obtain American simulation facilities which could help it maintain its weapons reliability.

While it was easy for the US to bring in Britain and France and even Russia into a treaty, it was hard to win over China. China, during the
confidential meetings had proposed that the treaty either ban all low-yield tests including HNEs or exempt much higher yields up to 500 tons energy release. Moreover it also called for PNE exemption. This had put the Americans, who themselves wanted up to 2 kg energy exemption, in a dilemma. In this scenario, the US decided to go down to a 'zero yield' option. This was, however, done after enormous domestic compensation in terms of SSMP programme which would help the US to maintain and modernise its "enduring stockpile". Thus by the end of the second phase, the US, Britain and France had gone down to a "true zero yield".

During the final phase, beginning in January 1996, Russia and China adapted to this "zero-scope". China by this time, had conducted several nuclear explosions and hence dropped its earlier demand for exempting PNEs from treaty scope. Indeed, it can be said, China was trying to delay negotiations to facilitate these explosions. After doing so, it agreed to the US defined "zero-yield" scope. Hence a consensus was achieved amongst the nuclear powers on treaty scope.