

The CTBTO Preparatory Commission – Legal Status and Responsibilities

By Anthony Aust

The United Nations General Assembly adopted the Comprehensive Nuclear-Test-Ban Treaty (CTBT) on 10 September 1996.¹ Although it has been signed by 172 States ('States Signatories'), of which 115 have ratified it (as of 2 July 2004), the CTBT will not enter into force until all 44 States listed in Annex 2 (which participated in the 1996 Conference on Disarmament or possessed nuclear power or research

multilateral treaties can be exceedingly complex and provide for the creation of sophisticated monitoring regimes. Since it may be a number of years before such treaties enter into force, and setting up the regime can take a long time, the necessary preparatory work must be started well before that day arrives.



OPENING OF THE TWENTY-SECOND SESSION OF THE CTBTO PREPARATORY COMMISSION, 22 JUNE 2004, VIENNA (AUSTRIA)



An approach that is increasingly being followed is therefore to establish a preparatory commission, or 'prepcom', composed of all the States Signatories. The prepcom has the job of anticipating entry into force by making all the arrangements so that the regime will be ready to begin operations fully from day one. A prepcom was established for the UN Convention on the Law of the Sea in 1982 and met until the Convention entered into force in 1994. For some treaties there is little more for the prepcom to do than draft rules of procedure, financial regulations and suchlike. However, Article II of the CTBT provides for the establishment of a Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO). Its tasks will include the operation, by means of a Technical

Secretariat, of a most elaborate verification and monitoring regime, involving 321 monitoring stations and 16 laboratories throughout the world.

Because of the immensity of this task it was clear to the States Signatories that they would have to take all necessary measures to ensure the rapid and effective establishment of the future CTBTO. On 19 November 1996 a meeting of the States Signatories adopted a resolution approving the 'Text on the Establishment of a Preparatory Commission for the CTBTO'.² All the States Signatories have a seat on the Commission. It is based in Vienna, and served by a Provisional Technical Secretariat. One of its essential tasks is to conclude arrangements with those States Signatories that have agreed to

reactors at the time) have ratified. So far 32 have done so. The 12 who have yet to ratify include China, the Democratic Republic of Korea, Egypt, India, Iran, Israel, Pakistan and the United States.

It is not uncommon for several years to pass before a multilateral treaty enters into force, yet today many of them provide for international bodies to be established. Although they cannot be established until entry into force, it is desirable that their rules of procedure should be prepared, secretariat staff engaged, premises found and, not least, all financial arrangements settled. Sometimes no further action is needed to prepare for entry into force. But

“Because of the immensity of this task it was clear to the States Signatories that they would have to take all necessary measures to ensure the rapid and effective establishment of the future CTBTO.”



host the monitoring stations. To ensure that the arrangements are firm, they need to be binding in international law; and therefore embodied in treaties between the Commission and each host State. All this takes considerable time and effort, but needs to be completed well before the CTBT enters into force.³

Usually a prepcom has no legal status, being temporary and informal. As such it does not have the international legal personality necessary to enable it to enter into treaties. The States Signatories therefore decided that, exceptionally, the Commission

of its functions.” As an international organization in its own right, albeit temporary, the Commission has therefore been able to conclude agreements with the various States Signatories hosting the monitoring stations. If the Commission had not been established by a treaty and given the power to enter into such agreements, many States Signatories would not have been able to conclude the agreements or make the necessary implementing legislation. So far 29 facility agreements have been concluded, of which 22 are now in force. Their general purpose

CTBTO by the CTBT. This has now either been completed or is actively being done. The Commission has also concluded relationship agreements with the United Nations, the UN Development Programme and the World Meteorological Organization.

In short, the Commission is well ahead of the game. ■

Biographical note



Anthony Aust served as Deputy Legal Adviser to the Foreign and Commonwealth Office, United Kingdom, until 2002, advising ministers and officials in various fields, including

general international law, investment protection, dispute settlement, privileges and immunities, counter-terrorism and defence. He had over ten years close involvement with United Nations legal affairs, including as Legal Adviser to the UK Permanent Mission to the United Nations in New York from 1988 to 1991.

Mr Aust is now a freelance consultant on public international law and constitutional law, and works with Kendall Freeman, solicitors, in London. He lectures as visiting professor at the London School of Economics and at University College London. Mr Aust is the author of ‘Modern Treaty Law and Practice’ (Cambridge University Press, 2000), the leading work on the subject, and of a ‘Handbook of International Law’, which will be published by Cambridge in 2005. ■

“As an international organization in its own right, albeit temporary, the Commission has therefore been able to conclude agreements with the various States Signatories hosting the monitoring stations.”

would be created by treaty - albeit one with the novel name ‘Text’. And since it was essential for the Commission to begin work immediately, the Text would enter into force on its adoption. Although most multilateral treaties are subject to signature and ratification, the negotiating States agreed to dispense with these formalities and bring the treaty into force straight away. The law of treaties allows this.

Paragraph 7 of the Text provides that the Commission “shall have standing as an international organization, authority to enter into agreements, and such other legal capacity as necessary for the exercise

is to facilitate the continued testing, provisional operation and maintenance of the International Monitoring System (IMS) standards, in pursuit of the goal of an effective CTBT. The agreements thus provide for inventories of existing monitoring facilities; site surveys; upgrading or construction of monitoring facilities; and certification that facilities meet IMS standards. They also include provisions on finance and privileges and immunities.

The other specific responsibilities of the Commission include preparing all the reports, recommendations and other documentation, including essential operational manuals, required of the

¹ International Legal Materials (1996), p. 1443, or see the CTBTO PrepCom website: www.ctbto.org.

² See CTBT/MSS/RES/1 or the website. The Text was also published in the UK Treaty Series (1999) 46.

³ See the Agreement between the Commission and the United Kingdom of 12 November 1999 (UK Treaty Series (1999) 10).