CHAPTER IV

THE POLITICS OF ENTRY INTO FORCE

This chapter examines how the nuclear powers coordinated their efforts on entry into force. It is organised in three sections, each dealing with a particular phase of talks. The first phase can be said to have begun in January 1994. During this phase, the nuclear powers put forward their preferred formula for the treaty to come to force. Indeed, the attempt was to define basic principles: what exactly is to be negotiated? During the second phase, beginning in January 1995, the States parties tried to combine various formulae to evolve an agreement. The concept of "waivers" was introduced. Several permutations and combinations were worked upon in search for the most appropriate E.I.F. option. However, no agreement was arrived at. The final phase began in January 1996. By this time, substantial agreement has been achieved on the issue of scope and verification. Hence, the talks were primarily focussed upon the entry into force. While the nuclear powers agreed on an entry into force formula during this phase, India blocked an overall consensus. This section, therefore, attempts to unearth India's role, as well.
PHASE I OF NEGOTIATIONS: THE BEGINNING

For a treaty to be legally binding, it has to enter into force. In the absence of any entry-into-force (EIF) provisions or agreement regarding this, the treaty may enter into force as soon as consent to the treaty has been established for all negotiating states. However, in most cases, treaties specify that they will come into effect after a specified period or after certain conditions are fulfilled by the parties.

Most arms control treaties, traditionally, had an entry into force clause which specifies the conditions, which are to be met before the treaty becomes operative. For example, the Chemical Weapons Convention (CWC), successfully concluded at the Geneva Conference on Disarmament (CD) in 1992, can enter into force 180 days after sixty-five states deposit their instruments of accession. Thus, the convention sets a minimum "numerical" requirement for the treaty to be functional. The formula, however, can vary, given the purposes of the treaty in question.

Never before in the history of arms control negotiations was the issue of entry into force so contentious as in the case of the test ban. It was contentious because the proposed treaty's basic obligations would restrict the nuclear weapons development and thereby impinge upon the fundamental security concerns of the negotiating states. Moreover, it provided the blue print of a verification regime, which perhaps could be

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abused, for the purposes of espionage. Indeed, the talks on the entry into force blew up to the extent that it forced one of the participant states - India - to block consensus on the treaty text. Perhaps for the first time ever, an entry into force clause was drafted to impinge upon the sovereign right of any state. This was contrary to the fundamental norms of customary international law and a violation of the Vienna Convention of the Law of Treaties. The Vienna Convention lies down that no obligation can be imposed upon a state without its specific consent. Remonstrating over the entry into force conditions, the Indian Ambassador, Arundhati Ghose, on September 10, 1996, warned at the United Nations General Assembly session: "so long as the CTBT contained this article, India will never sign this unequal treaty, not now nor later". This brings into focus the politics underlying the entry into force. The central question is: how did the nuclear powers agree on the issue? The talks to achieve a test ban began on January 25, 1994. This marked the beginning of the first phase of negotiations. However, at this initial stage, the talks focussed on the scope and the verification regime. Entry into force was regarded as an "end-game" issue. But it did not remain marginal. When should the treaty become operationally viable? What requirements are to be met for the treaty to become politically effective? These questions formed the core of the debate since the start. In this sense

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the issue did not altogether remain outside the discussions on other parts of
the treaty. Progress on scope and verification did influence the negotiations
on the entry into force. Altogether, they remained inextricably linked.

Two fundamental concerns guided the negotiations on E.I.F. First, all
"key" states should ratify the treaty before it enters into force. The term
"key", however, remained disputed. As the treaty would militarily affect the
five nuclear powers along with the three nuclear capable "thresholds"
powers - India, Israel and Pakistan - it was thought to be desirable for all of
them to join the treaty, if it was to be effective. However, some states raised
the question of treaty universality and wanted as many states to join as a
condition of the E.I.F. Secondly, E.I.F. should not be blocked by the delay in
ratification by any individual state. These two concerns led towards evolving
various formulae, often at variance with each other. Opinions differed even
amongst the nuclear powers on the issue. At the beginning of the
negotiations, the United States had made it explicit that it wanted the treaty
to be concluded "at the earliest". By extension, this meant an early entry
into force. The US Ambassador to the CD, Stephen Ledogar, was extremely
candid on the issue. Addressing the CD plenary on February 3, 1994 he
stated:

The United States does not yet have a fixed view on entry into
force (or EIF), but we do have some general ideas. To achieve
non-proliferation goals, the CTBT must gain wide - even
universal - adherence. It is also essential that all nuclear-
weapon states be party to the treaty at E.I.F. The United States

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would favour an approach designed to garner early adherence of a significant number of key States, but we would have some doubts about making E.I.F. contingent upon ratification by a specific group of States, beyond the nuclear weapons states. Hence we believe that considerations that led to the rather conservative entry into force provision of CWC should not apply to the CTBT.4

Thus, for the US, the essential condition for the treaty's E.I.F. was its ratification by the five nuclear powers. Moreover, while it desired universal adherence of the treaty, it also did not favour any stringent formula, which could turn the treaty into a dead letter.

Paradoxically, Britain - one of the staunchest US allies during the Cold War - did not share this perception. As noted earlier, in the chapter on scope, Britain ostensibly valued the CTBT for its non-proliferation goals. It had earlier argued at the CD plenary, “a successful outcome [of the CTBT] will mean the conclusion of a treaty which makes a real contribution to non-proliferation”.5 Therefore, it wanted its conclusion only after the NPT was indefinitely extended in 1995. In addition, it also wanted to bargain with the US for exempting low yield explosions from the treaty scope. E.I.F. could serve as a crucial tool. As a consequence London had adopted a tactic to delay the negotiations. Reversing the US position on the treaty entry into force, the British Ambassador Sir Michael Weston argued for the CWC formula to be used as a model for the CTBT. He asserted at the CD plenary:

..adopting this formula would provide no guarantee of adherence by all - or indeed any - of the countries whose

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commitment to the treaty we regard as necessary if it is to play a non-proliferation role we want from it. We would suggest therefore that, at a minimum, all members of the CD should ratify the treaty before it enters into force. Given that we proceed in the forum by consensus it is surely not unreasonable to expect that a treaty whose terms we have all been prepared to agree should be ratified by all without undue delay. In this regard, in particular, earliest possible progress on enlarging the CD.⁶

This formula, however, had a trick. Indeed, it was an effort to rope in the five nuclear powers along with the three "threshold" states into the treaty without identifying them explicitly. At the start of the negotiations, the CD had only 37 members. While this number included the five nuclear powers, only two threshold states - India and Pakistan - were its members. The CD's expansion was overdue. In September 1993, a list of 23 states was proposed. This list known as the O'Sullivan list after the name of Australian Ambassador Paul O'Sullivan included Israel, the other threshold state. For this reason, Britain urged for an early CD expansion. By reasoning of the British formula, Britain in a way made the treaty's entry into force mandatory upon ratification by the eight "key" states. As we shall see, British insistence on this "5+3" formula subsequently became the treaty "spoiler".

Russia took a similar position to Britain, although with slight modification. It had proposed the treaty ratification by sixty-five states as a condition of entry into force. The proposed sixty-five states were on the International Atomic Energy Agency (IAEA) list of states with nuclear

⁶ Ibid., p.24.
research programmes or possessed nuclear power reactors. This list also included the five recognised nuclear powers and the three threshold states. The Russian Ambassador to the CD asserted that for the treaty to be truly effective, this numerical strength was necessary. At this early stage, France and China did not articulate their E.I.F. formulae. Both however desired that the EIF must be brought into line with the principle of universality and the purposes of preventing nuclear proliferation.

Ironically, the various conflicting E.I.F. requirements made the task of the Ad Hoc Committee more difficult. Within this Committee, Working Group II, on Legal and Institutional Issues, was concerned with the drafting of the E.I.F. language. It had assigned an Italian diplomat Ambassador Vattani, as a "Friend of the Chair" to work towards evolving a consensual formula. Towards this end, Vattani adopted a combination of approaches including some non conventional ones. For instance, an opinion poll was conducted to assist the Chair in putting forward his recommendations for a draft provision. Delegations were also asked to respond to a questionnaire on a specific provision. Private consultations also served as a valuable guide in the drafting exercises. Moreover, the language proposed by the draft treaties, earlier tabled by Sweden and Australia along with the various other proposals put forward by several CD members also contributed to the

7 Grigori Berdennikov, 1 February 1994, Conference on Disarmament Doc. CD/PV.668, p.10.

drafting process. As a result of this cumbersome exercise, Vattani, by the end of the first phase, managed to bring about a consensus that the E.I.F. should not take effect earlier than two years after the treaty was opened for signature. Moreover, he developed six E.I.F. options or alternative formulae, which were later elaborated in the Chair's draft treaty language. These options were (a) entry into force conditional upon ratification by a certain number of "key" states; (b) entry into force conditional upon the deposit of instrument of ratification by a percent of all states which have, or had under construction, nuclear power or nuclear research reactor at the date of opening of the treaty signature; (c) entry into force conditional upon the ratification by all members states of the Conference on Disarmament which are members at the time of the treaty's opening for signature and all States as per the IAEA list; (d) E.I.F. upon ratification by all CD members and all States which have applied for membership prior to a date to be agreed; (e) E.I.F. upon ratification by all states and members of the Conference of Disarmament and observers to the Conference on Disarmament; and (f) E.I.F. upon ratification by 80 percent of the member states or observers to the Conference on Disarmament which participate in the negotiations.

To put it simply, the six options which appeared at the end of the first phase of negotiations provided a choice between simple numerical options,

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9 Ibid., p.52.
qualified numerical options, a CD expansion option, and an IAEA list option. The dilemma, however, continued over which "key" states, apart from the five nuclear powers, should be deemed as essential for the treaty's effectiveness? At the end of the first phase, the US remained firm on the ratification by the five declared nuclear powers as the minimal condition. Britain remained adamant on an "expanded CD" lists which meant ratification by 65 states including the three "threshold" states. However, with the CD expansion remaining doubtful, it was likely that Britain would find Russia's approach attractive, that is, to base E.I.F. on the adherence of all States recognised by IAEA to have nuclear power or research reactors. This figure came to around 60. Thus Britain and Russia, in a way, appear to have coalesced against the US in their demand to make ratification by the "threshold" states mandatory for the entry into force. France and China's position still remained unclear. However, it was believed that both would join with Britain and Russia.

**PHASE II OF NEGOTIATIONS : DISCUSSIONS WITHOUT DECISION**

After the various E.I.F. alternatives or options were identified the task ahead was to further streamline these options. The search towards this end began with the opening of the Conference on Disarmament on January 30, 1995. This also marked the beginning of the second phase of negotiations. As a first step, the AdHoc Committee was reconstituted and the German diplomat, Stephen Keller, was appointed as the "Friend of the Chair" on the
E.I.F. The major challenge for him was how to reconcile various conflicting options to evolve a consensual E.I.F. language? If carefully examined, all six options reflected three common concerns. First, any E.I.F. formula should, at least, meet the principle of treaty universality, as was embodied in the negotiating mandate to the Ad Hoc Committee. This meant that the E.I.F. formula should ensure a reasonable and representative group of states on board the treaty. There was an economic rationale behind it as well; namely, the costs of sharing the expenses of the proposed verification system could then be equitably distributed, without there being an unnecessary burden on a handful of states. Secondly, the formula should encompass all “key” states. Although the term “key” remained highly subjective and hence disputed, it was widely interpreted to include the five recognised nuclear powers and the three nuclear “thresholds”. Thirdly, the formula should ensure that the treaty implementation could not be held hostage by any one or a group of states.

To accomplish these goals, the option was either to combine the earlier delineated E.I.F. alternatives or to work on fresh E.I.F. concepts. In this sense, this phase was distinct from the previous one. For the first time during the test ban negotiations, the Chair introduced the concept of “waivers” for the discussions. This concept was first introduced in the 1967 in the Tlatelolco Treaty, which prohibits nuclear weapons in the Latin America and the Caribbean region.\(^{10}\) In this treaty, the signatory states have

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the right to abandon, wholly or in part, the entry into force requirements. They may do so by means of a declaration which can be appended to their respective instrument of ratification and which may be formulated at the time of deposit of the instrument or subsequently. For those who exercise this right, the treaty shall enter into force upon deposit of the declaration or as soon as those requirements have been met which have not been expressly waived. This formula thus gives the right to each of the parties to individually waive the requirements, thereby allowing the treaty to enter into force individually. During a Working Group (WG) meeting, Australia proposed the "Tlatelolco formula" to the Chair for discussion. While this could have been a good formula to harmonise individual states security concerns along with avoiding the E.I.F. clause holding back the treaty's implementation, it was not received well by the CD members. In fact, doubts were raised about the practicality of the formula. It was thought that it would have to be combined with some specific list, meeting certain minimum numerical requirements. This "minimum" number would be required to trigger off the international verification system. Otherwise verification would have to be based on national monitoring, thereby raising fears about treaty's compliance and the possibilities of its circumvention. The proposal, therefore, was rebuffed. In the absence of any alternative proposal, a stalemate was reached on the issue of E.I.F.

Building upon this concept, the US proposed its own "waiver" formula, with a difference. The US waiver proposal called for a conference of states,
which have ratified, two years after signature, provided all the nuclear powers had ratified.\textsuperscript{11} The conference participants could then decide whether to waive any specific E.I.F. requirements to let the treaty enter into force. This formula could be useful in preventing the treaty's implementation being held hostage by any other state except the nuclear powers. But the key to the formula remained the accession by the five nuclear powers. In this sense, the US merely adhered to the earlier stated position and did not concede on the issue of E.I.F.

By this time France had expressed its desire to resume nuclear explosions. China was continuing with its nuclear testing plans, raising doubts about the intentions of the two countries. The fear among several non-nuclear CD members was that to make the CTBT entry into force contingent upon ratification by the nuclear powers may indeed provide a big opportunity to both France and China to block the treaty.\textsuperscript{12} Hence, they were unhappy with the US waiver formula and, favoured a simple "numerical" mechanism. The US, however, had introduced a "waiver" formula in anticipation that the other nuclear powers may also come closer towards on agreement on the E.I.F. This proved to be wrong. Throughout the early months of 1995, Britain continued to adhere to its earlier stated position, namely, that entry into force should be conditional upon ratification by all members of the "expanded CD". France also, at this stage, called for the


\textsuperscript{12} Ibid.
"expanded CD" formula. However, realizing that CD expansion was improbable, both had during the later months of 1995 joined Russia to support the IAEA list of states with nuclear research programmes or power reactors. This list came to about 68, including all the nuclear powers and the threshold states. China also supported this list. Thus the IAEA formula - which was a camouflage for "five plus three" - had by the end of this phase the backing of four nuclear powers, Britain, France, Russia and China. Moreover, all of them were adamantly opposed to any dilution of their proposed formula. This led to an impasse, and it was, by now, clear that the issue would remain for the "end-game" bargaining.

**PHASE III OF NEGOTIATIONS: THE END-GAME**

The final phase of the test ban talks started in January 1996. Most of the key issues still remained unsettled. For instance, Russia and China were yet to decide on a US defined "zero-yield" scope on which the position of US, Britain and France had converged. On the issue of verification, ‘on-site inspections’ still remained contentious amongst the US and China. For these reasons the entry into force remained dormant until May 1996, by which time most of these issues had either been settled or were within reach of settlement. Until, then, the five nuclear powers adhered to their earlier stated positions on the E.I.F.

The Ad Hoc Committee now chaired by Jaap Ramaker, however, continued with its efforts. Ramaker had appointed Ambassador Mounir
Zahran of Egypt as a "Friend of the Chair" on the E.I.F. Whereas the Ad Hoc Committee received several E.I.F. proposals, including the two drafts treaties tabled first on February 22, 1996 by Iran and later after a week on February 29, 1996 by Australia, yet it failed to evolve a consensual E.I.F. language.

The Iranian draft suggested basing entry into force upon the IAEA list of 68, but specified that the treaty could enter into force if 65 out of 68 joined. The Australian proposal evolved a cumbersome E.I.F. process. It combined the list of CD members and observers - which came to some 75 states - along with a waiver conference. This conference could be held two years after signature, at which time the states that had ratified the treaty could decide whether to let the treaty enter into force.

Ramaker was a calm and experienced diplomat. The Western group chose him to chair partly because of his caution and preference for non-confrontation. However, this proved to be his major drawback, often counterproductive. While he could have appropriated various conflicting draft proposals on the E.I.F. to evolve consensus, he failed badly. Indeed, it may not be improper to say that he was manipulated by Britain, which was absolutely adamant on the issue of E.I.F. As a result, bypassing the various E.I.F. proposals, the British proposal, which was not even discussed in any

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working group meeting, found its way into the Chairman’s May 28 draft.\textsuperscript{14} This draft was the turning point, particularly on the E.I.F.

As Ramaker argued, he tabled this draft treaty to facilitate the “last and the final stage of negotiations”. At this stage, the Chair had to take a decision on a trigger mechanism for the on site inspections, that is what should be the decision mechanism to activate on site inspections. As a result, Ramaker had to propose some formula for the E.I.F., as well. Taking this, as an opportunity, he introduced an “innovative” formula. According to this formula, the treaty could enter into force only on ratification by 37 states, which were listed, in the draft treaty annex, to have offered their national seismic facilities or radionuclide laboratories to the proposed treaty’s International Monitoring System (IMS). Initially floated by Britain, this formula was inserted in the draft by Ramaker as a “holding article” which had not been negotiated. This was clearly an attempt to bind the “five plus three”. As Rebecca Johnson writes: “The absurdity of the ploy to bind the eight became clear when two more countries added [seismic) stations to the list”.\textsuperscript{15} The two were later found to be Pakistan and Israel. By this time India had decided to keep itself away from the treaty. Hence it promptly withdrew its seismic facilities, which it had earlier offered. This was a bargaining tactic to pressure the nuclear powers and the Chair to meet the Indian concerns:


that the treaty be “securely anchored in a global disarmament context”.

The May 28 draft, however, had signaled Chair’s preferences. It was a clear indication of what the final treaty could look like. It was also a signal to the negotiators of where the Chair himself - who was perhaps best placed to know - thought an agreement between opposing views could be struck. However, what he was not aware of were the politics surrounding the E.I.F. issue. Britain, Russia, China, supported by Egypt and Pakistan, were “shadow boxing” over the issue of treaty implementation.

The May 28 draft also brought a fundamental change in the negotiating environment. Although the purpose of the draft as Ramaker hoped was to “galvanize the delegates into fresh endeavours to find a good compromise”, it did the opposite. It stopped the multilateral negotiations. Rather “indoor” meetings were now held to evolve a compromise. Ramaker convened 15 or so key states to discuss the entry into force. These states included the five nuclear power, the three “threshold” states and the diplomats from states which had played a significant role either as moderators or the “Friends of the Chair” on core issues. This list included Japan, Mexico, Egypt, Morocco, Germany, Canada, Indonesia and Australia.

19 Ibid., p.15.
Another attempt to further evolve a consensus began on June 20. Ramaker, on this day, tabled a Chair's working paper on the entry into force for the discussion. Ironically, India had, earlier on the same day, categorically refused to accept the treaty. The Indian Ambassador, Arundhati Ghose, had explicitly stated that India "may not accept any language in the treaty text which would affect our sovereign right to decide, in the light of our supreme national interest, whether we should or should not accede to such a treaty". While India at this stage did not indicate its willingness to veto the treaty draft, this was widely reported by Western sources. Indian media writings - which had generated a wave of opinion against the treaty, domestically - also contributed to the view that New Delhi would veto.

The June 20 Ramaker formula sought to appease the hard-liners: Britain, Russia and China. In the proposal, the first and the main condition for treaty implementation was the accession by the 37 states providing the primary seismic station or the radionuclide facilities to the verification system. This condition would stand for five years after the treaty was opened for signature. If this were not met within that period but at least seventy-five states had signed and ratified the treaty, then the treaty would enter into force automatically five years plus 180 days from the date of opening for signature; unless any state or a group of states- which had ratified- requested a special conference. This conference would be open for

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21 Conference on Disarmament Doc. CD/NTB/WP.334.
only states that had ratified the treaty. This conference then could decide to implement the treaty by a two-thirds majority. However, any state which had ratified the treaty but did not support the majority decision to implement the treaty could, at the time of the conference, defer entry into force of the treaty for itself until all the original conditions had been met or it revoked its decision to defer. The later clause was known as the "deferment option" and was sponsored by Pakistan.

Ramaker's formula was nothing more than a compilation of staggered proposals earlier tabled before the Ad Hoc Committee. Interestingly, it reflected the British, Russian, Chinese and Pakistani influence over the Chair, as none other than these states - at one time or another - had mooted these proposals.

Apart from its ingenuity in combining various conflicting proposals, the Ramaker formula had three major problems. First, the "timing" was late. Secondly, the entry into force process was perhaps too cumbersome. Finally, the baseline of the formula was the earlier discredited IMS list. Rebecca Johnson, argues that "it could possibly have won through if it had used the IAEA list or the newly-expanded CD list as its baseline and if Ramaker had been able to put it as an 'holding article' in the May 28 draft instead of the unequivocal IMS based list proposed by Britain".  

Britain and Russia refused to accept the cumbersome entry into force

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22 Johnson, n.18, p.63.
proposal along with "waiver" or a "deferment" provision. At this stage, the US and France were willing to be flexible on the issue. As far as the US was concerned, it was prepared to bargain over the "five plus three" formula. However, this was conditional upon reciprocal concession on the issue of on-site inspection with China.

Between June 20 through June 28, the CD witnessed hectic diplomatic activity. Most of these confidential meetings were conducted until midnight.\(^\text{23}\) They proved to be even worse. During one of the meetings the British Ambassador Sir Michael Weston caused great consternation. The Ambassador argued that the point of a strict entry into force provision was that the CTBT only concerned the "eight", the others being there merely to share the financial burden of its verification.\(^\text{24}\) One of the objectives of the treaty Weston said was to rope in the three countries - India, Pakistan and Israel - which are outside the NPT.\(^\text{25}\) Suggesting that India was "wriggling" to escape from the CTBT, Weston declared that India should not be "let off the hook".\(^\text{26}\) This arrogance of the nuclear powers - particularly Britain - led to a further hardening of the Indian position on the treaty. In fact, after Britain's churlish behaviour, the Indian Ambassador Ghose remarked "In my 35 years

\(^{23}\) As told to the author in an interview with a senior official of the Ministry of External Affairs, Government of India, New Delhi, 10 May, 2000

\(^{24}\) Johnson, n.18, p.64.

\(^{25}\) See C. Raja Mohan, "UK, Russian fears on CTBT out", The Hindu, New Delhi, 28 June 1996.

\(^{26}\) Ibid.
of service, I have never heard India being thrashed liked this". In New Delhi, the Ministry of External Affairs took serious note of Weston's behaviour. The British High Commissioner in New Delhi was summoned by the Ministry and was told to convey to the British government that the Ambassador's behaviour was provocative and offensive.

Weston offended not only India. Japan too was unhappy with the remark that its presence was merely in a burden sharing capacity.

What were the reasons behind their intransigence? First, both countries were angered over the US 'zero yield' decision on scope. As we have already seen, in the chapter on scope, Britain was a reluctant partner to the CTBT negotiations. It joined the talks in anticipation that the treaty would not be realized, as had happened historically. Moreover, during the negotiations, it had left no stone unturned to complicate the talks. At the same time, the British Foreign Secretary Douglas Hurd had in 1992 - when he was Defence Secretary - unsuccessfully campaigned within the US to overturn the US testing moratorium to facilitate British nuclear tests. However, Britain failed to get the US to agree to resume testing thereby constraining its ability to develop certain weapon types. The US 'zero yield' decision further nipped in the bud Britain's weapon refinement ability. For

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27 Chitra Subramaniam, "UK broadside on India stuns CTBT delegates", The Indian Express, New Delhi, 28 June 1996.
28 Interview, n. 23.
29 Johnson, n.18, p.64.
these reasons, Britain was angered with the US and as a last ditch wanted to stop the treaty without being specifically recognised as doing so.

The US 'zero yield' decision was also recognised as a factor behind Russian stalling. Russia and China were also, at that time, not willing to accept the tough on-site inspection regime demanded by the US. They feared that such a regime could be abused for the purposes of espionage. As C. Raja Mohan, the strategic affairs analyst for The Hindu, who was witness to parts of the negotiations notes: "In both the countries (Russia and China) there are strong apprehensions about the prospect of American intelligence snooping around their nuclear weapon-related facilities. Unwilling to be seen as blocking the treaty on the issue they are trying to shift the battle to the 'entry into force' and present India as a principal obstacle".31

On June 26, India formally conveyed its decision to withdraw from seismic facilities scheme. This move discredited Ramaker's June 20 proposal on the entry into force. As a result, he came up with a new E.I.F. formula in his June 28 submission, which was the final draft treaty. The E.I.F. formula - as it appeared in this draft text - made the treaty entry into force conditional upon a list of 44 states. These states are those which were participating members of the CD on 18 June 1996 and which were also listed by the IAEA's 1995 and 1996 schedules as possessing nuclear power reactors. If the entry into force conditions are not fulfilled within the first three years,

31 Raja Mohan, n.25.
then the states which have ratified can convene a "political conference". This conference could "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 this treaty".\textsuperscript{32}

Although Canada initially floated the idea, the formula met the demands of the hard-liners: Russia, Britain and China. It brought in all the nuclear powers and the threshold states within the treaty's purview. It did not provide for a waiver. Moreover, it also had a mechanism to force the "hold outs" to get on board. With this, the negotiations on the entry into force issue almost ceased. Realizing that Britain, Russia and China were not likely to concede on the issue, the US also came to support the formula. However, the US acceptance came only after a public assurance from the rest from that they were prepared to accept the E.I.F. language.\textsuperscript{33} Also, China was made to commit that it would reconsider its objections to the on-site inspections scheme, when the CD reopened on July 29.

\textit{India's Role on Entry Into Force}

The issue of entry into force brought India's role during the negotiations into sharp focus. On June 20, 1996, the Indian Ambassador, Arundhati Ghose, had categorically stated India's inability to accede to the treaty. India's objections at this stage ostensibly were three fold: First, the draft which had emerged "would give us only a 'nuclear weapon test

\textsuperscript{32} Conference on Disarmament Doc. CD/NTB/WP.330/Rev.l, 28 June, 1996.

\textsuperscript{33} Johnson, n.18, p.16.
explosion ban treaty' and not a Comprehensive Test Ban Treaty". The scope or the basic obligation was narrow "enough to leave loopholes that would permit nuclear weapons states to continue refining and developing nuclear arsenals at their test sites and in their laboratory". Thus as Ambassador Ghose asserted at the CD plenary on June 20, 1996: "The CTBT that we see emerging appears to shaped by the technological preferences of the nuclear weapon states rather than the imperatives of disarmament. This was not the CTBT India envisaged in 1954. This cannot be the CTBT that India can be expected to accept".

Ironically, in January 1996, India had tabled a working paper on the treaty preamble, suggesting five new language formulations. One made a general reference to the relationship between the test prohibition and nuclear disarmament. Three proposals referred to the elimination of nuclear weapons within a ‘time-bound framework’, ‘agreed time frame’ and ‘time bound process’. India had also proposed an additional paragraph in the treaty preamble. This reads: “emphasising that the principal objective of this treaty is to end the qualitative improvement and development of nuclear weapon system”. None of these proposals found their way into the May 28 draft.

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34 Statement by Ms. Arundhati Ghose, Ambassador/Permanent Representative of India to the UN offices at Geneva, in the Plenary of the Conference on Disarmament on 20-6-1996, n.2, p.103.
35 Ibid.
36 Ibid.
37 Conference on Disarmament Doc. CD/NTB/WP.295.
Secondly, India for the first time during the negotiations invoked "security considerations" as a factor in its decision making on the CTBT. In her June 20 statement, the Ambassador said: "countries around us continue their weapon programme, either openly or in clandestine manner. In such an environment, India cannot accept any restraints on its capabilities if other countries remain unwilling to accept the obligation to eliminate nuclear weapons".38

Finally, what had dismayed India the most was the effort of the nuclear powers to force upon it a treaty which it did not subscribe to "in its present form". The conditions put forward for the treaty implementation made the ratification by India vital. As we have seen in this chapter, the criteria determining the selection of "key" states for the treaty's entry into force went through several iterations, finally to bind India despite its repeated assertions to "opt out" of the treaty. India found this unacceptable. As Ambassador Ghose said: "we would not accept any language in the Treaty text which would decide, in the light of our supreme national interest, whether we should or should not accede to such a treaty".39

The entry into force issue later became the treaty-breaking point. India was dubbed as a "spoiler". This brings us to what factors contributed to India's decision to reject the treaty? Conversely why did India join the negotiations, if it had to reject it later?

39 Ibid,p.105
Even since Independence, there seems to be a visible contradiction in India's posturing on nuclear issues and its actual capability. India's first Prime Minister Jawaharlal Nehru - who in 1954 gave the first call for "stand-still agreement" on all nuclear testing - was known for his unassailable disarmament commitments. At the same time he wanted to exploit nuclear technology to transform India from a poor peasant state to a relatively modern developed state. As a result, he established India's Atomic Energy Commission in 1948, exclusively for civilian purposes. But Nehru did not foreclose the possibility of a nuclear weapons option. This is indicated in one of Nehru's speech in Parliament, in 1948, where he talks of the "purposes" of the proposed nuclear programme. He says, "I think we must develop it [nuclear energy] for peaceful purposes". He further says that, "if we are compelled, as a nation to use it for other purposes, possibly no pious sentiment will stop the nation from using it that way."

India's next Prime Minister also adopted the Nehruvian approach. Lal Bahadur Shastri is known to have given the "go-ahead" for a test after China exploded its first bomb in 1964. Nehru's daughter Indira Gandhi, who succeeded Shastri as Prime Minister, also adopted a similar policy. She rejected the 1968 Non Proliferation Treaty on the grounds that the Treaty was "inherently discriminatory" and restricted nuclear weapons to an exclusive

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40 For citation of Nehru's speech see Zia Mian, "Homi Bhabha killed a Crow", in Zia Mian and Ashis Nandy, The Nuclear Debates: Ironies and Immoralities (Colombo: Regional Centre for Strategic Studies, July1998), p.12.

41 Ibid.
five-member club. At the same time, Mrs. Gandhi pushed India's nuclear weapon programme forward by conducting a "peaceful" nuclear explosion in 1974.

India was, therefore, trying to combine restraint with a hard headed and prudent approach in which the "weapon option" was kept open. This is revealed in the nuanced analysis of the origin and development of the India's nuclear programme by the American Scholar, George Perkovich. In the concluding chapter of the book titled *India's Nuclear Bomb*, he writes:

This history [of India's nuclear programme] explodes a number of illusions, many of them Indian. For example, although Nehru made moral aversion to nuclear weapons a dominant theme in the Indian national narrative, he also expressed interest in having a nuclear weapon option for India. India's nuclear activities have not been as "pure" as Indian conventional wisdom suggests- even if moral considerations have had an unusually material impact on Indian policy.42

By the mid 1980s Indian decision-makers decided that India would have to weaponise at some point of time. The were number of reasons for this view. There were no signs of global nuclear renunciation. At the same time, the strategic environment around India was worsening. As J.N. Dixit, who was Foreign Secretary in the Ministry of External Affairs at that time, notes: "we had information of China possibly deploying some missiles in Northern Tibet and we had more information about Pakistan's nuclear weapons programme".43 Even then, according to Dixit, India wanted to work

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42 George Perkovich, *India's Nuclear Bomb* (New Delhi: Oxford University Press, 1999), p.444

43 Interview with J.N. Dixit, Former Foreign Secretary ,Government of India New Delhi, 30 September 1999
within the framework of its commitment for a "non discriminatory comprehensive disarmament". As a result, the then Prime Minister, Rajiv Gandhi, mooted a "time bound" plan for the elimination of nuclear weapons. Popularly known as the Rajiv Gandhi Action Plan, it was proposed in 1988 at the UN General Assembly.44 To work for a comprehensive test ban figured as one of the key elements of the plan. At the domestic level, Rajiv Gandhi also authorised work on the commencement of nuclear weapons and missiles. On the reasons behind the Rajiv Plan, Dixit says, "The calculation was that if we get the endorsement of the Rajiv Gandhi Action Plan from the nuclear powers, then India will not have to purposively move on its nuclear weapon programme".45 He adds further, "we also wanted to be in the forefront of the movement towards elimination of nuclear weapons".46 While the Rajiv Gandhi Action Plan did not get an endorsement, it was also not rejected by the nuclear powers. As a result, India was encouraged to continue with its time-tested nuclear posturing: promoting disarmament while building up a "capability" which would lead towards weaponisation. The turning point came with the end of the Cold War when the Chemical Weapons Convention (CWC) was negotiated between 1989-1991. This Convention, negotiated at Geneva, was perhaps the first non-discriminatory disarmament agreement. It encouraged India to the extent that it endorsed most of the provisions of the


45 Interview with Dixit,n.43.

46 Ibid.
Convention through domestic legislation well before the CWC was actually finalised at Geneva. India also was one amongst the few to sign and ratify the CWC at the earliest. It was this spirit which influenced Indian decision making when it started to discuss the prospects of a test ban with the US in 1992.

After the tragic assassination of Rajiv Gandhi in May 1991, Narashimha Rao had assumed the Prime Ministership of India. J.N. Dixit was then his Foreign Secretary. On January 31, 1992, Prime Minister Rao met the then US President George Bush at the UN Security Council Summit in New York. Dixit was present at this meeting. President Bush raised the issue of the NPT's extension as well as the negotiation of a CTBT. Dixit recalls Rao's reply on these issues: “Rao said that we [India] may not join the NPT but we may also not oppose any move towards its extension if it is for a period of say ten or fifteen years”.47 On the issue of the CTBT, Dixit recalls: “Rao said, if the terms of reference of CTBT are absolutely the same which governs the Chemical Weapons Convention, India will join”.48

Between 1991 and 1993, at least four rounds of bilateral official level talks were conducted between India and the US. In the September 1993 meeting, the US officials agreed to India's terms. Before moving a joint resolution of India and the US, Dixit had bilateral talks with three senior US officials. The first was with Madeleine Albright, then the US Ambassador to

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47 Ibid.
48 Ibid.
the United Nations, Peter Turnoff, then Under Secretary of State in charge of Political Affairs and Lynn Davis, Assistant Secretary of Disarmament and Arms Control at the State Department. All the US officials gave him a general assurance on India's concerns on NPT extension and the CTBT. It was against this backdrop that India co-sponsored the 1993 UNGA resolution.

When the CD began its discussions at Geneva on the drafting of the treaty in January 1994, India participated actively. Indeed, Ajit Kumar, then an official at the Permanent Mission, Geneva not only coordinated actively with the G-21 (the group of non-aligned states within the CD) but also assumed the responsibility of assisting the Chair on the drafting of the treaty. Dixit, who had now retired from the Foreign Office, claims that "around the middle of 1994 we had information that the Americans are now going to work for the permanent extension of NPT". India was dismayed. However, it continued to negotiate at the CD. In May 1995, the NPT was indefinitely extended. This brought forth the greatest challenge for India. The French and the Chinese nuclear testing acted as a further catalyst. Indeed, India's nuclear diplomacy was trapped in its own contradictions. Accepting a CTBT would have meant foreclosing its "weapons" options, which India was not prepared to accept.

At this stage, India decided to abandon its nuclear ambiguity and conduct nuclear tests. The preparations at Pokhran, however, were detected

49 Ibid.
50 Interview with Dixit, n.43.
by the US intelligence satellites. The idea was that India might accede to a
CTBT after conducting a series of nuclear tests.\footnote{Ibid.} However, it failed to carry
out the tests. As an alternative negotiating tactic, India chose to adopt a
maximalist position at the CD. From January 1996 onwards, India's position
on various aspects of the treaty began to harden. For instance, on the issue of
ElF, India believed that the entry into force should be based on ratification by
a reasonable and representative group of countries. Later, in January 1996, it
linked up the entry into force with a 'time bound commitment' for
disarmament. The idea was to disengage from the treaty negotiations if such
a commitment was not met. The government in New Delhi changed in the
meantime and Deve Gowda took over as Prime Minister of a coalition
government with the left parties as a major partner. Gowda also
contemplated conducting the nuclear tests in the wake of the CTBT
negotiations. However, he was advised not to do so by his foreign minister,
Inder Kumar Gujral. He advised Gowda: "Hold for a while. Let's see how the
CTBT negotiations proceed".\footnote{As quoted in Raj Chengappa, Weapons of Peace (New Delhi: Harper Collins, 2000),
p.398.}

Meanwhile, the Indian media had generated strong domestic feeling
against the CTBT. Most of the articles which appeared in the press were
written by leading strategic experts who commanded some influence in the
government by virtue of their former affiliations and who were respected by
After Ramaker presented his first May 28 draft, the government in New Delhi had decided not to accept it. The choice, however, was to 'opt out' of the treaty or to continue to resist the treaty conclusion. In the latter case, the dilemma before India was: can the objection by one country block a consensus since consensus is distinctly different from unanimity. Also, the fear was that to block consensus would discredit India. Moreover, if India's blocking the treaty could be used by some nuclear powers to abandon the negotiations, which India did not want. As a result the June 20 speech of Ambassador Arundhati Ghose was carefully drafted indicating that India would not accept the treaty but would let the treaty conclude, if some "waiver" provision was included in the entry into force formula. It also indicated that it would not withdraw from the negotiations.


54 This view finds resonance in the statement made by Prakash Shah, then Permanent Representative of India to the United Nations, at the 50th session of the United Nations General Assembly. He says:

We could have restrained ourselves from a move to oppose consensus and stepped aside to let the treaty go forward for adoption by those who so desired. But in full knowledge of our decision not to subscribe a treaty, a provision was included which required India among other countries to sign and ratify the treaty in order for it to come into force.

This Indian position was hailed by the US. On June 21, the Director of the US Arms Control and Disarmament Agency, John Holum, said "we are pleased that India remains involved in the negotiations and we hope that they will be able to join the broad consensus in support of the final text". He also indicated that Jaap Ramaker was circulating new ideas to change the working draft formula to decide when the treaty would enter into force. Moreover, a Washington Times report also indicated that the US was willing to complete the draft with or without the signatures of the three "threshold" states - India, Israel and Pakistan.

The CD resumed on July 29 in a highly charged atmosphere. Notwithstanding its position against any re-consideration of the treaty, the US agreed to China's demand for discussion on on-site inspections. For the Chinese, it had become a make or break point. The US finally agreed to China's demands, after Beijing's assurance that it would agree to the draft text. Following its pattern of conducting a nuclear test prior to any "concession" at the CD, China had earlier conducted its 45th and final test on June 7. On August 14, Ramaker presented his absolutely final text with some procedural modifications. While this text met the Chinese demand on OSI it did not address India's concerns over the E.I.F. The text still made it mandatory for India to join the treaty for its implementation. Furthermore, it

55 The Hindu, 22 June 1996.
56 Ibid.
57 Ibid.
contained a sub-clause which read:

If this Treaty has not entered into force three years after the date of the anniversary of its opening, the Depository shall convene a Conference of the States that have already deposited their instruments of ratification upon the request of a majority of those States. That Conference shall examine the extent to which the requirement set out in paragraph 1 has been met and shall consider and decide by consensus what measure consistent with international law may be undertaken to accelerate the ratification process in order to facilitate early entry into force of this Treaty.\(^{58}\)

India thought this was illegal and coercive. As a result, it blocked the consensus on the draft text on August 14 and rejected its transmittal to the United Nations General Assembly for its adoption.

Later, in a procedural camouflage, Australia put a resolution in the United Nations. On September 9, Australia formally proposed the resolution at the U.N. which was endorsed by 158 votes to 3, when voting took place. During this vote 19 countries were diplomatically absent, 5 abstained and 3 voted against it. The three which voted against the motion were India, Bhutan and Libya. It was in this meeting the Ambassador Ghose reiterated that "so long as the CTBT contained this article, India will never sign this unequal treaty, not now, nor later".\(^{59}\) On September 24, the treaty was formally opened for signature.

\(^{58}\) Conference on Disarmament Doc. CD/NTB/WP.330/Rev.2.

\(^{59}\) Arundhati Ghose, n.2, p.144
CONCLUSION

Entry into force remains an "end-game" issue in any treaty. It gains significance if it is an arms control treaty in particular. The reason is that an arms control treaty involves issues related to military secrecy and broader national security. Hence until the issues, in this case, the treaty basic obligation and verification are resolved to the satisfaction of all parties, entry into force remains exceedingly contentious.

For this reason, the five nuclear powers - during the first stage of talks - only put forward their preferred formula on the choice of the "key" states. At this stage, there was a strange parallel between their positions on scope and entry into force. As we have seen Britain, France, and China wanted to delay the treaty and hence their position on scope was diametrically opposed to the US. In similar vein, we find that their entry into force formula at this stage was opposed to that of the US. Russia's case is different. It wanted to exploit entry into force for later bargaining. By the end of the first phase, six workable E.I.F. formulae had been delineated. It was assumed that the second phase would further streamline the discussions. However, when a deadlock developed on the issue, the US introduced the concept of "waivers", an element of innovation during the negotiations.

With Britain, Russia, France and China unwilling to concede, the deadlock continued. In the final phase, E.I.F. became the focus of the talks. However, failure to bargain with the US on the low-yield test exemption,
further hardened the position of Russia, Britain and China.

While a bargain was eventually struck amongst the nuclear powers, India was made a "bogey" of the entry into force politics, the reason being, that Britain, Russia and China, while wanting to stall the talks, did not want to be identified as doing so. For this reason, they remained adamant on an EIF formula which included the threshold states. The US wanted an early treaty encompassing the five nuclear power and hence had to agree to the formula.

India, during the negotiations, did not appear to be pragmatic. Had it conducted its nuclear tests, when the negotiations were on, it would had been better placed to compel the nuclear powers to concede to its demands. Domestic pressures and security considerations did put pressure on it to reject the treaty. The treaty was finally opened for signature by a procedural trick at the United Nations. This was unprecedented and undermined the sanctity of the Conference on Disarmament where decisions are taken by consensus. In retrospect, the CTBT negotiations were full of contradictions and this may jeopardise its future.