

# 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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## French draft for a Treaty Banning the Production of Fissile Material for Nuclear Weapons or Other Nuclear Explosive Devices (as in 48/75 L)

### Working paper submitted by France

Highlighting the commitment to and the mobilization of France in support of disarmament, the President of the French Republic, Mr. François Hollande, recalled on 19 February 2015 the priority given to the definitive end of the production of fissile material for nuclear weapons. The French President announced that France would take the initiative to propose an ambitious, realistic and verifiable draft treaty on that subject.

The French Government has prepared a draft for a Treaty Banning the Production of Fissile Material for Nuclear Weapons or Other Nuclear Explosive Devices.

The draft text was submitted on 9 April 2015 to the Conference on Disarmament as an official document of the Conference. It was presented to the disarmament community during a side event organized in Geneva on 10 April 2015 by the Permanent Mission of France to the Conference on Disarmament. France would also like to share this draft text with the States parties to the Treaty on the Non-Proliferation of Nuclear Weapons, by submitting it, as a working paper, to the ninth Review Conference of the parties, which will convene from 27 April to 22 May 2015 in New York.

### 1. Overall background

The negotiations at the Conference on Disarmament for a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices is one of the international community's long-standing commitments. The urgent need to conclude this international instrument is emphasized in General Assembly resolution 48/75 L of 16 December 1993, adopted by consensus and by three Review Conferences of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, namely those of 1995, 2000 and 2010 (action 15). The immediate launch of these negotiations, based on the 24 March 1995 report by the Special



Coordinator (CD/1299), is a priority for France. As the President of the French Republic recalled in his address on 19 February 2015, this is the next logical step towards creating the conditions for a world without nuclear weapons, in accordance with the objectives of the Treaty on the Non-Proliferation of Nuclear Weapons, in the framework of a realistic approach based on gradual concrete gestures.

To enable more in-depth discussions with a view to preparing future negotiations on a legally-binding international instrument, France supported resolution 67/53, which was adopted by the General Assembly on 3 December 2012, which for example provided for the creation by the Secretary-General of a “group of governmental experts with a membership of twenty-five States chosen on the basis of equitable geographical representation, which, taking into account the report containing the views of Member States, will make recommendations on possible aspects that could contribute to but not negotiate a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices on the basis of document CD/1299 and the mandate contained therein, which will operate on the basis of consensus, without prejudice to national positions in future negotiations and which will meet in Geneva for two sessions of two weeks in 2014 and in 2015.”

France has actively contributed to the significant, in-depth discussions within the group of experts and welcomes the progress made as regards international discussions on the matter and the shared understanding of the issues pertaining to such an instrument. It commends Canada for the exceptional quality of its Chairmanship which enabled this progress and the adoption of a substantive report.

The draft treaty which France is now proposing to the international disarmament community builds on the discussions carried out in international bodies, the recent meeting of the group of experts in particular, as well as projects which have already been presented in the past on the issue (United States in 2006; International Panel on Fissile Materials relayed by the Governments of Canada, Japan and the Netherlands in 2009). It is also based, as often as relevant, on the wording agreed by the international community in the Chemical Weapons Convention and the Comprehensive Nuclear-Test-Ban Treaty.

By presenting a draft treaty banning the production of fissile material for nuclear weapons, France intends to show its sincere commitment to launching negotiations for this treaty as soon as possible and its will to make a concrete contribution to international discussions. France hopes that this initiative will enable the process of substantial discussions which was recently held on the “cut-off” issue to be extended. It invites all its partners from the disarmament community to join it in order to express that it is today urgent, necessary and possible to start negotiations on such a treaty without delay, one which would be a major step in the area of disarmament, and to turn this conviction into action.

## **2. Summary of the French proposal’s main themes**

The draft text proposed by France:

- Prohibits the future production of fissile material for nuclear weapons or other nuclear explosive devices. It thus requires States parties to decommission and, where possible, to dismantle their former production facilities or to convert them for civilian or non-prohibited military uses;

- Sets out the main principles for a verification regime for these commitments, including the principle of challenge inspections in the event of a substantiated suspicion that a State has broken its commitments. Its terms are defined in an annex and in a specific protocol, as regards non-prohibited military activities;
- For the purposes of implementing the Treaty, creates a small-sized organizational structure which will cooperate with the International Atomic Energy Agency (IAEA) to carry out verification missions;
- Puts forward transparency and confidence-building measures on the declaration of civilian stockpiles constituted prior to the entry into force of the Treaty and of material declared excess to defence needs;
- Sets out a supervised right to withdrawal.

The entry into force of the Treaty, for an unlimited duration, depends on the ratification of the five nuclear-weapon States.

### **3. Presentation of the Treaty's main elements**

#### **Preamble**

The preamble sets out the objective and purpose of the Treaty, and places it in a broader context of work already completed and still to achieve as regards disarmament and non-proliferation.

After recalling that the ultimate objective is the elimination of nuclear weapons and general disarmament under strict and effective international control, it sets out the objective of such a treaty, namely to contribute to nuclear disarmament, by quantitatively limiting arsenals by shutting down the production of fissile material for nuclear weapons.

It highlights the complementarity between a treaty banning the production of fissile material and the Comprehensive Nuclear-Test-Ban Treaty, which to date has been ratified by 164 States. The treaty banning the production of fissile material and the Comprehensive Nuclear-Test-Ban Treaty should help to qualitatively and quantitatively limit nuclear arsenals, which is an essential step for continued international disarmament efforts.

It commends the work of the Conference on Disarmament and the group of governmental experts which respectively provided the international community with a mandate for negotiating a non-discriminatory and internationally verifiable multilateral treaty, and with recommendations on aspects which could help Treaty negotiations.

It highlights the ambition to see the Treaty become a universal instrument.

#### **Article 1**

##### **Object and purpose of the Treaty**

In the same vein as the preamble, article 1 fundamentally bans any State party, from the date of entry into force of the Treaty for it, from producing fissile material

for nuclear weapons or other nuclear explosive devices. This ban applies equally to all States parties without discrimination.

## **Article 2**

### **Definitions**

As France has highlighted in international bodies and during discussions, the implementation of the Treaty should cover only materials and facilities which could truly allow a diversion from the desired objective. This precise prior identification of materials and facilities which could truly be used to circumvent the desired objective is all the more necessary as it can guarantee at the same time that the implementation costs of the Treaty remain economically reasonable, in the fiscal context which is currently very constrained for many countries.

In this efficient and targeted approach:

- Under the Treaty, the definition of “fissile material” refers to unirradiated fissile material which could be used directly to manufacture nuclear weapons, in line with the definitions of IAEA which are a reference;
- The “production of fissile material” within the meaning of the Treaty is defined in such a way as to cover the process by which fissile material for the production of nuclear weapons can be created, i.e. the isotopic enrichment of uranium 235 and the separation of plutonium or uranium 233 from nuclear fuels, whether irradiated or non-irradiated (this final detail is necessary to cover the separation of the plutonium and highly-enriched uranium from the fresh fuel);
- The “fissile material production facilities” within the meaning of the Treaty are all facilities reprocessing nuclear materials and all those enriching uranium whose production capacities are significant as regards the objective of a treaty banning the production of fissile material. The Treaty negotiators will be responsible for setting the thresholds beyond which the capacities of the facilities should be subject to a verification regime. For the purposes of verification, closed-down facilities decommissioned facilities and those which have been dismantled are also defined in the Treaty.

## **Article 3**

### **Basic obligations**

Article 3 sets out and clarifies the fundamental commitments taken by States parties to implement the Treaty’s comprehensive ban on producing fissile material for nuclear weapons or other explosive nuclear devices.

Thus, under paragraph 1, the parties shall commit, as of the date of entry into force of the Treaty which applies to them, to cease all production of fissile material for nuclear weapons or other nuclear explosive devices and not to use the material produced following the entry into force of the Treaty for nuclear weapons or other nuclear explosive devices. The Treaty does not, however, ban States parties from continuing to produce fissile material for any civilian use, particularly within the

framework of a closed nuclear cycle policy, or for non-prohibited military purposes, such as nuclear propulsion.

To make this commitment operational, paragraph 2 sets out that the States parties shall close down and decommission their fissile material production facilities for nuclear weapons. To be effective and credible, this measure must be followed by dismantling, which will make it irreversible, or a verified conversion for civilian or non-prohibited military uses. These commitments shall be verified in the conditions set out by the Treaty and via an annex to the Treaty on verification (paragraph 3).

This first stage of implementing the Treaty should therefore involve an exhaustive declaration of facilities to produce fissile material for weapons (paragraph 4), i.e. facilities for enriching and reprocessing, as defined by the Treaty.

## **Article 4**

### **Organization**

For the purposes of implementing the Treaty, article 4 shall create an international organization with its own legal personality: the Organization of the Treaty Banning the Production of Fissile Material for Nuclear Weapons or Other Nuclear Explosive Devices.

Modelled on other international organizations active in the field of disarmament and non-proliferation (Organization for the Chemical Weapons Convention, IAEA), the Organization shall comprise two governing organs, a conference of the States parties and an executive council, as well as a technical secretariat responsible for administering the organization and implementation of verification functions.

In order to keep the operating costs of this future organization as low as possible, the project proposes that the Conference meet twice yearly, that technical secretariat staff be limited and that the Organization cooperate as much as possible with the IAEA for the implementation of the Treaty's verification mission. The secretariat shall be set up on a temporary basis prior to the Treaty's entry into force with the sole purpose of negotiating a cooperation agreement with the IAEA.

## **Article 5**

### **Verification**

In order to build trust among the States parties, the implementation of the Treaty is inseparable from the establishment of a credible verification regime, providing sufficient assurances as regards compliance with the commitments made. Article 5 sets out the main verification principles, in conjunction with article 8, which mainly deals with measures to clarify cases of presumed non-compliance with the Treaty.

Paragraph 1 recalls that, if it is to be credible, the verification regime should allow three main objectives to be achieved:

(a) Certify the decommissioning of dedicated means of production prior to the production of fissile material for nuclear weapons until their dismantling or their conversion for civilian or non-prohibited military uses;

(b) Verify that the fissile material produced following the entry into force is not diverted to prohibited uses;

(c) Provide assurances to the States parties that no undeclared production of fissile material is taking place in undeclared facilities and, to do so, deal with presumed situations which are cause for concern with regard to the compliance with the Treaty.

Paragraph 2 sets out the main tools of the verification regime (system to verify the correctness and completeness of declarations, consultation and clarification and on-site inspections).

Paragraph 3 refers to an annex of the Treaty containing the definition of the specific, detailed terms for implementing the verification principles, which will form an integral part thereof. France's idea is for this annex to be negotiated at the same time as the Treaty itself so that it will be verifiable as soon as it enters into force.

Paragraphs 4 and 5 set out the obligations of the States parties to declare all facilities for the production of fissile material and all fissile material produced following the entry into force of the Treaty and subject to the verification regime, whether it is for civilian use or non-prohibited military use. To ensure the irreversibility of their use for civilian or, where applicable, non-prohibited military purposes, stockpiles of civilian fissile material produced prior to the entry into force of the Treaty must also be declared and verified, as well as any fissile material which States could, on a voluntary basis, have declared to be excess to their defence needs (see art. 9 below). Due to the sensitivity of certain information regarding such material that is excess to defence needs, States also have the option of making specific arrangements for verifying them.

Since the verification objectives under the Treaty are broadly similar to those of the IAEA within the framework of the implementation of the safeguards agreements and the additional protocol, and to avoid unnecessary and costly overlap of the tests currently conducted by the IAEA on a number of production facilities and on fissile material which falls within the scope of the Treaty, paragraph 6 sets out the coordination between the safeguards agreements and the verification measures set out by the Treaty. It thus sets out the principle under which the executive council can, under certain conditions (explained in the Treaty), limit verification under the Treaty to measures which supplement those undertaken in line with the safeguards agreements concluded between the States parties and IAEA. The wording proposed draws on the coordination provided for by the Chemical Weapons Convention between the verification measures implemented under the Convention and those applied under bilateral agreements.

The practical result of this principle is that the Treaty should not involve any additional commitment for non-nuclear-weapon States parties to the Treaty on Non-Proliferation which have concluded a comprehensive safeguards agreement and an additional protocol.

The verification of Treaty obligations is part of the framework of an arms control and nuclear disarmament contribution initiative. It is thus carried out in accordance with three principles: preserving national security interests, preventing the transfer of confidential information on nuclear weapons which is sensitive from a non-proliferation point of view, and preventing the dissemination of sensitive information from an industrial or technological point of view (paragraph 8).

The need to protect such information and national security interests may require specific protection measures and procedures to be implemented, including managed access (paragraphs 9 to 11). These measures must not, however, prevent the Technical Secretariat, with which the State parties are committed to cooperate (paragraph 12), from carrying out the activities necessary to accomplish its mission.

## **Article 6**

### **Non-prohibited military nuclear activities**

Just as the Chemical Weapons Convention includes an article VI addressing activities not prohibited under the Convention, France believes it worthwhile to include in the Treaty an article on military nuclear activities which are not prohibited. Where applicable, it would be up to the negotiators to specify the details during the negotiations.

The Treaty does not ban the production of fissile material for non-prohibited military nuclear activities, in particular naval propulsion, but these materials must indeed be subject to a verification regime to ensure that they will not be diverted to prohibited military activities (paragraph 2). This is essential in order to prevent the Treaty from being circumvented.

To take account of the challenges and particular difficulties in verifying these activities, the draft text proposes referring the definition of the terms for implementing the verification of non-prohibited military nuclear activities to a specific protocol (paragraph 2). While the aim is undoubtedly for it to be concluded as closely in line with the Treaty as possible, the eventuality of it being concluded at a later date must also be covered so as not to subsequently delay the Treaty's entry into force.

## **Article 7**

### **National implementation measures**

This article is largely based on other treaties and multilateral agreements such as the Comprehensive Nuclear-Test-Ban Treaty (article III) and the Chemical Weapons Convention (article VII).

## **Article 8**

### **Specific measures to redress a situation and ensure compliance with this Treaty**

The object of article 8 is to prevent and sanction Treaty violations. It too draws on other treaties and multilateral agreements ("consultation-clarification" process

set out in the Comprehensive Nuclear-Test-Ban Treaty, article XII of the Chemical Weapons Convention).

In this objective:

- It sets out the principle and the main terms, in paragraphs 1 to 5, of a clarification and consultation process in the event of the substantiated presumption of clandestine activities. This process can be adopted under certain conditions on the initiative of either a State party, based on substantiated information, or the Technical Secretariat which is responsible for verification. If the presumption remains, this process can lead to a challenge inspection being conducted in the relevant State party. The detailed terms, in particular as regards the verification of, possibly, defence facilities, will be set out in the annex on verification. This annex, which has the same legal value as the Treaty, should state, for example, that if a State is unable to grant the requested access, it must do everything reasonably in its power to promptly meet the Technical Secretariat's requirements by other means;
- It sets out in paragraphs 7 to 11 a system to enable violations observed by the Executive Council to be sanctioned, including by referral to the Security Council and through adoption by the Executive Council and the Conference of the States parties of measures to restore compliance with the Treaty.

## **Article 9**

### **Transparency and confidence-building measures**

The Treaty proposed by France is based on the mandate agreed at the Conference on Disarmament (CD/1299). However, to reflect the attention paid by the governmental experts within the framework of the group of experts to the civilian stockpiles constituted prior to the entry into force of the Treaty as well as to the material that could have been declared excess to their defence needs by the relevant States parties on a voluntary basis, the French project proposes an article 9 dealing with the declaration of this material.

This material must thus be declared to the Organization and made subject to the verification regime set out by the Treaty or, if necessary for the protection of sensitive information, to a form of verification to be defined between the relevant State party and the Organization.

## **Final provisions**

### **Articles 10 to 17**

For the settlement of disputes (article 10), standard provisions shall be used, similar to those found in other treaties and multilateral agreements. It should be noted that these provisions cannot be used to block the implementation of the procedures provided to clarify a presumed violation or to redress a violation.

Article 12 makes the entry into force of the Treaty dependent on the ratification by the nuclear-weapon States. Furthermore, since this Treaty is an essential step towards creating the conditions for a world without nuclear weapons, the French project proposes that it be concluded for an unlimited period. Along with

other ambitious measures in this project (in particular the closing down, decommissioning and dismantling of production facilities which have not been converted for civilian or non-prohibited military uses), this provision aims to ensure the irreversibility of the commitments made under the Treaty.

Article 14, however, sets out a withdrawal provision in the event of exceptional circumstances, in accordance with international treaty law, while ensuring that conditions are strictly defined in order to avoid any abusive exercise of this right. This article includes some new elements when compared with existing treaties and multilateral agreements, in order to reflect the international discussions carried out over the last 10 years on withdrawal from the Treaty on Non-Proliferation.

The provisions in articles 11 (Amendments), 13 (Signature, accession and ratification), 15 (Status of the annexes and the protocol), 16 (Depositary) and 17 (Authentic texts) do not require any particular comment.

#### **4. Draft Treaty**

(as submitted by France on 9 April 2015 to the Conference on Disarmament)

### **Treaty Banning the Production of Fissile Material for Nuclear Weapons and Other Nuclear Explosive Devices**

#### **Preamble**

The States parties to this Treaty (hereinafter referred to as the “States parties”),

*Stressing* the need for continued systematic and progressive efforts to reduce the quantity of nuclear weapons globally, with the ultimate goal of eliminating those weapons, and of general and complete disarmament under strict and effective international control,

*Desiring* to contribute to the realization of the purposes and principles of the Charter of the United Nations,

*Welcoming* the international agreements and other positive measures already taken in the field of nuclear disarmament, notably continued efforts to reduce arsenals of nuclear weapons and the banning of nuclear weapon test explosions and other nuclear explosions,

*Underlining* the importance of the full and prompt implementation of such agreements and measures,

*Further underlining* the need to continue the efforts undertaken to tackle effectively the proliferation of weapons of mass destruction and their means of delivery in all its aspects,

*Recognising* that final cessation of the production of fissile materials for nuclear weapons and other nuclear explosive devices, that is legally binding and universally applicable will establish an overall quantitative limit on nuclear arsenals,

*Considering* the complementarity of that effort with the cessation of all nuclear weapon test explosions and all other nuclear explosions, the aim of which is to constrain the development and qualitative improvement of nuclear weapons and end the development of advanced new types of nuclear weapons,

*Convinced* that a multilateral, non-discriminatory and international and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices is a necessary step towards the realisation of the ultimate objective of a world without nuclear weapons and will contribute greatly to disarmament and non-proliferation of nuclear weapons in the context of a gradual and systematic approach,

*Commending* the work done in the context of the Conference on Disarmament with a view to the prompt commencement of negotiations for such a treaty, and recalling in particular document CD/1299 of 24 March 1995 in which all the Member States of the Conference agreed upon the mandate for negotiation of a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices,

*Welcoming* the discussions of the Group of Governmental Experts established by Resolution 67/53 of the General Assembly to make recommendations on aspects likely to contribute to the negotiation of a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices, and taking note of its recommendations,

*Affirming* the purpose of attracting the adherence of all States to this Treaty,

Have agreed as follows:

## **Article 1**

### **Object and purpose of the Treaty**

Each State party to this Treaty is prohibited, from the date of entry into force of the Treaty for it, from the production of fissile material for nuclear weapons or other nuclear explosive devices.

## **Article 2**

### **Definitions**

For the purposes of this Treaty:

1. “Fissile material” means:
  - (a) Uranium enriched to 20 per cent or more in isotope 235 or 233;
  - (b) Separated plutonium containing less than 80 per cent of isotope 238;
  - (c) Any unirradiated material containing the materials defined in (a) or (b).
2. “Production of fissile material” means:
  - (a) Isotopic enrichment of uranium to a level equal to or greater than 20 per cent in U235 or U233;

(b) Separation of the fissile materials defined in paragraph 1 above through operations to reprocess irradiated or unirradiated nuclear fuels.

3. “Fissile material production facilities”, hereinafter referred to as “production facilities” means:

(a) Uranium enrichment facilities where production capacities are above a threshold of [XXX];

(b) Nuclear fuel reprocessing facilities where production capacities are above a threshold of [YYY].<sup>1</sup>

4. “Closed-down facility” means any facility where production activities have been stopped and from which nuclear materials have been withdrawn, but where production capacities remain intact.

5. “Decommissioned facility” means any facility where the structures and equipment essential for operation have been withdrawn or disabled for any use whatsoever of the facility (storage, processing or any other use of the facility).

6. “Dismantled facility” means any facility having reached the final stage of the decommissioning process through the destruction of all equipment.

## Article 3

### Basic obligations

1. Each State party undertakes, from the date of entry into force of this Treaty for it, to cease all production of fissile material for nuclear weapons or other nuclear explosive devices and to refrain from using the materials produced thereafter for the manufacture of nuclear weapons or other nuclear explosive devices. The provisions contained in this paragraph are without prejudice to the right of the States parties to continue producing fissile materials for civilian uses or, in compliance with article 6, military nuclear activities not prohibited by the Treaty.

2. In order to fulfil the commitment made under paragraph 1 above, each State party undertakes:

(a) To permanently close down and, insofar as possible, dismantle its facilities for the production of fissile materials for nuclear weapons or other nuclear explosive devices; or,

(b) To convert them to civilian uses.

3. Each State party is under the obligation to agree to verification of compliance with its commitments under paragraphs 1 and 2 above, subject to the conditions laid down by article 5 of this Treaty and in accordance with the procedures detailed in an annex to the Treaty on verification.

4. Each State party undertakes to declare all production facilities, subject to the conditions set out in article 5.

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<sup>1</sup> The thresholds set out in paragraphs 3(a) and 3(b) shall be defined during treaty negotiations.

## **Article 4**

### **Organization**

#### **A. General provisions**

1. The States parties hereby establish the Organization of the Treaty Banning the Production of Fissile Material for Nuclear Weapons or Other Nuclear Explosive Devices (hereinafter referred to as the “Organization”) to achieve the object and purpose of this Treaty, to ensure implementation of its provisions, including those concerning international verification of compliance with the Treaty, and to provide a forum for consultation and cooperation among the States parties. All States parties shall be members of the Organization. A State party shall not be deprived of its membership in the Organization.
2. There are hereby established as organs of the Organization the Conference of the States parties, the Executive Council and the Technical Secretariat.
3. The Organization shall enjoy on the territory of any State party such legal capacity and such privileges and immunities as are necessary for the exercise of its functions. The representatives of the States parties, and their deputies and advisors, the Director-General and members of staff of the Organization shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization. The legal capacity, privileges and immunities referred to in this article shall be defined in an annex to the Treaty, in agreements between the Organization and the States parties and in an agreement between the Organization and the State in which the Organization is seated. The Conference shall consider and approve such agreements in accordance with paragraph 14 below.
4. The costs of the activities of the Organization shall be met biannually by the States parties in accordance with the United Nations scale of assessments adjusted to take into account differences in membership between the United Nations and the Organization. The budget of the Organization shall comprise two distinct sections, one devoted to administrative and other expenses, and the other to expenses relating to verification.

#### **B. The Conference of the States parties**

5. The Conference of the States parties (hereinafter referred to as “the Conference”) shall be composed of all States parties. Each State party shall have one representative in the Conference, who may be accompanied by alternates and advisers.
6. The first session of the Conference shall be convened by the Depositary not later than 30 days after the entry into force of this Treaty. The Conference shall meet in regular sessions which shall be held every two years unless it decides otherwise.
7. Special sessions of the Conference shall be convened:
  - (a) When decided by the Conference; or

(b) When requested by the Executive Council; or

(c) When requested by any State party and supported by two thirds of the States parties.

8. The Conference may also be convened in the form of an Amendment Conference in accordance with article 11, or in the form of a Review Conference in accordance with paragraph 9 below.

9. Unless a majority of the States parties decides otherwise, ten years after the entry into force of this Treaty, a Conference of the States parties shall be convened in order to review the operation and effectiveness of the Treaty. This review shall take into account any scientific and technological developments relevant to the Treaty. At intervals of ten years thereafter, unless otherwise decided upon, further sessions of the Conference shall be convened with the same objective.

10. Each member of the Organization shall have one vote in the Conference.

11. The Conference shall take decisions on questions of procedure by a simple majority of the members present and voting. Decisions on matters of substance should be taken as far as possible by consensus. If consensus is not attainable, the Conference shall take the decision by a two-thirds majority of members present and voting.

12. The Conference shall be the principal organ of the Organization. In compliance with the provisions of the Treaty, it shall consider and may make recommendations on all questions, matters or issues within the scope of this Treaty, including those relating to the powers and functions of the Executive Council and the Technical Secretariat.

13. The Conference shall oversee the implementation of the Treaty and examination of compliance with its provisions, and shall act in order to promote its object and purpose. It shall also oversee the activities of the Executive Council, whose members it shall elect in accordance with paragraph 15 below, and the Technical Secretariat, of which it shall appoint the Director-General, and it may issue guidelines to either of them for the exercise of their functions.

14. As part of its functions, the Conference shall examine and approve agreements and arrangements negotiated by the Technical Secretariat with the States parties, other States and international organizations to be concluded by the Executive Council on behalf of the Organization.

## **C. The Executive Council**

15. The Executive Council shall consist of [ZZZ]<sup>2</sup> members elected by the Conference. Each State party shall have the right, in accordance with the principle of rotation, to serve on the Executive Council, whose membership shall reflect an equitable geographical distribution.

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<sup>2</sup> The number of States on the Executive Council shall be determined during Treaty negotiations. For your information, the IAEA Board of Governors has 34 members and the Executive Council of the Chemical Weapons Convention has 41 members.

16. Each member of the Executive Council shall have one vote. Unless otherwise specified in this Treaty, the Council shall take decisions on matters of substance by a two-thirds majority of all its members.

17. The Executive Council shall be the executive organ of the Organization. It shall be responsible to the Conference. It shall carry out the powers and functions entrusted under this Treaty. In so doing, it shall act in conformity with the recommendations, decisions and guidelines of the Conference and assure their proper implementation. The Council shall promote the effective implementation of, and compliance with, this Treaty. It shall supervise the activities of the Technical Secretariat.

18. The Executive Council, subject to prior approval by the Conference, is empowered to conclude agreements or arrangements between the Organization and States parties, other States and international organizations whose activity is relevant to that of the Organization.

#### **D. The Technical Secretariat**

19. The Technical Secretariat shall assist the States parties in implementing this Treaty. It shall assist the Conference and the Executive Council in the performance of their functions under the Treaty. It shall carry out the verification functions and other functions entrusted to it under the Treaty as well as those delegated to it by the Conference and the Executive Council in compliance with Treaty provisions.

20. The Technical Secretariat shall comprise a Director-General, who shall be its head and chief administrative officer. Staff shall be kept to the minimum necessary for the proper discharge of the responsibilities of the Technical Secretariat.

21. The Technical Secretariat shall be established on a provisional basis, subject to the terms and conditions laid down in an annex to this Treaty, from the date of adoption of the Treaty up to its entry into force, in order to begin the negotiation with the International Atomic Energy Agency (IAEA) of a draft cooperation agreement for submission to the Conference at its first session and to the Executive Council at its first meeting.

### **Article 5**

#### **Verification**

1. In order to verify compliance with the provisions of this Treaty, a verification regime shall be established with the aims of:

(a) Certifying the closing down and, if appropriate, the dismantling or conversion to civilian uses of facilities for the production of fissile material for weapons or other nuclear explosive devices;

(b) Verifying that fissile material produced after the entry into force of this Treaty in facilities declared under article 3 of this Treaty and paragraph 4 below is not diverted to nuclear weapons and other nuclear explosive devices;

(c) Assuring the States parties that no fissile material is being produced in undeclared facilities.

2. The verification regime shall be based on a system to verify the accuracy and completeness of declarations made under paragraphs 4 and 5 below, consultation and clarification, and on-site inspections.

3. The implementation procedures for this article are given in an annex on verification.

4. Any fissile material production facility shall be subject to the verification regime. For this purpose, each State party shall declare all its production facilities. The facilities to be declared under this paragraph are facilities that are operating, as well as any closed-down facility, any decommissioned facility or facility that has been or is being dismantled. Each State party shall submit to the Technical Secretariat, within sixty days from the entry into force of this Treaty for it, an initial declaration providing the information listed in the annex on verification. The time-frames and terms for declaration of new production facilities and updating of information provided in the initial declaration are given in the aforementioned annex.

5. All fissile material produced after the entry into force of this Treaty shall be declared to the Technical Secretariat. For this purpose, each State party shall submit to the Technical Secretariat an account of the fissile material held in declared facilities.

6. As regards the verification activities to be carried out under this article and the annex on verification, the Organization shall examine ways to avoid those activities duplicating those provided for by the agreements concluded between the States parties and the IAEA for the purposes of implementing safeguards. For this purpose, the Executive Council shall decide to limit verification to measures supplementing those undertaken under the safeguards agreements concluded between the States parties and the IAEA where it observes that:

(a) The provisions of the safeguards agreement of the State in question are compatible with the corresponding provisions of this article and of the annex on verification; and

(b) Implementation of the agreement provides a sufficient guarantee of compliance with the relevant provisions of this Treaty;<sup>3</sup> and

(c) IAEA keeps the Organization fully informed of its verification activities.

For the purposes of the implementation of this article and the annex on verification, the Organization shall conclude a cooperation agreement with the IAEA.<sup>4</sup>

7. Nothing in paragraph 6 above shall affect the obligation of a State party to submit to the Technical Secretariat the declarations mentioned in paragraphs 4 and 5 and in the annex on verification.

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<sup>3</sup> The Executive Council may thus decide that the combined, satisfactory implementation of a comprehensive safeguards agreement and additional protocol provides a sufficient guarantee of compliance with the provisions of this Treaty and that it is therefore unnecessary to subject the State party in question to additional verification.

<sup>4</sup> This agreement shall also specify the funding by the Organization of the verification activities carried out by the IAEA in relation with this Treaty.

8. Verification activities shall be based on objective information, limited to the subject of this Treaty and carried out in full respect of the sovereignty of the States parties and in the least intrusive manner possible compatible with achieving their aims with the desired efficiency and time-frame. Verification activities shall be carried out so as to be compatible with the following requirements:

- (a) The need to prevent the transfer or acquisition of information that is sensitive from the point of view of the proliferation of nuclear weapons;
- (b) The preservation of the security interests of the States parties;
- (c) The protection of industrial, technological and commercial secrets.

9. In the framework of verification activities, each State party shall have the right to take measures to protect sensitive facilities and prevent disclosure of confidential information and data not related to this Treaty.

10. At the request of a State party, the Technical Secretariat and the State party concerned shall make arrangements to manage access to all or part of a production facility or any other civilian or military structure to which access is requested for the purposes of verification. These arrangements shall be detailed in specific agreements between the Organization and the State party in question.

11. All desired measures shall be taken by the Organization to protect the confidentiality of all information concerning civilian and military facilities and activities obtained during verification activities.

12. Without prejudice to paragraphs 8 to 10 above, each State party commits to cooperating with the Technical Secretariat. It shall take all the necessary measures, including those specified in the annex on verification, to ensure that the Secretariat can effectively carry out its functions.

## **Article 6**

### **Unprohibited military nuclear activities**

1. Each State party shall have the right, after the entry into force of this Treaty and without prejudice to its provisions, to continue producing fissile material for military nuclear activities not prohibited by this Treaty.

2. Each State party shall adopt the necessary measures to ensure that the fissile material produced for unprohibited military nuclear activities is used solely for purposes not prohibited by the Treaty. To this end, and to guarantee that its activities are compliant with its obligations under this Treaty, each State party shall submit to verification measures. Those measures shall be given in a specific protocol on the verification of unprohibited military nuclear activities.

## **Article 7**

### **National implementation measures**

1. Each State party shall, in accordance with its constitutional processes, take all necessary measures to implement its obligations under this Treaty. In particular, it shall take any necessary measures:

(a) To prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction or control from undertaking any activity from which State parties are prohibited under this Treaty;

(b) To prohibit, in conformity with international law, natural persons possessing its nationality from undertaking any such activity anywhere.

2. Each State party shall inform the Organization of the measures taken pursuant to this article.

3. In order to fulfil its obligations under the Treaty, each State party shall designate or set up a National Authority and shall so inform the Organization upon entry into force of the Treaty for it. The National Authority shall serve as the national focal point for liaison with the Organization and with the other States parties.

## **Article 8**

### **Specific measures to redress a situation and ensure compliance with the Treaty**

1. Each State party may inform the Technical Secretariat, on the basis of substantiated information, of any situation giving cause for concern with regard to the compliance of another State party with its basic undertakings under this Treaty. The Secretariat shall examine and assess such matters in the light of all the information available to it as received from the IAEA or other sources.

2. Where there is serious concern regarding a State party's compliance with its basic obligations under the Treaty, the Technical Secretariat and the State party concerned shall consult together immediately. Following those consultations, the Director-General, on the basis of the information gathered by the Secretariat, may request the State party concerned, independently of any recourse to dispute settlement procedures, to provide clarifications or take promptly any other measures that may be necessary to clarify the situation and facilitate its resolution. The Director-General shall inform the Executive Council accordingly. The above-mentioned provisions shall apply in all cases of serious concern felt by the Secretariat, whether such concern has arisen from information received from a State party and evaluated in accordance with paragraph 1, or in connection with the verification activities provided for by article 5 of the Treaty and the annex on verification.

3. The State party concerned shall provide clarifications promptly to the Director-General.

4. In the absence of any response from the State party concerned or in the event that the clarifications provided fail to clarify the situation, the Director-General may initiate a challenge inspection or any other particular measure he may deem to be necessary to clarify the situation. He shall at the same time inform accordingly the Executive Council, which may oppose his decision by a three-quarters majority. The Director cannot oppose an explicit request from a State party for the performance of a challenge inspection on the territory of another State party unless he or she is able to demonstrate that the request is abusive or frivolous.

5. The details of the procedure to be followed in the event of the performance of a challenge inspection in the State party concerned are defined in the annex on verification.
6. The Executive Council, acting in accordance with its powers and functions, shall consider the inspection report and all other relevant documents relating to the situation that it may receive in compliance with the annex on verification, and shall determine whether the Treaty has been violated.
7. The Executive Council shall urge the State concerned to put an end forthwith to any violation whose existence is confirmed. It shall bring the issue, including relevant information and conclusions, to the attention of the Security Council and inform the General Assembly.
8. The Executive Council, acting in accordance with its powers and functions, may make detailed recommendations to the Conference on appropriate measures within its remit with a view to redressing the situation and ensuring compliance with this Treaty.
9. The Conference, taking into account the recommendations of the Executive Council, shall take the necessary measures, as mentioned in paragraphs 10 and 11 below, to ensure compliance with the provisions of this Treaty and to redress or rectify any situation violating the provisions of this Treaty.
10. In cases where a State party which has been requested by the Conference or the Executive Council to take measures to redress a situation raising issues with regard to its compliance fails to fulfil the request within the specified time, the Conference may decide to restrict or suspend the exercise by that State of the rights and privileges it enjoys under the Treaty until such time as the Conference decides otherwise.
11. In cases where prejudice to the object and purpose of this Treaty is likely to occur due to non-compliance with the basic obligations established by it, the Conference may recommend collective measures to States parties in conformity with international law.

## **Article 9**

### **Transparency and confidence-building measures**

For the purpose of strengthening transparency and confidence, the States parties concerned:

1. Commit, upon entry into force of this Treaty for them, to declaring to the Organization the stockpiles of fissile material constituted for civilian uses prior to the entry into force of this Treaty. They shall submit that material to the verification measures provided for by the Treaty in article 5 and in the annex on verification.
2. May, on a voluntary basis, declare to the Organization, upon entry into force of this Treaty for them or at any later date, fissile material produced prior to the entry into force of this Treaty for nuclear weapons or other nuclear explosive devices and which is excess to their defence needs. The States parties concerned commit to conserving or using the declared material for civilian nuclear activities or military nuclear activities not prohibited by this Treaty only. They shall submit this

material for verification under the conditions stipulated in the Treaty or, at the request of the State party concerned, in specific agreements between it and the Organization.

3. Are encouraged to provide the Organization with information on fissile material production facilities where production capacities are below the thresholds set out in article 2 of this Treaty.

## **Article 10**

### **Settlement of disputes**

1. Disputes that may arise concerning the application or the interpretation of this Treaty shall be settled in accordance with the provisions of this article and in conformity with the provisions of the Charter of the United Nations.

2. When a dispute arises between two or more States parties, or between one or more States parties and the Organization, relating to the application or interpretation of this Treaty, the parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of the parties' choice, including recourse to appropriate organs of this Treaty and, by mutual consent, referral to the International Court of Justice in conformity with the Statute of the Court. The States parties involved shall keep the Executive Council informed of actions being taken.

3. The Executive Council may contribute to the settlement of a dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States parties to a dispute to seek a settlement through a process of their own choice and recommending a time-limit for any agreed procedure.

4. The Conference shall consider questions related to disputes raised by States parties or brought to its attention by the Executive Council.

5. The Conference and the Executive Council are separately empowered, subject to authorisation from the General Assembly to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the activities relating to this Treaty. An agreement between the Organization and the United Nations shall be concluded for this purpose in accordance with article 4, paragraph 18.

6. The provisions of this article are without prejudice to those of article 8 of the Treaty.

## **Article 11**

### **Amendments**

1. At any time after the entry into force of this Treaty, any State party may propose amendments to the Treaty or to its annexes or its protocol.

2. The proposed amendment shall be considered and adopted only by an Amendment Conference.

3. Any proposal for an amendment shall be communicated to the Director-General, who shall circulate it to all States parties and the depositary and seek the views of the States parties on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States parties notify the Director no later than thirty days after its circulation that they support further consideration of the proposal, the Director shall convene an Amendment Conference to which all States parties shall be invited.

4. The Amendment Conference shall be held immediately following a regular session of the Conference unless all States parties that support the convening of an Amendment Conference request that it be held at an earlier date. An Amendment Conference shall not, under any circumstances, be held less than sixty days after the circulation of the proposed amendment.

5. The States parties shall make every effort to facilitate a consensus on each amendment. If no agreement is reached despite those efforts, the amendment shall be put to a vote as a last resort. It shall be adopted by a positive vote of a majority of all States parties with no State party casting a negative vote.

6. All amendments adopted in conformity with paragraph 5 above shall enter into force for each State party that has deposited an instrument of acceptance of that amendment 90 days after the majority of the States that were States parties to the Treaty at the time of the adoption of the amendment have deposited their instruments with the depositary. It shall enter into force thereafter for all other State parties ninety days after deposit of the instrument of acceptance of the amendment.

## **Article 12**

### **Entry into force and duration of the Treaty**

1. The Treaty shall enter into force on the date of its ratification by the States that have concluded voluntary offer safeguards agreements with the IAEA on the date of its adoption.
2. The Treaty shall be of unlimited duration.

## **Article 13**

### **Signature, ratification and accession**

1. This Treaty shall be open to all States for signature before its entry into force.
2. The Treaty shall be subject to ratification by States Signatories according to their respective constitutional processes.
3. Any State which does not sign the Treaty before its entry into force may accede to it at any time thereafter.

## Article 14

### Withdrawal

1. Each State party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of the Treaty have jeopardised its supreme interests. Any State party intending to withdraw from the Treaty shall give notice of that intention in writing to the depositary, to the Executive Council, to all States parties to the Treaty and to the Security Council. Notice of withdrawal shall include a statement of the extraordinary events which the State concerned regards as jeopardising its supreme interests. Withdrawal shall take effect one hundred and eighty days from the date of receipt by the depositary of the aforementioned notice. This time period cannot be shortened in any way by the State party notifying its intention to withdraw.
2. On receipt of the notice of withdrawal, the Executive Council shall mandate the Technical Secretariat to submit to it within three months a report containing its evaluation of the status of the withdrawing State party's compliance with its obligations under this Treaty.
3. On receipt of the notice of withdrawal by the Executive Council, the Technical Secretariat shall convene a special session of the Conference of States parties within three months to allow the latter to consider the appropriate reaction, individual or collective, to that notice.
4. States parties that are members of the Security Council shall also promptly take all appropriate measures for referral of the matter to the Security Council.
5. Withdrawal shall have no effect on any right, obligation or legal position of the withdrawing State party created by the performance of this Treaty prior to the date at which the withdrawal takes effect. The withdrawing State party shall continue to be liable for any violation of the Treaty committed prior to its withdrawal. All goods, equipment, materials, nuclear materials, technology and facilities transferred prior to the withdrawal and able to be used for purposes prohibited by the Treaty must be used, following withdrawal, exclusively for civilian purposes. The goods, equipment, materials, nuclear materials, technology and facilities referred to above shall remain under IAEA safeguards at all times following withdrawal.
6. As part of the individual measures for which provision is made in paragraph 3 above, any State party having transferred prior to withdrawal goods, equipment, materials, nuclear materials, technology and facilities able to be used for purposes prohibited by this Treaty may request their restitution or dismantling. If the State concerned does not make this request, or if restitution and dismantling are not materially possible, the aforementioned goods, equipment, materials, nuclear materials, technology and facilities shall remain under IAEA safeguards at all times following withdrawal, in compliance with paragraph 5 above.

## **Article 15**

### **Status of the annexes and the protocol**

The annexes of this Treaty and the protocol form an integral part of the Treaty. Any reference to this Treaty includes the annexes and the protocol.

## **Article 16**

### **Depositary**

1. The Secretary-General shall be the Depositary of this Treaty and shall receive signatures, instruments of ratification and instruments of accession.
2. The depositary shall promptly inform all States Signatories and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of the entry into force of this Treaty and of any amendments and changes thereto, and the receipt of any other notices.
3. The depositary shall provide duly certified copies of this Treaty to the Governments of the States Signatories and acceding States.
4. This Treaty shall be registered by the depositary pursuant to Article 102 of the Charter of the United Nations.

## **Article 17**

### **Authentic texts**

This Treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General.

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