

# Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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### Comprehensive Nuclear Test Ban Treaty

#### Working paper submitted by the Russian Federation

1. One of the challenges to the NPT regime today is a serious impediment to the entry into force of the Comprehensive Nuclear Test Ban Treaty (CTBT).
2. The CTBT constitutes an effective measure in the field of nuclear non-proliferation and nuclear disarmament. The principal objective of the CTBT is to effectively constrain the development of nuclear weapons as well as terminate the qualitative and quantitative improvement of nuclear weapons.
3. The CTBT is an essential instrument of the NPT regime. The Preamble of the NPT recalls the determination “to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end”. The obligation to conclude the CTBT was an important precondition for the indefinite extension of the NPT at the 1995 NPT Review and Extension Conference. The importance and urgency of achieving the early entry into force of the CTBT was the first of the thirteen practical steps on non-proliferation and disarmament agreed to at the 2000 NPT Review Conference.
4. In its Final Document, the 2010 NPT Review Conference reaffirmed that the provisions of Article V of the NPT with regard to the peaceful applications of any nuclear explosions are to be interpreted in the light of the CTBT. The Conference underscored the vital importance of the entry into force of the CTBT as a core element of the international nuclear disarmament and non-proliferation regime, as well as the determination of the nuclear-weapon States to abide by their respective moratoriums on nuclear test explosions pending the entry into force of the CTBT. The Conference resolved that all nuclear-weapon States undertake to ratify the CTBT with all expediency, noting that positive decisions by nuclear-weapon States would have a beneficial impact towards the ratification of that Treaty.
5. In the course of the current NPT review cycle, the situation around the CTBT has changed significantly. For the first time, the key CTBT Annex 2 State, the United States of America, has openly stated that it would no longer support ratification of the Treaty. In the 2018 Nuclear Posture Review, Washington declared possible options for resuming nuclear explosive testing – to ensure if necessary the safety and effectiveness of the U.S. nuclear arsenal. The measures are taken to increase the



operational readiness of the Nevada National Security Site for the resumption of nuclear explosive testing.

6. The U.S. decision is in confrontation with Article 18 of the Vienna Convention on the Law of Treaties and defeats the object and purpose of the CTBT. Given the conditions for the Treaty's entry into force enshrined in the Treaty, the U.S.'s refusal to ratify the CTBT poses an unsurmountable difficulty for the Treaty to become an acting international legal document, and devaluates further international efforts to encourage other Annex 2 States to accede to the CTBT. Thus, the future of the almost universal treaty signed by 184 and ratified by 168 States is taken hostage by one State.

7. Against this background, recently there has been an increased pressure on the countries that host the International Monitoring System facilities provided for by the CTBT, to install without delay these facilities and continuously transfer data to the International Data Center in Vienna. There have also been systematic attempts to build up the capabilities of the CTBT's verification regime and to endow the CTBTO Preparatory Commission with functions and tasks, which go beyond the 1996 Resolution on the establishment of the Organization.

8. The above mentioned actions indicate a deliberate policy to obtain a provisional application of the CTBT's verification mechanism, even in a greater scope than provided for by the Treaty. Meanwhile, the CTBT itself would remain non-operational indefinitely.

9. Proposals for "provisional application" of the CTBT were made yet during the negotiations on the Treaty as well as after the establishment of the CTBTO Preparatory Commission. This issue was discussed, *inter alia*, with the assistance of Legal Service of the Commission's Secretariat and of Member States. The discussions have proved that implementation of "provisional application" could slow down the process of ratification of the CTBT by those States that have not signed and/or ratified the Treaty and even undermine efforts to bring the CTBT into force.

10. In particular, Article XIV "Entry into force" of the CTBT provides that the Treaty shall enter into force only "after the date of deposit of the instruments of ratification by all States listed in Annex 2 to this Treaty." The requirements set out for the CTBT's entry into force and based on its ratification by 44 States possessing substantial nuclear capabilities, are balanced and optimal. This formula provides for a strong connecting link between a non-proliferation aspect of the CTBT and its universal character. There are no other requirements in this regard provided by the Treaty.

11. Paragraph 2 of Article XIV also says that "if this Treaty has not entered into force three years after the date of the anniversary of its opening for signature, the Depositary 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 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." There were no consensus decisions on possible "provisional application" of the Treaty taken during such conferences.

12. The Vienna Convention on the Law of Treaties of 23 May 1969 contains Article 25 "Provisional application". It specifies that "a treaty or a part of a treaty is applied provisionally pending its entry into force if: (a) the treaty itself so provides" – as it is well-known that there is no such provision in the CTBT – "or (b) the negotiating States have in some other manner so agreed." Such agreements do not also exist.

13. The same Article states that “the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.” If an arrangement on “provisional application” of the CTBT is reached, there is a risk that States that have already ratified the Treaty would get a legal opportunity to revoke their consent to be bound by the CTBT. Such a possible development could not only undermine all efforts to bring the CTBT into force but make the situation with regard to the Treaty even more complicated.

14. The Russian Federation confirms that it remains committed to the CTBT and strongly believes that its early entry into force will be a significant measure for strengthening the non-proliferation regime as a whole. We call upon the States to intensify joint focused efforts aimed at the CTBT’s early entry into force in full compliance with its Article XIV.

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