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**The Treaty of Pelindaba
on the
African Nuclear-Weapon-Free Zone**

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FOREWORD

Since its origins in the 1960s, the nuclear non-proliferation regime has been premised upon global and regional treaties backed by assurances on implementation made by the International Atomic Energy Agency's safeguards system. Regional non-proliferation arrangements were the first to emerge. The Treaty of Tlatelolco, which established a nuclear-weapon-free zone (NWFZ) in Latin America, opened for signature in February 1967, some 18 months before the global Treaty on the Non-Proliferation of Nuclear Weapons (NPT). As Ambassador Adeniji explains in this study, moves towards a similar zone for Africa were also under discussion at this time, stimulated by French nuclear weapons tests in the Sahara. However, it was to be almost 30 years before this African NWFZ treaty was to become a reality. This was largely because such a treaty was not feasible without the active participation of South Africa, the African State most advanced in the development of nuclear energy.

The five years after 1989 proved to be revolutionary for both global and regional nuclear relations. Africa was not excluded from this trend, with the emergence of a unique opportunity to establish a NWFZ in the continent. The most significant catalysts that brought this about were the end of apartheid in South Africa, and the revelation that the De Klerk Administration had decided to dismantle the nuclear weapons secretly stockpiled by previous regimes. These developments created the momentum to establish a regional treaty. As the person who chaired the session of the April 1993 Track II meeting in Harare at which the details of the South African programme were explained to representatives of the other African States, I can testify to the tremendous sense that an unprecedented revolution was taking place in African nuclear affairs. However, it was to be another two years before agreement could be reached on the details of the African NWFZ, in what became the Treaty of Pelindaba.

In the early 1990s, only two models existed for NWFZs: the Latin American NWFZ Treaty of Tlatelolco, which was opened for signature in February 1967, and the South Pacific NWFZ Treaty of Rarotonga, opened for signature in August 1985. Pelindaba covered much the same ground as

these, but developed the “standard model” of a NWFZ treaty much further. Additional provisions included dismantling nuclear-explosive devices and their production facilities, physical protection of nuclear installations, prohibition of armed attack on such installations, and mechanisms to deal with allegations of non-compliance. Those negotiating the treaty also had to navigate their way around several diplomatic problems. Perhaps the foremost of these was the issue of zone boundaries. These had to abide by Organization for African Unity (OAU) resolutions, and at the same time avoid creating obstacles to the implementation of the protocols to the treaty by the five nuclear-weapon States and those European States with territory within the zone. It is a tribute to the professionalism of the diplomats involved in this process, and to the leadership of their chairman, Ambassador Adeniji, that the treaty both incorporated these new elements and navigated around the potential obstacles confronting them.

1995-56 saw the signing of the Bangkok Treaty on a South East Asian NWFZ, the Comprehensive Test ban Treaty (CTBT), and the indefinite extension of the NPT. Unfortunately, this proved to be something of a high-water mark for the post-Cold War nuclear non-proliferation regime, as progress since then has been patchy and uncertain. The CTBT still lacks the required number of signatures to bring it into force, and moves to create a Central Asian NWFZ have yet to bear fruit. The Treaty of Pelindaba also has yet to come into force. The reasons for this slow progress are many and varied, but perhaps the principal problems is the apparent lack of priority placed upon the treaty by African governments when confronted by the civil wars and other challenges of the post-Cold War world. Yet there are compelling reasons why entry into force of this treaty is now urgent. One is the need to create the machinery to develop regional co-operation in the civil uses of nuclear energy. A second is the need to provide a new impetus for further global movements towards nuclear non-proliferation, with Africa providing leadership by example. This study is a necessary record of how an important non-proliferation instrument was created: let us hope it may also serve as a stimulus for bringing this instrument into force, allowing Africa and the world to gain from its inherent benefits.

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GLOSSARY OF TERMS

AFRA	The African Regional Cooperation Agreement for Research, Training and Development Related to Nuclear Science and Technology
ASEAN	Association of South-East Asian Nations
Bangkok Treaty	South East Asia Nuclear Weapon-Free Zone Treaty
BIOT	British Indian Ocean Territory (Chagos Archipelago)
CCD	Conference of the Committee on Disarmament
ENDC	Eighteen-Nation Disarmament Committee
HEU	Highly enriched uranium
IAEA	International Atomic Energy Agency
IGG	Inter-Governmental Group of Experts set up by the OAU on the African NWFZ
NFZ	Nuclear-Free Zone
NPT	Nuclear Non-Proliferation
NWFZ	Nuclear-weapon-free zone
OAU	Organization of African Unity
OPANAL	Agency for the Nuclear-Weapon-Free Zone in Latin America
Pelindaba	Zulu word meaning the matter is settled
PPNN	Programme for the Promotion of Nuclear Non-Proliferation
Rarotonga Treaty	South Pacific Nuclear-Weapon-Free Zone Treaty
Tlatelolco Treaty	Treaty for the Prohibition of Nuclear Weapon in Latin America
UNGA	United Nations General Assembly
ZPPFAN	Zone of Peace, Freedom and Neutrality

INTRODUCTION

In 1976 I was appointed the Nigerian Permanent Representative to the International Atomic Energy Agency (IAEA) and Governor on the Agency's Board of Governors. Prominent among my instructions was to put a stop to the anomaly whereby South Africa was the designated member for Africa on the Board. Even if there was a technical justification, South Africa's apartheid policy made its designation unacceptable. Thus my introduction to nuclear issues was in the context of the anti apartheid campaign. On my initiative in the IAEA's Board of Governors and with support of African and Non-Aligned members, South Africa lost its privileged position.

Shortly after South Africa's removal as the designated member in 1977, however, African and global interest had a more profound reason than apartheid to be concerned about South Africa's nuclear programme, namely, nuclear proliferation. In August 1977, the Soviet Union raised an alarm about that country's preparations for a nuclear test in the Kalahari Desert. This triggered international attention to the nuclear proliferation risk in its nuclear programme. For Africa, nuclear non-proliferation became an even greater concern which had to be vigorously pursued. There arose renewed focus on the 1964 Organization of African Unity (OAU) Declaration on the Denuclearization of Africa with emphasis, however, on the impediment to its implementation by the South African nuclear programme. As Nigeria's representative on the Political and Security Committee (First Committee) of the United Nations General Assembly from 1977 to 1990, I played a major role in the formulation of the annual resolutions on the item on "Implementation of the OAU Declaration on the Denuclearization of Africa". With the prevailing Cold War atmosphere however, it was impossible to make progress on the denuclearisation of Africa.

Given the changes that took place in international relations in the second half of the 1980s, the United Nations General Assembly was able in its session in 1990, to adopt a positive resolution on the African Denuclearization item. That resolution affirmed that the evolution of international situation was auspicious for commencing the implementation

of the 1964 African Declaration, and requested the United Nations, in cooperation with the OAU, to convene a group of experts to study the modalities for its implementation. I was appointed a member of the Group in 1991 and elected its Chairman. Two years later, when the General Assembly again called on the United Nations and OAU Secretaries-General to jointly appoint a group of experts to draft a treaty or convention on the Denuclearization of Africa, I was again appointed a member of the group and elected its Chairman.

With such a background, writing the negotiating history of the African Nuclear-Weapon-Free-Zone Treaty (Pelindaba Treaty) was an idea which occurred to me at the conclusion of the drafting of the treaty in 1995. Such an idea was also suggested to me by some people who had interest in non-proliferation issues and had followed the negotiations of the Pelindaba Treaty. In April 1996 I was invited by the government of Egypt to the special ceremony of the signing of the treaty in Cairo. Presence at that solemn ceremony gave further incentive for documenting the process of the transformation of the 1964 Cairo Declaration on the Denuclearization of Africa to the 1996 Pelindaba Treaty.

Non-proliferation was the primary reason for the African Heads of States' Declaration on the Denuclearization of Africa in 1964. It had therefore to be so reflected in the treaty as had been the case in other regional denuclearisation treaties. However, given the evolution of the concept of regional nuclear-weapon-free zones, the issue of regional cooperation on the peaceful use of nuclear energy arose in the context of negotiating the Treaty of Pelindaba.

Since non-proliferation of nuclear weapons is the *raison d'être* of the treaty and therefore of this book, I shall only comment on the aspects of regional cooperation on peaceful uses of nuclear energy in this introductory part.

THE TREATY OF PELINDABA AND THE CHALLENGE OF COOPERATION IN THE PEACEFUL USES OF NUCLEAR SCIENCE AND TECHNOLOGY IN AFRICA

In examining the modalities and elements for the preparation of the treaty, the experts established for that purpose agreed that although the

treaty's focus should be non-proliferation, it should also promote peaceful uses of nuclear science and technology. Those African State parties with nuclear programmes would have to be at the forefront of such cooperation. Thus, rather than be a threat to African security as had been the case during the period of the apartheid regime's advanced nuclear programme, post-apartheid South Africa as a party to the African Nuclear-Weapon-Free Zone would thereby enhance African security in the broader sense of the term. The idea was later developed and reflected in the treaty.

Early Efforts by the OAU to address the African Situation

Concerned at the neglect by African countries of nuclear science, the OAU organised a seminar on Africa's Role in Nuclear Science for Peace and Development, in Kampala, Uganda in March 1990. The large number of African scientists who attended the seminar identified a need for greater intra-African cooperation in the development of nuclear science and technology. To this end, they elaborated a wide-ranging programme of action.¹ It was as an immediate response to the seminar, that some African members of the IAEA established the African Regional Cooperation Agreement for Research, Training and Development Related to Nuclear Science and Technology (AFRA) in April 1990.²

AFRA has since remained the only mechanism for promoting intra-African cooperation in the areas of radiation protection and safety, agriculture, nuclear medicine and the maintenance of scientific instruments. Its programme of activities included cooperative efforts to improve food preservation through irradiation technology and the use of standardised services and exchange of information on studies on animal reproduction and nutrition. To further enhance the use of radioimmunoassay (RIA) in medical diagnosis by reducing the cost of purchasing reagents, AFRA initiated a project to develop a capability for their local preparation. Already most of the laboratories in participating countries have acquired the technical expertise to do this. AFRA also gave particular attention to the strengthening of basic infrastructures to promote nuclear technology development. Though the number of research reactors in Africa was small, AFRA members showed the desire to adopt a common approach to optimise the utilization of these facilities, and to enhance their capabilities for safety and efficient operation.³

The establishment of AFRA was a step in the right direction; however it has been only of limited value for the promotion of the application of nuclear science and technology in Africa. Its mandate was limited to aspects of the secondary uses of nuclear energy as has been shown above. Also the resources for supporting its activities have been limited. Thus AFRA has not been in a position to meet the great void which exists as a result of Africa's near total absence from the primary use of nuclear science and technology for power generation.

AFRA's limited effect was reflected in Africa's meagre part of the global production of nuclear energy which in any case was not included in its mandate. The statistics on Africa's share of the international production of nuclear energy are a vivid illustration of continent's neglect of this area in particular and of science and technology in general. At the end of 1999, 438 nuclear power reactors were in operation throughout the world. Their generating capacity represented 18.6 per cent of total global electricity generation. They are therefore an important part of the global energy mix. Indeed, seventeen countries relied on nuclear power for 25 per cent or more of their electricity needs. Of the total 438 global nuclear power reactors however, only two are in Africa, and both are located in South Africa. They generated 5.6 per cent of that country's electricity and 0.6 per cent of global nuclear power.⁴ In the area of nuclear research reactors, it should be noted also that by 2002, of the 284 total global reactors, only eight are in Africa.

In contrast to the limited mandate of AFRA, the African Nuclear-Weapon-Free Zone Treaty provides the basis for creating an African-owned legal framework for continent-wide initiatives in the promotion of peaceful uses of all aspects of nuclear science and technology for development purposes. The challenge to African countries is to recognize and exploit these opportunities by assuring the serious application of the relevant articles of the treaty.

As the work of AFRA has symbolized, some African countries have engaged in basic uses of nuclear technology in medicine, agriculture and animal husbandry. Evidently, those uses can still be broadened especially in the field of agriculture and food production as well as in medicine. Africa is often short of food due partly to losses sustained in the post-harvest period, which have been estimated as high as 35 per cent of production. Much of these, particularly of tuber crops, can be prevented through the use of the

technique of food irradiation. Nuclear medicine has become an important vehicle for the diagnosis and treatment of cancer in particular. Though not a great cause of death in Africa the percentage of fatalities attributed to cancer is growing even in spite of the fact that many deaths that are due to it cannot accurately be so attributed.

In addition, there is even greater potential in the admittedly much more complex and controversial and yet more beneficial use of nuclear science and technology for electricity generation. The shortage of electricity that is common to almost all African countries is a serious impediment, not only to industrial development, but also to socio-economic development and the improvement of quality of life. The main sources of electricity generation on the continent involve the use of hydrocarbons, especially oil and gas, and hydropower. With the rise in the price of petroleum following the search of producers for equitable prices, most African countries, which are non-producers of oil and gas, are experiencing difficulties in meeting the bill. Even African producers of oil are increasingly concerned at the depletion of their valuable "wasting asset". It is therefore in the common interest of all African countries, producers and non-producers of oil alike, to explore alternative sources of electricity generation. Nuclear power offers a new and mostly unexplored source in Africa.

The public opposition to nuclear power, orchestrated by the Green parties and provoked by the accidents in the Three Mile Island plant in the United States and later at Chernobyl in former Soviet Union, called into question its desirability. The passions aroused led to a halt in the expansion of nuclear power plants in the 1990s in Europe and North America. Nevertheless, by the end of 1999, as shown earlier, over 438 nuclear power reactors were in operation in more than thirty countries, producing about 18.6 per cent of total world electricity. Besides, studies on energy options recently commissioned by the governments of the United Kingdom and the United States have evoked the possibility of greater emphasis on nuclear electricity generation.

It is pertinent to observe that global electricity demand is on the increase, particularly in developing countries. As reported in a paper entitled "Energy Needs and the Nuclear Option in the 21st Century" by Jan Murray,⁵ the projection of the World Energy Council and the International Institute for Applied Systems Analysis (IIASA) was that global electricity demand will at least triple by 2050. In the three scenarios studied by the

World Energy Council/IIASA, energy use in developed countries will increase marginally under the first, modestly under the second and will actually decline under the third in which maximum emphasis is given to environmental consideration.⁶ Very broadly, energy demand will be influenced by rising population and accelerated development, both of which will be relatively higher in developing countries. Jan Murray concluded that the energy story of the 21st century will be about the developing world and nuclear energy will likely play a role. "If nuclear electricity is not to play a part in supply in the developing countries, then it will indeed be relegated to a minor role in history" she postulated.

The study of energy needs in Africa shows that demand growth is projected to be well above the global forecast. The master plan for Energy Development drawn up by the Economic Community of West African States (ECOWAS) for instance, foresees the need for a ten-fold increase in existing transmission capacity and six-fold increase in installed generating capacity by the year 2020. Based on even the base case electricity growth rate, more than 28,000MW of additional new generating capacity would be needed by the end of the period.⁷

The necessity, therefore, to consider all kinds of energy choices will confront African countries much more than developed countries. Though the master plan in the ECOWAS study referred only to West Africa's abundant hydropower resources and thermal power plants, it will be important to give consideration also to the alternative of nuclear power plants. The organ for the promotion of nuclear energy envisaged in the Treaty of Pelindaba can be a catalyst for broadening the energy choice for the West African Power Pool Project, as well as for the whole of Africa. Public opposition to nuclear power has not been a factor in the developing countries. It is instructive to note that almost all the thirty-three nuclear power plants currently under construction are in the fast growing economies of Asia and Eastern Europe.⁸

Obviously, there will always be the constraints created first by the issue of safety; second by the size of grids in developing countries (and particularly African States) which are considered too small for the size of current nuclear plants; and third by the upfront capital costs which are too high for most African countries. While not minimizing the difficulties contained in these three issues, they are nevertheless not insurmountable, and are being addressed in various on-going projects.

Nuclear safety is a major preoccupation of the IAEA. Throughout the decade of the 1990s the Agency expanded the range of services it could offer and in the future it will continue to upgrade these in the areas of safety review missions, training, scientific research, technical cooperation, legislative assistance and information exchange. An increasing number of countries have continued to take advantage of the services provided by the Agency in the areas of operational and engineering safety of power and research reactors, as well as in the review of regulatory approaches to nuclear radiation and the safety of waste.⁹ Therefore, African countries can substantively overcome the problem of nuclear safety by taking advantage of the services the Agency can provide through its Technical Assistance Programme.

Through the implementation of the relevant articles in the Treaty of Pelindaba relating to cooperation in peaceful uses of nuclear energy, Africa can go a long way in resolving the issue of size of grids vis-à-vis the size of current nuclear power plants. The emphasis in those articles is on inter-African cooperation that can ensure an energy pool and thus economy of scale in its use. The creation of power pools in the various sub-regions of the African continent will vastly increase the size of power grids, and make joint investment in large power plants more economical.

The third issue which relates to the upfront capital cost of existing nuclear power plants may also be getting close to being addressed. The challenge to the nuclear industry has been how to remain economically competitive in an environment where energy choice is being increasingly influenced by cost effectiveness. As shown by Jan Murray, although nuclear power plants have proved economical in the long term when the huge initial investment is balanced against the low operating cost,¹⁰ the notable size of the initial investment remains a disincentive to most developing countries. This is particularly applicable in Africa.

However, research is being carried out on the development of smaller size reactors that would reduce the initial capital outlay and shorten construction time. The most encouraging project in this connection is the pebble-bed modular reactor being developed by the South African Atomic Energy Commission. This 115MW reactor will incorporate important safety features and a modular approach that enables its power output to be increased gradually as electricity demand grows.

The South African Minister of Minerals and Energy, Phumzile Mlambo-Ngenka, elaborated on the project when he informed an IAEA sponsored conference in South Africa in 2001 that the country was striving to expand its role in nuclear technology by developing mini nuclear reactors. He said that the South African government believed that such reactors have considerable export potential and could earn the country more than 18 billion rand (about 2 billion US dollars) a year.¹¹

It is to be noted that among countries reported to be already interested in buying the South African pebble bed reactor are China, Egypt, Indonesia, Morocco, Tunisia and the United Kingdom. With three African countries already showing interest, the South African project can provide the basis for far-reaching inter-African cooperation in nuclear electricity.

It is obvious therefore that the only constraint for at least the major African States with relatively greater human and material resources will be the lack of will to take a leap into the nuclear era. Yet by taking that leap they can also contribute to growth in the less endowed States and thus to continental development.

Notes

1. OAU doc. OAU/SENR/NS/RPT (i).
2. See note 13 of Chapter 5 on AFRA whose members are: Algeria, Cameroon, Cote d'Ivoire, Democratic Republic of Congo, Egypt, Ethiopia, Ghana, Kenya, Libya, Madagascar, Morocco, Mauritius, Niger, Nigeria, South Africa, Sudan, Tanzania, Tunisia and Zambia.
3. The author has greatly benefited from the very illuminating article on AFRA by Ali Boussaha and Makdad Maksudi of the IAEA entitled "Nuclear Cooperation in Africa: Developing Expertise and Resources", *IAEA Information Bulletin*, No. 371.
4. "Nuclear Power Reactors in the World", IAEA Press Release RRS 2-19, 29 April 1999.
5. Jan Murray, "Energy needs and the Nuclear Option in the 21st Century", paper presented at PPNN Seminar on the 2000 NPT Review Conference, March 1999. The first scenario assumed the maximum development and utilization of all forms of energy globally; the second assumed moderate development and use of energy sources and the

third assumed maximum environmental consideration especially by the developed countries.

6. International Institute for Applied System Analysis and World Energy Council, *Global Energy Perspective*, Cambridge: Cambridge University Press, 1998.
7. ECOWAS Energy Master Plan 2001-2020.
8. IAEA, Nuclear Power Reactors in the World, Annual Report, Vienna, April 2001, pp. 8-9.
9. IAEA, Director General's Statement at the 43rd Regular Session of the IAEA General Conference, 27 September 1999.
10. Jan Murray, "Energy needs and the Nuclear Option in the 21st Century".
11. London Financial Times, "South Africa to expand its nuclear capacity", 14 November 2001.

CHAPTER 1

EVOLUTION OF GLOBAL AND REGIONAL NON-PROLIFERATION

INTRODUCTION

When the world formally entered the nuclear weapons age in August 1945 with the launching by the United States of America of atomic bombs on the Japanese cities of Hiroshima and Nagasaki,¹ most of Africa was under colonialism. Since the imperial powers were also the Allied Powers on whose behalf the most destructive element of the atom was unleashed on Japan, its effect in hastening the end of the Second World War was the only immediate impression. The universal euphoria over the end of the war, however, soon gave way to great concern about the future consequences of the wider use of atomic weapons. The United Nations, which was established in order to avert a future world war, had elaborated its charter unaware of the new weapon.² The effectiveness of the new Organization was hinged on the system of collective security, which would deter aggression and therefore maintain international peace and security. The appearance of the atomic weapon on the scene introduced a new situation which could render the system of collective security very difficult, if not impossible, to implement. The United Nations General Assembly was therefore obliged at its first meeting to give the highest priority to laying down principles for disarmament that had not been spelt out in the Charter.³ Thus, in the first resolution it adopted, the General Assembly established the Atomic Energy Commission, which was charged with making specific proposals for the elimination of atomic weapons and all other weapons of mass-destruction from national armaments.⁴

Not unexpectedly, the monopoly of the atomic weapon by only one power, the United States, created great disquiet in the chancelleries of the others and particularly the Soviet Union. Its claim to equal super-power

status with the United States demanded, so it seemed to its leaders, possession of atomic weapons. The situation was further aggravated by the immediate post-war cleavage among the erstwhile allies leading to the ideological division of Europe and the subsequent commencement of the Cold War. The early efforts of the United Nations to contain any further development of the atomic weapon became the first victim of the intense rivalry provoked by the Cold War, which was to lead to the most alarming nuclear arms race. While negotiations were deadlocked in the United Nations Atomic Energy Commission, the Soviet Union successfully developed its own atomic weapon in 1949, followed by the United Kingdom in 1952, France in 1960 and China in 1964.

Thus by the advent of the wind of change which heralded African independence in the 1960s, nuclear weapons had been consolidated in the hands of these five powers and constituted the most ominous element in the uncertain international environment into which the new States emerged. The more the number of nuclear-weapon States increased after the initial monopoly by the United States, the more difficult it became, especially in light of the intensification of the ideological rivalry, and the consolidation of the two opposing Alliances, the North Atlantic Treaty Organization (NATO) and the Warsaw Pact, to make any progress at the United Nations in the negotiations either on specific weapons or on general and complete disarmament, which was to encompass all types of weapons as well as armed forces. In recognition of the reality of the situation, efforts were progressively focussed on such collateral measures as could be agreed upon from time to time.

Among those measures two that related to nuclear weapons, namely a ban on nuclear testing and measures for non-proliferation of nuclear weapons, were uppermost. During the United Nations General Assembly session of 1962, there was widespread support for the idea that the prevention of the spread of nuclear weapons should be given priority after an agreement had been concluded on the on-going negotiations on the cessation of nuclear weapon tests. Once therefore the Partial Test Ban Treaty was adopted in 1963, non-proliferation of nuclear weapons became the central issue for action. Thus began the focus of efforts for the construction of a system of measures that would at least prevent the spread of the much-dreaded weapon to more countries than the five that had acquired them, pending agreements on the reduction and ultimate

elimination of nuclear weapons. What has now become known as the *nuclear non-proliferation regime* grew out of these efforts.

It is pertinent to observe that the nuclear non-proliferation regime is not a systematically and globally created set of measures to exercise control over the development of nuclear weapons. Rather, its components are a series of instruments and measures, some global, some regional, some sub-regional and some national, developed at different times and for different specific purposes, which have been joined and superimposed upon one another.⁵ Among the labyrinth of instruments and measures, three in particular may be said to form the pillars of the regime, namely, the Nuclear Non-Proliferation Treaty (NPT) 1968, Nuclear-Weapon-Free-Zone Treaties, and the system of safeguards of the International Atomic Energy Agency (IAEA).

GLOBAL MEASURE

The Nuclear Non-Proliferation Treaty Negotiation

Universally acknowledged as the centrepiece of the non-proliferation regime, is the Nuclear Non-Proliferation Treaty (NPT). The first suggestion for the commencement of negotiations on such a treaty arose out of the discussion of an item on the agenda of the fourteenth session of the United Nations General Assembly in 1959 on the question of the prevention of the wider dissemination of nuclear weapons. The Irish delegation, which proposed the item, also introduced a draft resolution which on adoption became resolution 1380 (XIV) of 20 November 1959 in which the United Nations General Assembly expressed its concern for the possible spread of nuclear weapons through dissemination and acquisition, and "suggests that the Ten Nation Disarmament Committee ... should consider appropriate means, including the feasibility of an international agreement, subject to inspection and control, whereby the Powers producing nuclear weapons would refrain from handing over the control of such weapons to any nation not possessing them and whereby the Powers not possessing such weapons would refrain from manufacturing them".

Although successive sessions of the General Assembly adopted similar resolutions as a follow-up, no specific negotiation on non-proliferation was undertaken in the Ten Nation Disarmament Committee until 1965. In April

of that year, when the Disarmament Commission convened at the request of the Soviet Union, it undertook the first thorough discussion of non-proliferation.⁶ In the resolution it adopted after the discussion, the Commission called upon the Eighteen Nation Disarmament Committee (ENDC), which had been created by the expansion of the Ten Nation Disarmament Committee, to reconvene as soon as possible and to accord special priority to the consideration of the question of a treaty or convention to prevent the proliferation of nuclear weapons.⁷ Thus when the ENDC convened in July 1965, non-proliferation became the priority issue. Indeed the United States, in August, submitted to the Committee a draft treaty on the prevention of the spread of nuclear weapons, setting in motion the negotiating process that culminated three years later in the NPT.

By the time the negotiations for the NPT commenced, African States were already aware of nuclear issues largely because of the French nuclear tests on the continent. It is not surprising therefore that African States that were members of the ENDC participated actively in the negotiations of the treaty. Thus at the beginning of work in the ENDC following the submission of a United States draft treaty, Egypt not only called attention to the Organization of African Unity (OAU) Declaration on the Denuclearization of Africa adopted in July 1964 in Cairo, but emphasized that a non-proliferation treaty should take it into account. Also, referring to the OAU preoccupation with the nuclear threat, Nigeria postulated that non-proliferation should be based on the following principles: responsible political actions by the major powers and in particular refraining from nuclear blackmail of smaller States or threatening their sovereignty with conventional weapons; banning of nuclear weapons and or renouncing their first use; and freezing the production of nuclear weapons and their delivery vehicles. Ethiopia expressed the belief that, as a minimum requirement, a non-proliferation ban should be accompanied by such measures as a comprehensive nuclear test ban, the denuclearisation of certain regions of the world and a convention on the prohibition of the use of nuclear weapons.

Together with the other five non-aligned and neutral States members of the ENDC, Brazil, Burma, India, Mexico, and Sweden, the three African States submitted a list of five "main principles" which should serve as a basis for negotiating the treaty on non-proliferation. These principles were:

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- (i) That the treaty should be void of any loopholes that might permit nuclear and non-nuclear powers to proliferate, directly or indirectly, nuclear weapons in any form;
 - (ii) That the treaty should embody an acceptable balance of mutual responsibilities and obligations on the part of the nuclear and non-nuclear powers;
 - (iii) That the treaty preventing the proliferation of nuclear weapons should be a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament;
 - (iv) That there should be acceptable and workable provisions to ensure the effectiveness of the treaty;
 - (v) That nothing in the treaty should affect adversely the right of any group of States to conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories.⁸

The main aim of the NPT, which was to prevent the further spread of nuclear weapons beyond the five countries that had developed them at that time, was embodied in its first two articles. In the first, each nuclear-weapon State undertakes not to transfer, or give control of, nuclear weapons or other nuclear explosive devices to any recipient, and not to assist, encourage or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other explosive devices. For their part, each non-nuclear-weapon State in article 2 of the treaty undertakes not to receive, manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, and not to seek or receive assistance in the manufacture of nuclear weapons or other nuclear explosive devices. The safeguards of the IAEA, an element in the non-proliferation regime, became the main instrument of verification of compliance with obligations assumed under the by the non-nuclear-weapon States. On the insistence of non-nuclear-weapon States, however, other elements were added to the treaty. These related to the peaceful uses of nuclear energy, including permission to undertake peaceful nuclear explosions on their territory, undertakings by the nuclear-weapon States to conduct negotiations on the cessation of the nuclear arms race and nuclear disarmament, and the right of States to create nuclear-weapon-free zones.

Notwithstanding that it has been subjected to various strains and stresses, particularly arising from sharp disagreements among its parties on the fulfilment of their respective obligations, the role of the treaty in promoting nuclear non-proliferation is widely recognized.⁹ Its near

universal adherence has given it a great moral force that has been reinforced by its indefinite extension in 1995 by the Conference of the States Parties.¹⁰

REGIONAL MEASURE

Nuclear-Weapon-Free Zones

The development of the concept of nuclear-weapon-free zones (NWFZs) as a measure of non-proliferation of nuclear weapons was almost simultaneous with the global non-proliferation concept, which resulted in the NPT. The concept was first formally evoked in the so-called Rapazcki Plan enunciated by the Polish Foreign Minister at the twelfth session of the United Nations General Assembly. In his declaration to the Assembly on 2 October 1957, the Polish Foreign Minister stated that after consultations with other members of the Warsaw Pact, Poland was prepared to impose a ban on the production and stockpiling of nuclear and thermonuclear weapons on its territory, should the two German States express their consent to impose simultaneously a similar ban on their territories. Shortly thereafter, Czechoslovakia, the German Democratic Republic and the Soviet Union expressed their support for the Polish initiative.

The plan was further elaborated and published by the Polish government on 14 February 1958. It called for the creation of a zone free from nuclear weapons in Central Europe comprising Poland, Czechoslovakia, the German Democratic Republic, and the Federal Republic of Germany, whereby those States would undertake not to manufacture, maintain, or possess nuclear weapons, and not to permit on their territories the stationing and stockpiling of nuclear weapons and installations and equipment designed for servicing nuclear weapons, including missile-launching equipment. The nuclear-weapon States would undertake to respect the nuclear free status of the zone, as well as not to use nuclear weapons against any territory in the zone. Conceived for Europe in the Cold War context, the proposal was opposed by the Western powers and became moribund. However, the NWFZ concept was later applied in regions outside Europe.

Principles for Nuclear-Weapon-Free Zones

With the growth of interest in the possibilities of NWFZs in various regions, it became necessary to establish some agreed principles and characteristics. Thus in its resolution 3261 F (XXIX) of 9 December 1974, the United Nations General Assembly decided to undertake a comprehensive study of the question of NWFZs in all its aspects, and requested that the study be carried out by an ad hoc group of qualified governmental experts under the auspices of the successor to the ENDC, the Conference of the Committee on Disarmament (CCD). Following the consideration by the United Nations General Assembly of the report of the CCD on the study,¹¹ the General Assembly adopted resolution 3472B(XXX) 1975 in which it defined the concept of a NWFZ and the scope of the principal obligations of the nuclear-weapon States towards such zones and towards the States included therein.¹²

Three years after the principles were enunciated, the place of NWFZs in the non-proliferation regime was confirmed during the First Special Session of the United Nations General Assembly on Disarmament held in May 1978. In the Final Document of the session, the General Assembly stated that: "The establishment of nuclear-weapon-free zones on the basis of agreements freely arrived at among the States of the region concerned constitutes an important disarmament measure. The process of establishing such zones in different parts of the world should be encouraged with the ultimate objective of achieving a world entirely free of nuclear weapons".¹³ The importance of NWFZs was further reiterated by the parties to the NPT. In one of the documents adopted at the Review and Extension Conference of the Treaty in May 1995, the parties reaffirmed their conviction that the establishment of an internationally recognized NWFZ, enhanced global and regional peace and security. They further indicated that the development of such zones, especially in regions of tension such as the Middle East, should be encouraged.¹⁴

Such was the hope about the possibilities of a NWFZ in regions of tension where the regional major States are non-parties to the NPT because of objections to its discriminatory nature, that the hope for the universality of the non-proliferation regime was thought by some to depend on the NWFZ concept. Since, for instance, the threshold States such as India, Pakistan and Israel are unlikely in the foreseeable future to become parties to the NPT, some analysts postulated that these countries might find it easier

to undertake legally binding non-proliferation commitments within a NWFZ for their respective regions.¹⁵

The Establishment of a Nuclear-Weapon-Free Zone in Latin America

The Cuban Missile Crisis

The application of the concept in Latin America was the direct result of Cold War manoeuvres by the super-powers, leading to the attempt by the Soviet Union to clandestinely deploy nuclear weapons in Cuba. Following a secret treaty between the two countries concluded in June 1962, the Soviet Union proceeded to deploy 42 nuclear missiles of intermediate range in Cuba. The discovery of the missile sites by American spy planes in October 1962 triggered the resultant Cuban Missile Crisis, which a former Soviet Ambassador to the United States described as the most dramatic event of the Cold War.¹⁶ The American Secretary of State at the time, Dean Rusk, also graphically described the crisis as bringing the two super-powers “eye-ball to eye-ball”. The crisis brought the two super-powers as close as they ever got to a nuclear war and kept the whole world on edge in the days between October 22 and 28 1962, when finally the Soviet Premier, Nikita Khrushchev, agreed to remove the missiles.¹⁷

Aftermath of the Missile Crisis

Though a nuclear war was averted, the danger to the entire Latin American region posed by the presence of nuclear weapons on the territory of any of its countries was not lost on the regional States. On 29 April 1963, the Presidents of Bolivia, Brazil, Chile, Ecuador and Mexico issued a joint declaration in which they called for the total prohibition of nuclear weapons from the Latin American region. Later in the year the Declaration was brought to the attention of the United Nations General Assembly which in its resolution 1911(XVIII) of 27 November 1963, noted with satisfaction the initiative for the denuclearisation of Latin America taken in the joint declaration, and expressed the hope that the States of Latin America would initiate studies as they deemed appropriate concerning the measures that should be agreed upon with a view to achieving the aims of the said declaration. Negotiations among interested regional States commenced shortly thereafter and culminated in the signature on 14 February 1967 of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Tlatelolco Treaty), which legally established the first NWFZ in an inhabited region of the globe.

The Tlatelolco Treaty prohibits the testing, use, manufacture, production, or acquisition of nuclear weapons within its zone of application. It also prohibits the receipt, storage, installation, deployment and any form of possession of nuclear weapons by the parties themselves or by anyone on their behalf. The parties undertake to refrain from engaging in, or encouraging or authorizing or participating in, the testing, use, manufacture, production, possession or control of nuclear weapons. The treaty however permits the use by the parties of nuclear energy for peaceful purposes including the undertaking of nuclear explosions for peaceful purposes. To ensure compliance with their obligations, the parties established the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL). For purposes of verification, each party undertook to conclude safeguards agreement with the IAEA for the application of Agency safeguards to its nuclear activities. The treaty has two additional protocols, the first meant for States which are *de jure* or *de facto* internationally responsible for territories within the zone to which they undertake to apply the status of denuclearisation. The second protocol is meant for nuclear-weapon States, whereby they undertake not to contribute in any way to the performance of any acts involving a violation of the treaty and undertake not to use or threaten to use nuclear weapons against parties to the treaty.¹⁸

The significance of the Treaty of Tlatelolco went far beyond its regional importance for the security of the Latin American region. It was a proof of the feasibility of a regional, legally binding instrument for nuclear non-proliferation and thus an example that other regions were to follow. It established some principles for the involvement of non-regional States that later became standard elements for other NWFZ instruments. These were: the necessity for the commitment in a legally binding manner of nuclear-weapon States to respect the status of the zone by refraining from testing nuclear weapons or emplacing them in the zone; the provision of legally binding security assurances to the parties to the zonal treaty, a provision which the nuclear-weapon States (later) refused to give to parties to the NPT; and the undertaking in a legally binding manner by extra-zonal powers with international responsibility for territories in the zone to apply fully the nuclear-weapon-free provisions of the treaty to those territories.

As a multilateral legal instrument for the prohibition of the development and possession of nuclear weapons by non-nuclear-weapon States, the Treaty of Tlatelolco predated the NPT. It therefore served as the inspiration for Article VII of this treaty, and was meant to fill a shortcoming

of the NPT. It must be recalled that while the NPT prohibits the acquisition of nuclear weapons by non-nuclear-weapon States, it does not prohibit the presence of nuclear weapons owned by a nuclear-weapon State on their territories. Article VII affirmed the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons from their territories. The nuclear-weapon States that were the proponents of preventing additional States from acquiring nuclear weapons did not press for preventing the geographical spread of their own weapons because of Cold War security interests. NATO, which feared the conventional arms superiority of the Warsaw Pact, had envisaged the deployment of nuclear weapons on the territories of its members close to the East as a counterbalance to the latter. This had been the main reason for opposition to the Rapazcki Plan for the establishment of a NWFZ in Central Europe.

The Nuclear-Free Zone in the South Pacific (Rarotonga Treaty)

The proposal for a nuclear-free zone in the South Pacific arose out of the concern over the activities of the nuclear-weapon States in the region and in particular over the increasing number of nuclear weapon tests by France. On the initiative of Australia, the members of the South Pacific Forum agreed in 1984 to commence negotiations on a treaty to establish such a zone in their region. The treaty was signed on 6 August 1985 at Rarotonga in the Cook Islands, and entered into force on 11 December 1986 with the deposit of the eighth instrument of ratification. The treaty contains a preamble, sixteen articles and four annexes. It has three protocols meant for the nuclear-weapon States, and States with international responsibility for territories within the zone. As shown by its title, the Rarotonga Treaty differs from other existing similar treaties in that it is aimed at total nuclear prohibition, including very rigid restriction on peaceful nuclear activities. Nevertheless, many of its provisions are similar to those in the Treaty of Tlatelolco. However, it reflects the evolution of the concept of a NWFZ in the eighteen years after Tlatelolco. It also contained fresh ideas on the issue of peaceful nuclear explosives which it forbade through the use of the broader term of nuclear explosive devices instead of the narrower term of nuclear weapon used in the Treaty of Tlatelolco.¹⁹

Nuclear-Weapon-Free Zone in South East Asia: (The Bangkok Treaty)

The idea for the creation of a NWFZ in the region of South East Asia was first mooted in a declaration of the Foreign Ministers of the Association

of South-East Asia Nations (ASEAN) issued in Kuala Lumpur in November 1971. In that declaration on the Zone of Peace, Freedom and Neutrality (ZOPFAN) for the region, the Foreign Ministers noted the trend towards the establishment of nuclear-weapon-free zones and agreed that the establishment of the South-East Asia nuclear-weapon-free zone would be an essential component of ZOPFAN. It was not until the end of the Cold War and settlement of the longstanding Cambodia problem before the objective of establishing this zone could be realized. In 1995, ASEAN Foreign Ministers declared that the conditions in the region approximated those envisaged in the ZOPFAN declaration and thus would permit the establishment of the nuclear-weapon-free zone. Negotiations of the treaty for the zone proceeded rather rapidly leading to its signature in Bangkok at the fifth ASEAN summit in December 1995. Apart from the seven members of ASEAN, Cambodia, Lao People's Republic and Myanmar also signed the treaty. It entered into force on 27 March 1997. The treaty consists of a preamble, twenty-two articles, an annex and a protocol.²⁰

Notwithstanding its entry into force through the ratifications by the required number of zonal States, a major principle for an effective nuclear-weapon-free zone has not been obtained in that none of the nuclear-weapon States has signed the treaty protocol meant for them. The situation, as described by a representative of the People's Republic of China, is that there exists a legally binding treaty but not a NWFZ in complete form.²¹ This complication arose out of the complaint by the nuclear-weapon States about the treaty's provisions with respect to the inclusion of the Continental Shelf and the Exclusive Economic Zone in the area of application, and the extension of the protocol on security assurances to the entire zone, not just to the parties to the treaty. Though consultations have since been undertaken with the nuclear-weapon States, no satisfactory solution has yet been worked out to resolve the objections raised by those States.²²

Other Proposals for Nuclear-Weapon-Free Zones

The last NWFZ to be created is the African nuclear-weapon-free zone whose treaty was opened for signature (the Treaty of Pelindaba) in April 1996. Before dealing with it in the next and subsequent chapters, it is pertinent to mention the existence of several other proposals for the creation of NWFZs, such as in Mongolia, the Korean Peninsula, South Asia, the Middle East and Central Asia.

Mongolia

Taking advantage of the Principles on the Creation of Nuclear-Weapon-Free Zones enunciated by the United Nations General Assembly in 1975 which provided *inter alia* that “obligations relating to the establishment of nuclear-weapon-free zones may be assumed not only by groups of States, including entire continents or large geographical regions, but also by smaller groups of States and even by individual countries”, Mongolia in 1992 declared its territory a NWFZ. In resolution A/Res/53/77/D of December 1998 the United Nations General Assembly welcomed the declaration by Mongolia of its nuclear-weapon-free status and invited member States, including the five nuclear-weapon States, to cooperate with Mongolia in taking the necessary measures to consolidate *inter alia* its nuclear-weapon-free status. On 3 February 2000, the Mongolian Parliament adopted the law on the nuclear-weapon-free status of the country.²³ On 5 October 2000 the nuclear-weapon States made a joint statement in the First Committee of the General Assembly providing security assurances to Mongolia with respect to its nuclear-weapon-free status.²⁴

The Korean Peninsula

As part of efforts at strengthening peace in the Korean Peninsula, the proposal for its denuclearisation took a positive turn when in December 1991, a Joint Declaration on the Denuclearization of the Korean Peninsula was signed by representatives of the Republic of Korea and the Democratic People’s Republic of Korea. There has since been no follow-up because of the uncertain relations between the two countries.

South Asia

The creation of a NWFZ in the region of South Asia was first proposed by Pakistan at the twenty-ninth session of the United Nations General Assembly in 1974. In elaborating on its proposal, Pakistan stated that all the States of the region had declared their opposition to the acquisition of nuclear weapons or to their introduction into the region. It submitted a draft resolution, which was adopted by the General Assembly.²⁵

For its part, India stated that it supported the creation of NWFZs in different parts of the world, but this should be the result of consultations and consensus of the States in the region concerned. India regretted that no prior consultation had taken place before the submission of the proposal by Pakistan. It stressed that South Asia was only a sub-region of Asia and Pacific

region in which there already existed nuclear weapons, creating a situation inappropriate for the establishment of a nuclear-weapon-free zone in the sub-region of South Asia. It also submitted a draft resolution that was adopted by the General Assembly.²⁶

The difference in approach between the two countries has since persisted in the annual consideration of the item by the General Assembly, making progress impossible. Although the nuclear tests by India and Pakistan in May 1998, has further complicated the prospects for the creation of the zone, it has not rendered it impossible. If the political situation fuelling the arms race between the two countries improves, the example of the African NWFZ that was established with the participation of a former nuclear weapon South Africa, could provide a model for a South Asian nuclear-weapon-free zone treaty. As in the case of Africa, the creation of such a zone may become an important confidence-building measure for the two States.

Middle East

The initiative for the creation of a NWFZ in the Middle East was taken by Egypt and Iran in the United Nations General Assembly in 1974. Their proposal was adopted by the Assembly.²⁷ However, an important State in the region, Israel, abstained, thus putting in doubt the sustainability of the proposal. No further major step was thus taken until 1988 when, on the proposal of some of the States in the region, the General Assembly adopted its resolution 43/65 of 7 December 1988, which requested the Secretary-General to undertake a study to recommend measures to facilitate the creation of the zone. In the report, submitted by the Secretary-General in October 1990, it was concluded that an improved political climate and particularly progress in the Middle East peace process, was necessary to create the appropriate condition of confidence among zonal States leading to the necessary consensus for the creation of a NWFZ.²⁸ It is pertinent to note that of the countries in the potential area of the zone, only Israel is not a party to the NPT. Its situation of nuclear ambiguity and the lack of continuous progress in the Middle East peace process have made progress difficult, notwithstanding the constant encouragement for the creation of the zone by the General Assembly in its annual resolutions. In such a resolution (55/30 of 20 November 2000) the General Assembly requested the Secretary-General to continue to pursue consultations with States in the region and other concerned States and to seek their views in order to move towards the establishment of a NWFZ in the Middle East. Based on that

resolution, the Secretary-General submitted a report in doc A/56/187 of 12 July 2001 containing the views of some States.

Central Asia

The disintegration of the Soviet Union and consequent independence of the Central Asian States, as well as the withdrawal of Soviet nuclear weapons from the area, rendered possible the conception of the idea of a NWFZ by the regional States of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. The area has been one of the worst affected by the result of nuclear weapon tests, the Soviet Union having carried out 459 tests in the Semipalantinsk site in Kazakhstan. A proposal for the creation of the zone was first submitted to the forty-eight session of the United Nations General Assembly in 1993 by Uzbekistan. At their meeting in Almaty in February 1997, the five regional States adopted the Almaty Declaration stating their joint desire for the creation of a NWFZ.²⁹ An international Conference was convened in Tashkent, Uzbekistan on 15-16 September 1997, at the end of which the Foreign Ministers of the five States issued a joint statement in which *inter alia* they “reaffirm the need to declare Central Asia a zone free from nuclear weapons as an essential element in the strengthening of regional security”. At its fifty-second session later that year, the United Nations General Assembly in its resolution 52/38 S of 9 December 1997, called upon all States to support the initiative aimed at the establishment of a NWFZ in Central Asia, and requested the Secretary-General to provide assistance to the Central Asian States in the process of the establishment of the zone. That process is being pursued by the regional States.

CHAPTER 2

NUCLEAR ENERGY IN AFRICA

As a prelude to examining the reasons that made nuclear issues of preoccupation to African countries, it is useful to examine the extent of their involvement in the development of the stages of nuclear energy in the years following the beginning of the nuclear era.

The main ingredient for nuclear programme, uranium was first produced in 1789 when a German Chemist Martin Klaproth, isolated an oxide of uranium while analysing pitchblende samples from a silver mine in Bohemia. For more than a hundred years thereafter no more than 300-400 tonnes were produced for the main use as a colorant for ceramic glazes. However, with the discovery of nuclear fission in 1939, the uranium industry entered a new era, particularly after the first nuclear explosion in 1945.¹ The resultant nuclear weapons programmes and development of nuclear industry for power generation saw a dramatic surge in demand. Africa has since played a part as a major repository of uranium. Its earliest discovery on the continent in the Belgian Congo was followed by more significant discoveries in South Africa. Around 1945 the United Kingdom requested the South African Prime Minister, Jan Smuts, to undertake a secret survey of the country's potential of uranium resources. The survey showed the existence of large quantities of uranium. By 1949, pilot plants for the extraction and processing of raw uranium ore started operation, and by 1952 production began. It rapidly expanded, spurred by demands from the United Kingdom and the United States, both of which needed secure supplies for their expanding nuclear weapon programmes.² By 1955, 19 mines were in operation. When South Africa illegally occupied Namibia in 1966, exploration for uranium was undertaken and production started in that country in the 1970s. South Africa thus became one of the largest uranium producers, producing at its peak, in the 1960s and early 1970s, 16 per cent of the Western world's uranium requirement, while Namibia at the peak of its own production in 1979 produced 9.6 per cent.³

Exploration in some other African countries especially Gabon, Niger and Central African Republic began about the same time as in South Africa, by the French, whose colonial status guaranteed total monopoly of the strategic mineral for France's ambitious nuclear energy programme. Later, in the 1980s, French mining companies expanded their uranium exploratory activities to Cameroon, Congo, Mali, Central African Republic, Nigeria, Senegal and Zambia.⁴ Actual production was however concentrated in Gabon and Niger, as no substantial discoveries were discovered in the other countries.

GABON

Exploration in Gabon began in 1947 by the French Commissariat de l'énergie atomique (CEA). Deposits were discovered in 1956 in Mounana. Thereafter, the Compagnie des mines d'uranium de Franceville (COMUF) was formed in 1958 jointly owned by the Government of Gabon and a consortium of French companies. According to the usual Accord de Défense et Coopération which France concluded with its former African colonies at independence in the 1960s, and the 1974 Accord de Coopération, Gabon was committed to provide France with strategic raw materials such as uranium, thorium, lithium, beryllium and helium on priority basis "as required by the interests of common defence".

Thus from the beginning, almost all uranium ore production was shipped to France. In 1978, a yellow cake production plant was commissioned. Other uranium deposits were later discovered in Mikouloungou, Boyindzi, Oklo and Okelebondo. Gabon's production of uranium in the 1980s was between 900 tons and 1,000 tons annually.⁵ Production in the 1990s progressively diminished to 568 tons in 1996, 470 tons in 1997, and ceased in 1999.⁶

Though it made no concrete effort at developing a programme in nuclear science and technology, Gabon's President Omar Bongo created a surprise when, during an official visit to Gabon in January 1983 by President Mitterrand he asked France to supply his country with a nuclear power station. Knowing full well that Gabon had neither the infrastructure nor the high level scientific personnel necessary for operating such a plant, France did not respond to the request.⁷

NIGER

Uranium exploration in the Niger Republic was commenced by the French CEA in the mid 1950s. Ore was first discovered in 1965 in the Arlit region leading to the formation in 1968 of Société des Mines de l'Air (SOMAIR) a joint venture between Niger and French Companies. A further exploration programme in the South West of the region led to the confirmation of the Akouta deposits in 1972. Thereafter, other deposits were found in Imouraren, Afasto-West, Abkrorum Azlik and Sekiret. Thus considerable uranium reserves existed in Niger estimated by 1987 as 173,706 tonnes of Reasonably Assured Resources (RAR), and 283,600 Estimated Additional Resources (EAR).⁸ Production of uranium concentrates in the late 1970s up to 1982 totalled 25,027 tonnes. Thereafter, annual production varied between a high of 3,426 tonnes in 1983 and a low of 3,015 tonnes in 1988. Production remained well above 3,000 tonnes annually in the 1990s.⁹

Since, as in the case of Gabon, the 1961 Accord de Defence obliged Niger to supply France with uranium and other strategic minerals on a priority basis, French companies dominated the exploration and production of uranium. They also dictated the price, and always benefited from the support of the French government in price negotiations with Niger. Thus while Niger experts were arguing for a minimum price of FF 35,000 per tonne by 1973/74, the French argued that the price of about FF 30,000 per tonne paid was in fact a "political price", and much higher than the average market rate of FF 26,250 per tonne.

President Hamani Diori took a personal interest in the pricing of uranium in light of the important part uranium sales played in government revenues. Despite being rebuffed consistently by the French in his attempt to negotiate what he considered to be a fair price, the President persisted and in the process enlisted Gabon for joint negotiation with the French. The first tripartite meeting of representatives of France, Niger and Gabon was convened in Niamey in March 1974 and was scheduled to be resumed later in that year. The overthrow of President Diori by a military coup three days before the resumption of the tripartite meeting and two days before the President's departure for New York to attend the Special Session of the United Nations General Assembly on the price of Raw Materials, has been considered by some observers as not unconnected with the issue of uranium pricing.¹⁰

CENTRAL AFRICAN REPUBLIC

Though exploration of uranium began in 1947, it was not until about 1961 that workable deposits were found in Patou and, Bakouma by the French government's CEA. Though it was announced that 16,000 tonnes of RAR was located, successive joint venture companies concluded that the deposits were not economical and the project was abandoned in 1978.¹¹

Like other areas where Africa is a major source of crucial strategic minerals, the continent generally, apart from South Africa, did not play a significant role in the application of nuclear energy. As shown above neither of the two major producers, Niger and Gabon, developed a nuclear exploitation programme, both remaining confined to the export of uranium only. Of the few African countries non-producers of uranium that attempted to develop such programmes, none met with significant success as will be seen from a review of the efforts by Nigeria, Ghana, Egypt, Libya and Algeria that will be examined briefly as a prelude to looking at the only advanced nuclear programme on the continent, that of South Africa.

NIGERIA

Nigeria's interest in a nuclear energy programme began as part of its search to diversify its energy sources in order to conserve its crude petroleum resources. Among the options identified were solar energy and nuclear energy. Two research centres were created to explore each of the two options, those for nuclear energy being located at the Ahmadu Bello in Zaria and the Obafemi Awolowo University in Ile-Ife. A tentative programme for the training of necessary personnel commenced particularly in the latter research centre with technical assistance from the IAEA, Canada, France and Germany.¹²

The intensely pan-Africanist and anti-apartheid government that came to power in 1975 in the country conceived a nuclear programme also in the context of the struggle against apartheid. Such a programme was necessary to counter the South African programme. The government created the Nigerian Atomic Energy Commission in August 1976. Forgetting however that a strong infrastructural and manpower base was a precondition for such a big leap, the government immediately began approaching the Federal

Republic of Germany for the purchase of a 600-megawatt nuclear power plant. This author who was then Nigeria's Permanent Representative to the IAEA and a member of the Agency's Board of Governors pointed out the necessity of launching the programme with a less ambitious plan by acquiring a modest research reactor. Without explanation, the contact with Germany on the power plant was suddenly discontinued.

Thereafter, as part of its own project, the Obafemi Awolowo University research centre acquired a neutron generator, transmission electron microscope, gamma irradiator, mass spectrometer and data acquisition analyser. However the laboratory to house these was not completed, and the equipment was simply stored away. Similarly, a proposal to purchase a Tandem accelerator did not materialize.¹³

A lot of frustration at the research centre arose out of the insufficient funding allocated to it by successive governments. The project therefore continued to stagnate with no progress registered. That situation however, did not hinder Nigeria's anti-apartheid rhetoric as far as countering South Africa's nuclear programme was concerned. Many radical foreign policy scholars in Nigerian Universities were very vocal. No less vocal were some Nigerian leaders that the country should develop nuclear weapons (or black bomb).¹⁴ Needless to say, those declarations did not change the reality of a programme that was not properly supported by Nigerian governments.

GHANA

Ghana, under President Kwame Nkrumah, in the immediate post-independence years, aspired to a nuclear programme. With his grandiose vision of the pioneering role of Ghana in African liberation and continental unity and development, it is not surprising that Asagyefo thought of a nuclear programme as an element in his quest for African leadership. Thus, in 1961, four years after independence, the Ghana government decided to undertake "The Ghana Nuclear Reactor Project" in order to introduce nuclear science and technology into the country and to exploit nuclear energy in its peaceful applications to aid in national development. In 1963, the Ghana Atomic Energy Commission was established. Contact was made with the Soviet Union, which supplied a research reactor. However, this was never installed. Much later, in 1994/95, Ghana acquired from China a 30-kilowatt reactor. This is currently in use for the provision of neutrons for

activation analysis, and is available for training future nuclear scientists and engineers for the generation of electrical power. It is also to be used to produce short-lived radioisotopes for use in tracer technology for industry and agriculture.¹⁵

EGYPT

Of the fledgling African nuclear programmes, the Egyptian one is relatively the most advanced. The programme began with the establishment of the Atomic Energy Authority, which acquired from the Soviet Union in February 1961 a 2,000-kilowatt nuclear research reactor for use in neutron physics as well as the production of radioisotopes.¹⁶ In 1974 Egypt asked the United States to supply two 600-megawatt power reactors as part of a linked arrangement to sell the same type of reactor to Israel. A purchase agreement was signed in 1976 but was never executed. Later Egypt drew up an Energy Plan, which envisaged the construction of eight nuclear power stations by 2000. This project was to rely on Niger for the supply of uranium for which a protocol was concluded in 1983 between the Egyptian Energy Minister and Niger's Minister of Mining and Industry.¹⁷ The Egyptian plan has been slow in execution and no nuclear power plant is yet in operation. However, in 1992 work started on the construction of a second 22,000-kilowatt reactor for neutron and radiography research, which began operation in 1997. The first research reactor, which had been in operation since 1961, was modernised in 2001.

LIBYA

Rumours of Libya's nuclear ambitions had been circulating since 1971 when Prime Minister Major Abdul Salam Jalloud visited China reportedly with orders from Muammar Gaddafi to negotiate the purchase of an atomic device. Even if such a request was voiced, no sale was made. In 1973, the country established an Atomic Energy Commission and in 1975 an agreement was signed with the Soviet Union for the construction of a Nuclear Research Centre and the supply of an atomic reactor. As a result, a 10,000-kilowatt reactor named IRTI was constructed at the Tajoura Nuclear Research Centre and became operational in August 1981.¹⁸ It was refitted in December 1991.¹⁹

In order to ensure regular supply of uranium, Libya entered into an agreement with Niger by which it reportedly paid higher prices than the prevailing rates. In the process, Libya bought more uranium than required and was reported to have passed some to Iraq and Pakistan.²⁰

Notwithstanding the modest nature of the Libyan nuclear programme, its beginning generated considerable concern. This was due partly to a statement credited to Colonel Gaddafi in 1974 that in the future atomic weapons would be like traditional weapons possessed by every State according to its potential and that Libya would have its own share of the new weapon,²¹ and partly to Libya's alleged supply of uranium to Iraq and Pakistan. In reaction to these concerns, the United States in 1983 expelled Libyan students who were sent to study nuclear engineering in that country. Presently, Libya still maintains its nuclear programme but its scale remains modest.

ALGERIA

Algeria's nuclear programme, which began in the 1980's, consisted of two nuclear research reactors. The first named NUR was acquired from Argentina in 1987, with construction beginning that same year. The reactor became operational on 24 March 1989 and is being operated by the Unité de Recherche en génie nucléaire. It is a light water reactor of 1,000-kilowatt thermal power. The second named Es-Salam is a heavy water reactor. Its construction started in 1998 and the reactor became operational on 17 February 1992. With a capacity of 15,000-kilowatt, the fissile material was supplied by China. It is operated by Centre de Développement des Systèmes Energétique.

Though the two research reactors were under IAEA safeguards, Algeria's nuclear programme, curiously, provoked some suspicion especially on the part of the United States. This might have been related to the fact that the country was not initially party to the NPT. It became clear later that the suspicion was unjustified.

SOUTH AFRICA

South Africa was the only country on the continent that made significant progress in development of a nuclear programme. As was shown

earlier, South Africa began uranium exploration in 1945 and began production in 1952. Simultaneously, it conceived a nuclear energy programme with the creation in 1948 of the Atomic Energy Board. Though the Board initially concentrated on the production and export of uranium, it soon began nuclear research apparently on the spur of the South African government.

An accelerator was acquired in 1955. Four years later the National Nuclear Research Centre was created as the main governmental nuclear research body. Research at the Centre was wide-ranging and included work on mineral exploration, prospecting and mining, reactor and reactor fuel development, reactor operation and safety, and the application of radioisotopes in medicine, agriculture and industry. A 20-megawatt nuclear research reactor, SAFARI-1 was purchased from the United States under the Atoms for Peace Programme, and was operated by a team of experts who were trained under the Programme. The reactor first became operational in March 1965.

Secret research on uranium enrichment began in 1961 and did not become publicly known until Prime Minister B. J. Vorster announced in Parliament on 20 July 1970 that South Africa had succeeded in developing a new process for uranium enrichment “which was unique in its concept”. Though the Prime Minister added that the country’s sole objective was to promote the peaceful application of nuclear energy, the announcement provoked some consternation particularly in Africa. In August 1976 South Africa signed a contract with a French consortium Framatorie, Alsthom and SPIE Batgnolles for the construction of two light water power reactors of 922-megawatt each at Koeberg near Cape Town. The first, named KOEBERG-1, became operational in 1984, while the second, KOEBERG-2, became operational in 1985.²²

Without doubt, the South African programme was by far the most advanced and most extensive in Africa and the only one that encompassed all aspects of the fuel cycle. Though South African leaders constantly stated that the programme was only for peaceful purposes, suspicion was rife that the Apartheid regime in the country was secretly also developing a nuclear military capability. Evidence of this as will be seen in a subsequent Chapter, became the greatest threat to African security and a major obstacle to the realization of the OAU objective of an African Nuclear-Weapon-Free Zone.

It is clear from the above that, with the exception of South Africa, the individual efforts of each African country that has tried to establish a nuclear programme have not produced significant results. Besides, apart from purchase of uranium from Niger by Egypt and Libya, no effort at inter-African cooperation in nuclear science and technology was made until 1990 when the OAU sponsored a seminar for that purpose. It is noteworthy that in that same year the African States decided that the evolution of the international situation was propitious for setting in motion the process that resulted in the negotiations of the Pelindaba Treaty.

CHAPTER 3

THE AFRICAN POLITICO-MILITARY ORIGINS OF THE AFRICAN NUCLEAR-WEAPON-FREE ZONE

AFRICA AND FRENCH NUCLEAR TESTS

By the 1960s when most African countries gained independence, the nuclear era was consolidating itself with the development of nuclear weapons, the intensification of the Cold War and the sharp division of the world into two ideological camps. The reality of the new era dawned on Africa by means of the French nuclear tests. In its determination to join the rank of the nuclear-weapon States, France chose Africa as its testing ground. In February 1960, France conducted its first nuclear test in the atmosphere in the Sahara desert. In the course of the year, it conducted three additional atmospheric tests, all of which resulted in significant radioactive fall-out in several African countries, with consequent danger to human and animal lives.¹ The fact that a number of African States had appealed to France not to carry out the tests on their continent, all to no avail, was considered by many as a blatant affront on their newly acquired sovereignty and territorial integrity.

Some African countries expressed their national anger in various manners. Nigeria took the most far-reaching step in breaking diplomatic relations with France early in 1961,² while Ghana froze French assets in the country.³ The only joint action was the attempt by eight African States to have the United Nations General Assembly adopt a resolution on the issue during its fifteenth session in 1960. These countries cosponsored a draft that would prohibit nuclear test in Africa. Owing to a lack of sufficient sponsorship, many Francophone African countries having refused to join, the draft was not pressed to a vote. However, in the General Assembly session of 1961, a greater number of African States cosponsored a draft resolution that was adopted.⁴ Entitled "Consideration of Africa as a

Denuclearized Zone” the resolution, *inter alia*, called on all member States of the United Nations to refrain from carrying out any nuclear tests in Africa and from using the continent to test, store, or transport nuclear weapons.

THE ORGANIZATION OF AFRICAN UNITY AND THE DENUCLEARISATION PROJECT

The formation of the Organization of African Unity in 1963 provided African States with a continental forum for the discussion and coordination of African response to continental issues. Among the most important security issues that immediately confronted the continent were the French atomic tests in the Sahara. Though it had stopped atmospheric tests in 1961, France nevertheless continued underground nuclear tests. At the inaugural summit conference of independent African States in Addis Ababa in May 1963, an item entitled General Disarmament was inscribed on the Agenda. Following discussion of the item, the Heads of States adopted a resolution in which they agreed *inter alia* “to affirm and respect the principle of declaring Africa a Denuclearized zone, to oppose all nuclear and thermonuclear tests as well as the manufacture of nuclear weapons”.⁵

At the session of the OAU Council of Ministers held in Lagos, Nigeria in February 1964 the OAU Secretariat, at the initiative of Ghana, circulated a draft Convention for the Denuclearization of the Continent of Africa, containing two substantive articles. In the first article, members of the Organization undertake to prohibit and not carry out any nuclear weapon test, not to receive any nuclear weapons, to prevent carrying out or continuing carrying out in their respective territories nuclear tests in any form, and to prevent the use of the territory, territorial waters and air space under their respective jurisdictions for testing, storing, and transporting nuclear weapons.⁶ After a discussion, the Council of Ministers agreed to take note of the draft Convention and decided to send it to member States for study.

The aforementioned discussions of the issue of denuclearisation of the continent formed the bases of the far-reaching action taken by the first Assembly of Heads of States and Government of the OAU in Cairo in July 1964. The Assembly adopted the Declaration on the Denuclearization of Africa in which the Heads of State and Government called upon all States

to respect the continent of Africa as a nuclear-weapon-free zone, and committed themselves to negotiate an international agreement, to be concluded under the auspices of the United Nations, not to manufacture or control atomic weapons.⁷ The Declaration was submitted to the United Nations General Assembly during its session of 1965. After consideration, the General Assembly endorsed the Declaration, and expressed the hope that the African States would initiate measures for its implementation, and requested the Secretary-General to extend to the OAU such facilities and assistance as might be requested.⁸ It should be noted that the resolution passed the initiative for implementing the Declaration to the African States through the OAU thus indicating clearly that it would not itself convene an implementation conference.

DELAY IN THE IMPLEMENTATION OF THE DECLARATION

Given the early commencement of the African initiative for a NWFZ, the question arises why the idea was not fulfilled until 1996 when the Treaty of Pelindaba was signed. The delay in the implementation of the Cairo Declaration was due to a number of reasons, some global and others regional.

The perception of nuclear threat by Africa arose first from the French nuclear weapon tests in the continent that lasted from 1960 to 1966. When France stopped its tests in the Sahara in 1966 after three atmospheric and thirteen underground tests, that immediate threat was removed.⁹ Simultaneously, the latter half of the 1960s witnessed a flurry of activities on the construction of a global non-proliferation regime that, as has been described in Chapter 1, resulted in the negotiation and conclusion of the NPT. African States focused their attention at this time on negotiating this treaty. As was shown in Chapter 1, those that were members of the ENDC in particular, took an active part in the negotiation. They saw the negotiation of the universal instrument on nuclear non-proliferation as being closely related to the OAU Declaration on the Denuclearization of Africa, which had *inter-alia*, expressed the readiness of the African States to undertake, in an international treaty, not to manufacture or acquire control of nuclear weapons.

A good number of African States became parties to the treaty shortly after it was open for signature. Unfortunately, the aftermath of the adoption

of the treaty did not give encouragement to the implementation of article VII that recognized the right of regional States to pursue non-proliferation further by creating zones that would promote the total absence of nuclear weapons. Rather than the progressive reduction of their arsenals, the nuclear-weapon States embarked on their systematic expansion.

In addition, the reaction of the NATO States prior to 1991 to any proposal for the creation of any NWFZ was dictated by considerations related to the Cold War, rather than the interest of nuclear non-proliferation. Except for the South Pacific NWFZ created in the closing years of the Cold War, no other could be established following the Treaty of Tlatelolco, during the era. Indeed, the endorsement of the nuclear-weapon States belonging to the Western alliance through the ratification of the appropriate protocols to the Rarotonga Treaty, was not obtained until the Cold War was conclusively over.

It is no surprise therefore that the African NWFZ could not be realized for as long as South Africa, whose nuclear programme had increasingly become suspected by African States of being directed towards the production of nuclear weapons, was protected from appropriate sanctions by one side in the Cold War division. The Western powers shielded the apartheid regime, which they considered as the bastion of Western civilization in Africa, and particularly Southern Africa. They saw the denuclearisation of Africa as being against their Cold War interest since they needed military bases in South Africa and did not therefore want to antagonize the apartheid regime. They opposed in the General Assembly the African sponsored resolutions because of the call on States to cease military cooperation, especially in the nuclear field with the apartheid regime.

Though the Western powers denied it, Africa was convinced that their collaboration that was supposedly for peaceful uses of nuclear energy extended to assisting South Africa's nuclear weapon development. That the African suspicion was well founded became clear in the post-Cold War years. Evidence of collaboration has since been documented in the post-apartheid years in some writings on the nuclear programme. In an article entitled "De Klerk's three nuclear lies", Paul Stober quoted transcripts from the secret trial of Brigadier General Johann Blaauw of the South African Air Force in 1989 which showed that President De Klerk lied on three counts,

when, speaking in Parliament on March 24, 1993 about South Africa's nuclear weapons programme, he asserted that:

- South Africa had not acquired nuclear weapons technology or material from another country;
- South Africa had never provided nuclear material to another country;
- South Africa had never cooperated with another country in this regard.

The court case revealed extensive collaboration with Israel on nuclear materials and technology including the supply of 50 tons of yellow cake natural uranium which was arranged through the intermediary of Brigadier Blaauw, and in exchange, the supply of tritium (material which boosts the explosion of nuclear bomb) by Israel to South Africa.¹⁰

Similar conclusions had been drawn in an earlier detailed study of the South African nuclear programme by Peter Hounan and Steve McQuillan. They concluded *inter alia* that South Africa did benefit from various types of cooperation from other countries. The authors received information that the United States, the United Kingdom, France and Italy were directly involved in the technical know-how and funding of the project while Israel provided some manpower as well as some equipment.¹¹

In addition, though De Klerk denied that South Africa ever carried out any nuclear tests, information garnered by the two authors showed that not only was this not true but also proved the complicity of other countries. The preparation for a test in the Kalahari in August 1977 could not have eluded the searching eyes of United States satellites. The Stockholm Institute for Peace Research (SIPRI) was quoted as revealing that an American 56A Big Bird satellite had made several passes over the Vastrap area in mid July 1977. However it was not until the Soviet Union raised the alarm in August that the United States joined to pressure South Africa to cease its activities. Moreover, though the United States officially cast doubt on the double flash recorded by its Vela satellite in the South Atlantic on 22 September 1979, the authors were informed by Soviet spy Gerhard that it was indeed a South African test carried out in association with Israel. The fact really is that until that event, all previous recordings of such events by satellite had been accurately reported to be of nuclear explosions.¹²

SOUTH AFRICA'S NUCLEAR PROGRAMME

The role of South Africa's nuclear programme in delaying the implementation of the African NWFZ was thus very decisive, partly due to the country's Cold War influence as shown above and partly due to its direct regional security threat. Though South Africa's nuclear energy programme, which began in 1948, was already well established by the time of Africa's independence in the 1960's, it gave African States no immediate concern. It played no immediate role in the OAU's preoccupation with nuclear issues at its formation in 1963, and it was not a contributing factor to Declaration on the Denuclearization of Africa in 1964.

However, the programme began to be a cause of alarm in the 1970s when in defence of its policy of apartheid South Africa embarked on an arms build-up aimed at intimidating other African States and thus facilitating its policy of surrounding itself with a cordon sanitaire. That build-up and the increasing hostility towards its neighbours became pronounced when the gaining of independence by the countries of Southern Africa from British and Portuguese colonial and racist policies left South Africa alone in the sub-region. With its superior conventional military strength, South Africa openly subverted its neighbours, sabotaged their economies and carried out direct military attacks. Given this record of aggressive policy towards its neighbours, the announcement by Pretoria in 1970 that it had developed a new technology for enriching uranium immediately raised the suspicion that its purported peaceful nuclear programme was in fact directed towards developing nuclear weapons. Such a suspicion was reinforced by the apartheid regime's refusal to sign the NPT.

Suspicion reached fever pitch following two events. First, in August 1977, a Soviet Union satellite detected preparations in the Kalahari Desert for a South African underground nuclear test, leading the Soviet government to express alarm.¹³ France also sounded its own alarm in a statement issued by its Foreign Minister on 22 August 1977.¹⁴ Joint pressure exerted by the United States, the United Kingdom and France made South Africa abandon the test, which the apartheid government authorities alleged was intended for the development of peaceful nuclear explosives. Second and more alarming was the signal that was picked up by a United States VELA test monitoring satellite over the South Atlantic on 22 September 1979. The general belief then was that the signal was from a South African nuclear test. Strong in that belief, Nigeria initiated

simultaneous action on the same day both in the Plenary and the First Committee of the thirty-fifth General Assembly demanding a thorough investigation of the incident.¹⁵

With the suspicion by many in the international community, and the firm belief by most African countries, that South Africa was developing nuclear weapons, it was inconceivable that the OAU could proceed to implement the Declaration on the Demilitarization of Africa. A NWFZ agreement was for Africa primarily a security instrument meant to assure the security of the continent from external as well as internal nuclear threats. Its goal could only be realized if the participation of all African States, and in particular those with nuclear programmes, was assured. This was in consonance with the concept of a NWFZ developed by the United Nations General Assembly among whose principles was that if a NWFZ is intended to embrace a region, the participation of all militarily significant States and preferably all States in the region would enhance the effectiveness of the zone.¹⁶

Though meant to enhance the viability of the zonal non-proliferation instrument, the principle highlighted the dilemma of the African situation. Obviously, South Africa, as recognized by the International Atomic Energy Agency had the most advanced nuclear programme on the continent. An African NWFZ without its participation would therefore be meaningless, and South Africa would almost certainly not participate because of its apparent unwillingness to give up the option of making nuclear weapons.¹⁷ However, it was also clear in the prevailing circumstances of the mindless application of the policy of apartheid that African countries that had adopted an anti-apartheid policy of total isolation of South Africa could not conceive of a continental security arrangement that would include the pariah State. Negotiating a NWFZ is an intensely political process whose success depends on the regional political climate.¹⁸

NON-PROLIFERATION AS AN ANTI-APARTHEID STRATEGY

In the context of African security therefore, a clear picture of South Africa's nuclear capabilities as well intense pressure on it to abandon apartheid, became essential. Nuclear non-proliferation thus came to be an important element of the general anti-apartheid strategy. To that end, in the late 1970s and for most part of the 1980s, the African States sponsored

yearly resolutions on the Implementation of the Declaration on the African Nuclear-Weapon-Free Zone focused on drawing attention to South Africa's nuclear programme and its implications for nuclear non-proliferation, its refusal to adhere to the Non-Proliferation Treaty, and the impediment which it constituted to the realization of a NWFZ for Africa. During that period also, African countries took the initiative in proposing two United Nations studies, one on South Africa's Plan and Capability in the Nuclear Field in General Assembly resolution 34/76B of 11 December 1979, and the Study on South Africa's Nuclear Tipped Ballistic Missile Capability in General Assembly resolution 44/113B of 15 December 1989.

The first study, on South Africa's Plan and Capability was undertaken by a group of experts appointed by the United Nations Secretary-General. It did not, however, draw a definite conclusion as to the signals captured by the American VELA satellite on 22 September 1979. The group's failure to make such a definite judgement was perhaps influenced by the study of the event by an ad hoc panel of scientists convened by Dr. Frank Press, Science Adviser to President Carter late in 1979.

In its report, the ad hoc panel of scientists cast doubt when it concluded:

Based on the lack of persuasive corroborative evidence, the existence of other unexplained zoo events like meteoroid collision with a satellite which have some characteristics of signals from nuclear explosions, and the discrepancies observed in the September 22 signal, the panel concludes that the signal was probably not from a nuclear explosion. Although we cannot rule out the possibility that this signal was of nuclear origin, the panel considers it more likely that the signal was one of the zoo events, possibly a consequence of the impact of a small meteoroid on the satellite.¹⁹

The United Nations Secretary-General's appointed group of experts in its own concluding observations stated *inter alia* "There is no doubt that South Africa has the technical capability to make nuclear weapons and the necessary means of delivery. Discovery of a reported nuclear weapon test site in the Kalahari Desert in 1977 strongly suggests that preparation for a nuclear explosive device test was under way in South Africa in 1977. The event of 22 September 1979, without a scientifically indisputable explanation, further strengthened suspicions in the world community of South Africa's plans and intentions".²⁰

The second study, on South Africa's Nuclear Ballistic Missile Capability was undertaken in accordance with the General Assembly's great concern with reports that collaboration between Israel and South Africa had resulted in the development by South Africa of a nuclear tipped ballistic missile. The Assembly therefore called on the Secretary-General, with the assistance of a group of qualified experts, to investigate the reports, bearing in mind their implications for the implementation of the policy of denuclearisation of Africa and for the security of African States.

The study was carried out from April to September 1990, coinciding with the beginning of political changes that promised the possible end of apartheid. This led the experts involved to remark that those dramatic changes might have substantially modified, if not altered, the context in which the study was carried out.

In their conclusions, the experts noted:

- (a) that South Africa did indeed have a long-range rocket programme and that it did fire a rocket some 1,400 kilometres into the South Atlantic in July 1989;
- (b) that the programme relied on foreign technology from various foreign sources, the only presumed official source being Israel;
- (c) that if South Africa deployed long range missiles, they were most likely intended to carry nuclear warheads. However, this would still require long and difficult effort at adapting nuclear weapons for long-range missile delivery;
- (d) that the regional security environment had become far less adverse for South Africa, thus reducing any incentives it might have had in the past to seek advanced missile or nuclear capabilities for military purposes.²¹

At the level of the IAEA the African strategy was aimed at excluding South Africa from the Board of Governors and even the Agency's General Conference. On being appointed Nigeria's Permanent Representative to the IAEA and member of its Board of Governors in 1976, one of my instructions from the government was to carry out the non-proliferation anti-apartheid strategy in the Agency. My initiatives, which were strongly supported by African and Non-Aligned States members of the Agency, led to the expulsion of South Africa from the Board of Governors of the International Atomic Energy Agency in 1977, and its later exclusion from the IAEA General Conference. Together with the actions taken in the

United Nations General Assembly sessions, these persistent pressures had a sobering effect on the apartheid regime that could not admit to such a programme. The latter therefore lost much of its deterrent value.

ADVOCACY OF THE BLACK BOMB

The long years of frustration in Africa and exasperation with the ambiguous stance of some major Western countries both with respect to apartheid on the one hand and the nuclear programme of the apartheid regime on the other resulted in intra-African controversy as to an appropriate response. Some African political leaders and intellectuals gave vent to their exasperation by openly advocating the acquisition of a nuclear weapon capability by African countries. Among such political leaders were several Nigerians as was shown in Chapter 2. Taking a similar position, was the former Secretary-General of the OAU, Edem Kodjo who, during the nineteenth OAU regular Assembly of Heads of State and Government in 1983, urged African governments to match South Africa's nuclear might. "It is the duty of member states which are able, resolutely to embark on the nuclear path, since South Africa had developed weapons which could only be directed against OAU member states" he stated.

Among African intellectuals who persistently advocated that course of action was Professor Ali Mazrui who in his 1979 Reith Lecture delivered on the British Broadcasting Corporation (BBC) pronounced himself in favour of nuclear proliferation by the third world and identified African countries like Nigeria, Zaire and a black ruled South Africa as candidates for the African nuclear programme. "Africa, under its triumvirate of diplomatic leaders, partly endowed with nuclear credentials, will have begun to enter the mainstream of global affairs", he said.

The adoption of nuclear non-proliferation as an important element of anti-apartheid strategy was well founded. It gave assurance to African countries that the security threat posed to Africa by the nuclear weapon programme of the apartheid regime was seen in the context of the universal campaign against nuclear weapons. Much as the rhetoric on the African black bomb could have been counterproductive to that strategy, the reality of nuclear programmes in Africa was known well enough not to give concern to Western countries. It was widely recognized that none of the African countries being touted for nuclear weapon capability had at the

time started any credible nuclear programme. It was therefore to Africa's advantage that the evolution of international affairs at the end of the decade of the 1980's created conditions that made apartheid unsustainable, and set in motion changes in South Africa. Thus by the time of the forty-fifth session of the United Nations General Assembly in 1990, African States felt confident enough about the evolving political changes in South Africa to consider taking up the implementation of the Declaration on the Denuclearization of Africa.

CHAPTER 4

THE TRANSITION PERIOD: THE END OF APARTHEID AND THE PREPARATIONS FOR NEGOTIATIONS

END OF THE COLD WAR

The end of apartheid was an offshoot of the momentous changes that swept away the Cold War era. Beginning with Gorbachev's experiment with glasnost and perestroika in the Soviet Union, the changes spread like wildfire into the Eastern European satellite States. Their demand for self-determination and democracy found ready support in the Western countries anxious to see an end to the "evil empire" and its underlying totalitarianism, and the enthronement in Eastern Europe of Western political systems. By the end of the 1980s, the symbolism of the fall of the Berlin Wall as marking the downfall of the iron curtain, made the President of the United States of America speak of the emergence of a new world order.

As subsequently articulated, the new world order was to involve the end of the socialist system of governance, the adoption by all States of market economics and democratic regimes and the end of the bipolar division of the world. In the exuberance of the moment, there were claims that the fall of the Soviet Union marked the end of history,¹ and the transition from the twentieth to the twenty-first century.²

The celebrated wind of change of the 1960s that had propelled African States to independence also confronted them with the realities of an ideologically divided world dominated by two super-powers. It was a confused and confusing world with no identifiable order to govern the conduct of all States once the United Nations Charter was neutralized by the Cold War. The foreign policy of the major powers was dictated primarily by the necessity to extend their influence to the new States and

thereby gain ideological advantage. Though the new governments also profited from playing one ideological camp against the other for political and economic advantage, no regime in Africa benefited from the Cold War more than the white racist regime in South Africa as was shown in Chapters 2 and 3.

It took the end of the Cold War to change the pattern of cooperation and complicity with South Africa by the Western powers. With the loss of Western support precipitated by the end of the Cold War it soon became obvious that the position of the apartheid regime was untenable in the long run. President Frederick de Klerk himself correctly read the signs of change and committed himself to ending apartheid in a momentous address to the South African Parliament on 27 February 1989.³ For Africa, his undertaking in the statement raised tremendous hope not only for South Africa's national, but also for continental, reconciliation. The South African government announced in 1990 that it would adhere to the NPT and did so in 1991, leading several frontline Southern African States to do the same.

It now became the common interest of the apartheid regime and the Western powers that had collaborated with and protected it to dismantle the nuclear weapons and destroy all records. To the regime, the interest of non-proliferation would be served and it would facilitate the acceptance back into the world community of the changed racist rulers. The weapons were no longer of strategic or any interest to those who knew that they were on their way out and wanted to make sure that their successors did not inherit that symbol of power. For the West, majority rule implied power passing into the hands of the African National Congress (ANC), whose years of struggle against apartheid had drawn them close to the socialist camp that had been very supportive of the liberation struggle. The nuclear heritage of the apartheid regime could not be entrusted to such "radicals" as the use they would make of it was unpredictable. This consideration must have been the major reason for the concern shown by American officials once it became known that South Africa had dismantled its bombs and stored the highly enriched uranium (HEU). In their view, if such very sensitive nuclear materiel were to become the property of an ANC government, the latter might be tempted to sell some to old friends such as Muammar Qaddafi who was suspected to have nuclear ambitions!⁴

DENUCLEARISATION OF AFRICA IN THE 1990 GENERAL ASSEMBLY: REFLECTION ON A CHANGED SITUATION

The debate and resolutions adopted on the item on the Denuclearization of Africa in the late 1970s and 1980s were the reflection of Africa's awareness that the twin evil of apartheid and a suspicious nuclear programme in South Africa did not permit progress towards the conclusion of the treaty anticipated in the 1964 Declaration. However, once the Cold War ended and the South African government was seen to have begun the dismantlement of apartheid and adherence to the NPT, it was possible to move forward with the denuclearisation of Africa. This was reflected during forty-fifth session of the United Nations General Assembly in the debate and subsequent resolution 45/56A adopted on the item of The Implementation of the Declaration on the Denuclearization of Africa.

That resolution, while following the pattern of earlier resolutions in condemning South Africa's pursuit of a nuclear weapon capability and all forms of nuclear collaboration with the racist regime, also contained two important departures, which were very significant. Paragraph 2 of the resolution reaffirmed that the implementation of the Declaration on the Denuclearization of Africa would be an important measure to prevent the proliferation of nuclear weapons and to promote international peace and security, a reaffirmation which would have been seen as inappropriate in the former atmosphere of South African nuclear ambiguity and the nuclear vulnerability of African States. More significantly, paragraph 9 "requests the Secretary-General to provide all necessary assistance that the Organization of African Unity may seek regarding the convening, at Addis Ababa during 1991, of a meeting of experts to examine the modalities and elements for the preparation and implementation of a convention or treaty on the denuclearisation of Africa".⁵

CONSIDERATION OF MODALITIES AND ELEMENTS

In accordance with the General Assembly resolution 45/56A, a meeting of experts was jointly organized by the OAU and the United Nations at the headquarters of the OAU in Addis Ababa from 6-10 May 1991. The participating experts were: Ambassador Oluyemi Adeniji (Nigeria), Ambassador Bagbeni Nzengeya (Zaire), Dr. Ahmed Ben Yamina

(Algeria), Mrs. Liberata Mulamula (Tanzania) and Dr. Gift Punungwe (Zimbabwe). Ambassador Ibrahim Sy, Col. Gustave Zoula, Alhaji Ahmadie Niang represented the OAU and Dr. Sola Ogunbanwo represented the United Nations. Also invited to the meeting were observers from the Treaty of Tlatelolco and the Treaty of Rarotonga, as well as representatives of the Secretariat of the IAEA.⁶ To signify the role of both the United Nations and the OAU, the experts decided to associate representatives of the two Organizations with its Bureau. Thus the present author was elected Joint Chairman together with Ibrahim Sy of the OAU Secretariat while another expert, Ambassador Bagbeni Adeito Nzengeya of Zaire was elected Co Vice-Chairman together with Dr. Sola Ogunbanwo of the United Nations Secretariat. Another expert, Dr. Ahmed Ben Yamina of Algeria was elected Rapporteur.

As was made clear from the beginning of its session, the role of the group was not to attempt a draft treaty or convention; rather, it was to examine the modalities and elements for the preparation and implementation of a convention or treaty. Its task was essentially to lay the groundwork for any future decision to proceed to the preparation of a legal instrument. That task, however, was extremely important since the necessary political conditions had to be seen to be ripe for the process to advance to the stage of treaty drafting. The OAU, it was stressed, would depend largely on the recommendations of the group in taking the crucial decision of whether or not to proceed further. The Agenda of the meeting as annotated contained the following essential points:

1. What are the necessary political conditions for starting the concrete implementation of the decision for a NWFZ in Africa;
2. Examination of the 1964 Declaration as the basis for preparing a legal instrument on the Denuclearization of Africa;
3. Consideration of the geographical area of application including the sea and the adjacent areas;
4. The scope of the prohibitions, including dumping, peaceful nuclear explosion, non-attack on nuclear installations, transit of nuclear weapons;
5. Permitted activities such as peaceful uses of nuclear energy;
6. Verification provisions,
7. Obligations of nuclear-weapon States;
8. Obligations of States that possess territories within the zone;
9. Institutional arrangements to be established;

10. Technical clauses such as signature, ratification, entry into force, duration, reservations and withdrawal;
11. Relationship to other similar international agreements;
12. Survey of the preparatory works leading to the conclusion of earlier nuclear-weapon-free zone agreements;
13. To what extent can the Treaty of Tlatelolco and the Treaty of Rarotonga serve as models for an instrument on the African Nuclear-Weapon-Free Zone?

WORKING SESSIONS OF THE GROUP OF EXPERTS

In a brief general debate in which not only the experts but also some of the observers participated, it was the general view that the process of the denuclearisation of Africa should be situated in the context of a world-wide disarmament effort and should also take into account trends in regional security. It was pointed out that the implementation of the 1964 Declaration had been impeded for a long time by the Cold War, the prevailing global nuclear arms race and the regional fall-out symbolized by the South African nuclear weapon programme. However, with the Cold War at an end and the progress made in the field of disarmament, including nuclear disarmament by the major powers, and with the evolution of the situation in South Africa since 1989, the evolution of the international situation was conducive to the initiation of a process for implementing the Declaration on the Denuclearization of Africa. Africa should therefore take advantage of this situation to start the process of implementation.

It was also noted that since 1964 important developments had taken place with regard to the concept and implementation of a NWFZ. First, such zones had been set up in Latin America and the South Pacific; second, studies under the auspices of the United Nations had further refined the concept and laid down the principles for its implementation.⁷ These were seen as elements that could facilitate the implementation of such a zone in Africa. At the same time, attention was called to the particularities of Africa that had to be addressed. Unlike the Latin American and the South Pacific regions that had concluded NWFZ treaties, there existed in Africa a State, namely South Africa that was known to have a nuclear weapons capability, and was suspected to have manufactured nuclear weapons. In addition there was the legitimate concern of some African countries in the north of the continent with close connection with the Middle Eastern region that a

nuclear-weapon-free zone in Africa without a similar instrument in the Middle East could present security dangers, given Israel's existing policy of nuclear ambiguity.

These two particularities were given special attention in the debate. Consensus on how to deal with the South African issue was easily discerned. On the other hand the case of Israel led to some initial polarization. While there was general broad agreement on the dilemma it posed, especially to the North African States, its effect on the African denuclearisation project was interpreted differently. One conclusion was that the African NWFZ project could not proceed as long as the Israeli threat to North African States remained unresolved. The other was that while the denuclearisation of the Middle East and Africa were complimentary, they should not be considered inseparable and need not be simultaneous. Indeed one could accelerate the attainment of the other and thus help in strengthening rather than weakening the security of States that are linked to both regions.

An understanding was finally reached whereby the report of the experts would adjudge that the evolution of the international situation, especially in Southern Africa, was propitious for the realization of the denuclearisation of Africa to which they attached great importance. At the same time, however, the report would emphasize the legitimate concerns of some African countries. To address these, the experts stressed the importance of the establishment of a NWFZ in the Middle East. This initial clarification of the relationship between the denuclearisation efforts in the two regions settled that potentially divisive issue once and for all and facilitated future substantive negotiations.

After the general debate, the experts were able to proceed to a consideration of each of the items on their annotated agenda. Its results can be summarized as follows:

- (i) Though the 1964 Declaration should constitute the basic political reference point for the pursuit of the project of the denuclearisation of Africa, one of its elements needed to be modified in implementation. This concerned paragraph 4 which had called on the United Nations General Assembly to take responsibility in convening an international conference for concluding the African NWFZ instrument. The experts observed that while the United Nations might provide technical and

other assistance as might be requested, the initiative in convening a conference on the issue should lie exclusively with the OAU.

- (ii) On the geographical extent of the zone, the experts believed that the zone should cover the whole continent including the adjacent islands as contained in the OAU landmark resolution entitled "The Territorial Integrity of Africa and the Islands Surrounding the African Continent".⁸ They also considered that the Convention on the Law of the Sea should be used as a reference point in defining the maritime limits of the zone. In the same context, the experts stressed two essential issues: the first was the absolute need for South Africa to be an integral part of the zone and be subjected to its obligations; the second was the necessity for foreign powers exercising *de jure* responsibilities on territories or islands forming part of the zone as defined by the OAU resolution to commit themselves legally to accept the Denuclearized status of these entities within the African NWFZ.
- (iii) The responsibilities of the nuclear-weapon States for the maintenance of the integrity of the zone were considered of primordial importance and therefore had to be of a legally binding nature. First, the nuclear-weapon States should commit themselves fully to respect the status of the zone, by not doing anything directly or indirectly to violate it; and second, they should agree in a legally binding form not to use or threaten the use of nuclear weapons against any State, territory or island in the zone.
- (iv) To ensure maximum effectiveness of the zone, the experts considered that the elements of prohibition should be comprehensive, covering research, development, production, stockpiling, storage, acquisition, use, testing, transportation and dumping. In this connection they recommended that the issue of Peaceful Nuclear Explosion should be carefully examined in light of changes in its perception. They also emphasized that the issue of the transparent declaration and destruction of nuclear weapons already developed and stockpiled by any potential party to the zonal treaty should be very closely examined in the further pursuit of the project. An important element, it was agreed, should be the prohibition of armed attack by any party on nuclear installations in the zone. To prevent any resort to such dangerous unilateral step by any party, the experts emphasized the need to elaborate a procedure for complaints and dispute settlement.

- (v) Notwithstanding the stringency of the measures needed to prevent prohibited activities, the experts stressed that the aim of the zonal treaty should be to prohibit nuclear weapons but not the knowledge of and use of nuclear technology for peaceful purposes. Indeed they considered that the issue of the use of nuclear energy for peaceful purposes should constitute an important aspect of the treaty, not least because the African continent possessed large reserves of uranium. They agreed that the following principles should be used as guidelines for dealing with the issue of peaceful uses of nuclear technology in the treaty:
 - (a) the positive affirmation of the need of African States to commit themselves to mastering nuclear technology for the purposes of economic and social development;
 - (b) the need for African States to establish and strengthen mutual cooperation in the use of nuclear energy for peaceful purposes at the regional and sub-regional levels;
 - (c) the right to apply for and obtain from the developed countries and from the IAEA assistance in the various aspects of the use of nuclear energy for peaceful purposes.

- (vi) The experts agreed that a future treaty should contain provision for a mechanism for supervising compliance by parties. The mandate of such a mechanism should be carefully worked out so as to make it an effective instrument in maintaining the balance between non-proliferation and the promotion of peaceful uses of nuclear energy. To that end, they recommended that further consideration should be given to the suggestion by the present writer for the creation of a Committee of twelve members elected on sub-regional basis to supervise the implementation of the treaty. For financial reasons, the experts agreed that whatever institutions were to be established in implementation of the treaty should be within the framework of the OAU.

The report of that meeting⁹ was submitted to both the United Nations and OAU Secretaries-General. In forwarding the report to the OAU Secretary-General, the experts made the following suggestions:

1. To bear in mind that the development of the international situation is favourable for the initiation of a process of implementation of the

Declaration on the Denuclearization of Africa (1964) and the relevant provisions of the OAU Declaration on security, disarmament and development (1985);

2. To request the Secretary-General of the United Nations, in consultation with the OAU, to convene a second meeting of their group so as to complete the examination of the remaining Elements;
3. To establish an Inter-Governmental Group of African Experts to meet jointly with their own (United Nations/OAU) Group at the proposed second meeting;
4. To decide to include in the agenda of the fifty-sixth session of the Council an item entitled: "Implementation of the Declaration on the Denuclearization of Africa and Development of Nuclear Energy for Peaceful Purposes".

FOLLOW UP ACTION TO THE FIRST MEETING OF EXPERTS BY THE OAU AND THE UNITED NATIONS: 1991

The OAU Secretary-General submitted the report to the annual conference of the OAU held in Abuja, Nigeria from 27 May to 1 June 1991. Accepting the recommendations of the Group that the evolution of the international situation was conducive to the implementation of the Declaration on the Denuclearization of Africa, the OAU decided to set up an intergovernmental group of African experts and directed it to meet jointly with the United Nations/OAU Group of Experts.¹⁰

In submitting their report to the United Nations Secretary-General, the experts drew attention to the need to conclude their consideration of the elements for a treaty or convention in order to enable the proposal for a NWFZ for Africa to be pursued. By the time the United Nations General Assembly considered the report in the autumn of 1991, South Africa had acceded to the NPT on 10 July 1991 and had signed a safeguards agreement with the IAEA. In its resolution on the issue therefore, the General Assembly took note of this additional positive development, expressed the conviction that the evolution of events was indeed conducive to the implementation of the Declaration on the Denuclearization of Africa, and requested the Secretary-General, in consultation with the OAU to take appropriate action to enable the United Nations/OAU Group of Experts to meet in 1992 to complete its consideration of the modalities and elements

for the preparation of a convention or treaty on the denuclearisation of Africa.¹¹

SECOND MEETING OF THE UNITED NATIONS/OAU GROUP OF EXPERTS

After due consultations between the United Nations and the OAU, the group of experts was convened in Lome, Togo on 28 to 30 April 1992. Having re-elected the Bureau of its first meeting in Addis Ababa, the experts proceeded to consider the two outstanding items. These were:

- (i) Relationship of the treaty or convention with other international agreements and similar zones;
- (ii) Technical clauses such as ratification, entry into force, duration, reservation and withdrawal.

RELATIONSHIP WITH INTER-NATIONAL ORGANIZATIONS AND INTERNATIONAL TREATIES

The experts benefited from a working paper submitted by the United Nations Secretariat. As a beginning, the experts believed that as an African instrument, the Charter of the Organization of African Unity should be the basic reference instrument for the treaty or convention on the denuclearisation of Africa. Moreover the OAU would have to play a pivotal role in the preparation and implementation of the denuclearisation instrument, providing comments and giving necessary orientation to the drafters. It would also have to approve the final draft for recommendation to member States. In the view of the experts, any machinery that would be set up for supervising the implementation of the treaty, for verification and for promoting cooperation in the peaceful uses of nuclear energy had to be within the framework of the OAU, both for harmonization with the overall objectives of the Organization as well as for the economy of resources. The OAU thus had to be the depositary of the treaty or convention to be drawn up.

The experts also believed that the supportive role of the United Nations would be crucial and should therefore be assured. To that end it

was necessary to ensure that the convention or treaty should be consistent with the purposes and principles of the Organization. The Organization could be expected to promote universal respect for the Denuclearized status of Africa to be established by the convention or treaty.

A third international organization that was considered of great relevance to the zonal treaty or convention was the IAEA. Verification, the experts believed, was a key factor in the credibility of the zone. Recognizing the high cost of setting up an independent monitoring agency for the zone, recourse to the use of the expertise and facilities of the IAEA was considered the best option for the verification of compliance with obligations undertaken by States parties. In that connection the experts were greatly satisfied that a representative of the IAEA had been invited to participate in their work even at the preliminary stage of considering the elements and modalities for a legally binding instrument.

Though the main focus of the legal instrument on the denuclearisation of Africa would be on nuclear weapons, the experts considered that there were certain related issues that ought to be addressed since they had a bearing on the security of the continent. Some of these which had already been the subject of specific legal instruments would have to be taken into account in preparing the denuclearisation instrument. Among these, the Law of the Sea Convention was seen as having a close bearing on the geographical limit of the Denuclearized zone, which, if it is to attract the support of the maritime States, should not interfere with the freedom of the seas. Other relevant instruments cited were the Basel Convention of 1989 on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, and the 1991 Bamako Convention on the Prohibition of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa. Also mentioned as relevant was the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. The experts not only called attention to these instruments but also stressed the importance of African States becoming parties to them so that any references to them in the denuclearisation instrument would be credible.

RELATIONSHIP WITH OTHER NUCLEAR-FREE ZONES

The relationship with other legally created nuclear-free or nuclear-weapon-free zones was to be carefully studied particularly with a view to

finding out what lessons could be learnt from the modalities for the elaboration of their instruments, their functioning and the benefits which their member States derived there from. It was in this context that the experts were also encouraged by the participation in their work as observers of a representative from the parties to the nuclear-free zone (NFZ) in the South Pacific and the Secretary-General of the Organization for the Nuclear-Weapon-Free Zone in Latin America.

FINAL CLAUSES CONCERNING ISSUES SUCH AS SIGNATURE, RATIFICATION, ENTRY INTO FORCE ETC.

Believing that all African countries would be parties to the instrument and relying on the vital role envisaged for the OAU in guiding its preparation, the experts agreed that once the final text had been circulated to all African States, it could then be submitted for signature at an annual summit meeting of the Organization. This was to save the cost of a special conference for the signing ceremony which was the alternative foreseen by the experts. More important however was the issue of ratification and thus the entry into force of the instrument. While the experts agreed that it would be desirable for the instrument to enter into force soon after its signature, they also believed that its credibility would be enhanced if it entered into force on its ratification by a large number of African States, including the more significant ones and particularly those with nuclear programmes.

In this connection the experts had a lively debate on the place of South Africa in the ratification and entry into force issue. While some stressed the need for South Africa, with its very significant and diversified nuclear programme, to be among the States to ratify the instrument before it could enter into force, others expressed the fear of thereby conferring on South Africa a virtual veto if its ratification was made a precondition for entry into force. In any case it was agreed that a significant number of between one third and one half of OAU member States should be required to ratify before entry into force. The question as to whether or not the ratification of some important African States, including South Africa, should be a precondition for entry into force was deferred for further consideration by those who would draft the instrument.

Another issue of debate was whether ratification by the nuclear-weapon States of the protocols should be made a condition for entry into force. The experts suggested that further study should be undertaken of the relevant procedures adopted in the cases of the treaties of Tlatelolco and of Rarotonga. On the other issues related to the final clauses the experts agreed on the following:

- (i) that the instrument should be of indefinite duration;
- (ii) consequent to the recommendation for indefinite duration, the issue of an amendment procedure was considered necessary. Its modality was to be further studied;
- (iii) that there should be no provision for reservation to the instrument, though States would be free to make interpretative declaration if they so wished at the time of ratification;
- (iv) withdrawal from the instrument should be provided for. However, the conditions of withdrawal should be made very stringent such that resort to it would be under truly exceptional circumstance.

The report of the expert group was submitted both to the OAU and the United Nations.¹²

FOLLOW-UP ACTION BY THE OAU AND THE UNITED NATIONS IN 1992

At its meeting in Dakar, Senegal on 22 to 28 June 1992, the OAU Council of Ministers took note of the report, decided that the OAU Inter-Governmental Group of Experts, which was agreed to in Abuja, Nigeria in 1991, would be composed of: Algeria, Cameroon, Egypt, Ethiopia, Mauritius, Namibia, Nigeria, Senegal, Sudan, Togo, Zaire and Zimbabwe; directed the Group to consider the report of the United Nations/OAU Group of Experts on the Modalities and Elements; and decided to convene a joint meeting of the Inter-Governmental Group and the United Nations/OAU Group of Experts in order to draw up a draft treaty or convention to be sent to member States for observations and comments before the Council's fifty-eighth meeting in June 1993.¹³

At its forty-seventh session in 1992, the United Nations General Assembly also considered the report of the Group of Experts. Taking into

account the resolution of the OAU on the same report, it adopted a resolution which *inter alia* requested the Secretary-General, in consultation with the OAU, to take appropriate action to enable the United Nations/OAU Group of Experts to meet during 1993 with a changed mandate to draw up a draft treaty or convention on the denuclearisation of Africa, and to submit the report of the group to the forty-eighth session.¹⁴ With that resolution, a final and decisive stage opened in the progress towards a legally binding instrument on the African NWFZ.

STEPS TOWARDS SOUTH AFRICA'S PARTICIPATION: ROLE OF THE PROGRAMME FOR THE PROMOTION OF NUCLEAR NON-PROLIFERATION

The stage of treaty drafting had been reached by a careful preparatory stage carried out in the two meetings of the United Nations/OAU Group of Experts in 1991 and 1992. It should be noted however that notwithstanding the political developments in South Africa, no representative of that country had so far been involved even in an observer capacity. The deep suspicion of apartheid South Africa and its nuclear programme that had profoundly affected the implementation of the denuclearisation proposal continued, notwithstanding the steps it was taking for dismantling apartheid and for nuclear transparency by adhering to the NPT on 10 July 1991, and concluding required safeguards agreement with the IAEA on 16 September 1991. It was still the position of the OAU not to deal officially with representatives of the regime in Pretoria until the creation of an all-party Interim Government that was the OAU's benchmark for the irreversibility of the dismantlement of the apartheid system. Yet the report of the United Nations/OAU Group of Experts had clearly implied the necessity for the membership of South Africa in the African NWFZ.

It was at this stage that a non-governmental body, the Programme for the Promotion of Nuclear Non-Proliferation (PPNN) stepped in to play the role of an agent of confidence-building between the rest of Africa and South Africa.¹⁵ As part of its widely acclaimed project for promoting nuclear non-proliferation, PPNN had been holding meetings on specific regional aspects of the issue within individual regions. The meeting on the theme of Africa and Nuclear Non-Proliferation, which had been in preparation for about a year, was scheduled to be held in Harare, Zimbabwe in collaboration with

the University of Zimbabwe, on 1-4 April 1993. It could not have taken place at a more appropriate time, considering that barely a week before its opening day, State President De Klerk of South Africa made the startling disclosure in the South African Parliament on 24 March 1993 that the country had indeed built 6 to 7 nuclear weapons.¹⁶

Though sensitive to the African stance on apartheid, the PPNN as a non-governmental organization (NGO) whose reputation for its non-partisan approach to the issues of nuclear non-proliferation had been carefully cultivated, felt that discussions on Africa and the non-proliferation regime would be incomplete without a presentation from South Africa. So did the present author, not only as member of the Core Group of PPNN, but as the Chairman of the United Nations/OAU Group of Experts on the African Nuclear-Weapon-Free Zone. A balance had to be struck between the requirements for a fully productive meeting and the continuation of the total boycott of South Africa as part of the pressure on its government to fully dismantle apartheid.

After careful consultations therefore, PPNN invited the Chief Executive of the South African Atomic Energy Agency, Dr. Waldo Stumpf, to the Harare meeting. The meeting provided the first opportunity for African experts in the field to obtain a direct account of the South African nuclear programme from a high ranking atomic scientist deeply involved in it. Though the advertised subject in the programme on which Waldo Stumpf was scheduled to speak was "Nuclear Energy in Africa: Issues and Prospects for Nuclear Power and Radio-isotopes", he did in addition give a very useful oral presentation on South Africa's nuclear programme. He provided additional information to what was contained in the first disclosure by State President de Klerk on the South African manufacture of 6 to 7 nuclear weapons.

In both the written and oral presentations Waldo Stumpf emphasized South Africa's determination to be transparent and its acceptance in principle of a NWFZ for the continent. What is even more significant was his expression of the preparedness of South Africa to place at the disposal of other African countries its expertise and to share experiences in the peaceful uses of nuclear technology. Notwithstanding the hard questions asked and specific clarifications sought, participants at the seminar left with a feeling of nascent confidence in contacts between South Africa and the rest of the continent, especially on the very thorny issue of South Africa's

nuclear programme. This was to prove very invaluable in the negotiations of the treaty on the African NWFZ that was soon to follow.

The present writer having participated in the PPNN seminar was able to recommend to the negotiating and drafting session of the African NWFZ treaty that South Africa be invited to participate as an observer.

CHAPTER 5

NEGOTIATING AND DRAFTING THE TREATY (PART I): THE HARARE MEETING

Res. CM/res. 1395(LIV) of June 1992 of the OAU Council of Ministers and 47/76 of 15 December 1992 of the United Nations General Assembly mandated the United Nations/OAU Group of Experts and the OAU Inter-Governmental Group of Experts specifically to draft a treaty or convention on an African NWFZ within the timeframe of a year. This was based on the assumption that the major elements of the treaty had been sufficiently discussed in the 1991 and 1992 meetings of the United Nations /OAU Group. The reality, however, turned out to be different.

What should have been the negotiating meeting was convened in Harare, Zimbabwe on 5-8 April 1993. Rather than negotiate the text of the treaty, however, the expert group found itself having to engage in discussions meant to clarify and further refine the elements for the treaty. The OAU Inter-Governmental Group of Experts were not present at the meeting, but the composition of the United Nations /OAU Group of Experts that had considered the elements and modalities for the treaty in two sessions in 1991 and 1992 had changed. Of the five original members of the Group, two were replaced, that is: Ambassador Adeito Nzengeya of then Zaire replaced by Honourable M. Darga of Mauritius, and Dr. Ben Yamina of Algeria replaced by Ambassador Marei of Egypt. In addition to the 3 reappointed national members, namely, Ambassador Oluyemi Adeniji (Nigeria), Mrs. Liberata Mulamula (Tanzania) and Dr. Gift Punungwe (Zimbabwe), an additional member, Cheikh Sylla of Senegal was appointed. The OAU was represented by Ambassador Ibrahima Sy and Colonel Gustave Zoula (both of whom had participated in the two earlier meetings, and the United Nations by Dr. Ogunbanwo). Besides, South Africa was permitted to attend as observer and was represented

appropriately by a troika of representative of the Government, the African National Congress (ANC) and the Pan-Africanist Congress of Azania (PAC).¹

Two Working Papers prepared by the United Nations Secretariat entitled respectively “Current Proposals and Strategy for the Preparation of a Treaty on the Denuclearization of Africa” and “Working Text of an African Nuclear-Weapon-Free Zone Treaty” were submitted to the meeting. Though the documents were helpful, the new members of the Group of Experts considered that the Group could not proceed directly into article by article consideration of a text without first further clarifying the major points that would be reflected in those articles, notwithstanding that those points might have been discussed in the earlier meetings. They observed that the working paper submitted by the Secretariat on “Current Proposals and Strategy for the Preparation of a Treaty on the Denuclearization of Africa” could be very useful in focussing the initial discussions. In response to that view, an agenda was adopted which would commence with an exchange of views on the main elements for the treaty as itemized in the Secretariat’s first-working paper and thereafter be followed by negotiation of the articles of the treaty. As it turned out, the initial discussions took the entire time available to the Expert Group, and no draft articles for a treaty could be negotiated. The main points discussed in Harare were:

The Title of the Instrument

All the experts agreed that it should be called a treaty rather than a convention in order to conform to the existing NWFZ instruments. However the further suggestion in the working paper that the full title should be *The African Nuclear-Free-Zone Treaty* gave rise to a debate. Some experts were of the strong view that such a title could be interpreted as excluding also peaceful nuclear activities. In any case the aim of the OAU, it was said, was to prevent nuclear weapon and not all nuclear activities. Most experts agreed with that interpretation of the intention of the OAU that had led the former group of experts to recommend that special attention be given in the instrument to cooperation in peaceful uses of nuclear science and technology. However, doubts were expressed on the issue of peaceful nuclear explosives. It was observed that while the title should reflect the possibility of peaceful nuclear activities, this should not extend to so-called peaceful nuclear explosion.

It was argued in that connection that the evolution of thinking since the NPT was concluded in 1968 had tended towards the discouragement of

peaceful nuclear explosion whose scientific characteristics differed very little from explosion for military purpose. The experience with South Africa was cited as an overriding reason for avoiding such a potential loophole in the construction of the African NWFZ. Following further discussion, a consensus was reached that while the treaty should be titled *African-Nuclear-Weapon-Free Zone Treaty* to convey the notion of the permission of uses other than military, so-called peaceful nuclear explosion would not be permitted.

The Geographical Application of the Zone

The Secretariat's working paper recommended a minimalist approach to the area of application, using a simple definition that would incorporate continental Africa, island-States members of the OAU, all the islands belonging to continental African States, and the territorial waters and air space of these countries. According to that approach, the zone would exclude the islands in dispute with extra continental States, an obvious effort to avoid complications in obtaining the support of the extra-zonal States concerned. In reaction, many of the experts argued that care should be taken to ensure that provisions of the treaty should conform with the extant resolutions of the OAU, which had supported the claims of several island-States members of the OAU to territories contiguous to them. Any approach that did not take into account those resolutions would be ignoring African realities, which dictated that incentives for adherence to the treaty would very greatly depend on the perception by OAU member States that their diverse interests were being preserved. These discussions, which were not conclusive, indicated how difficult the negotiations on this issue would be, and they turned out to be so as will be seen later.

Declaration, Dismantling and Destruction of Nuclear Weapon Facilities

Emphasis was laid on the need of total transparency on the part of African States in ensuring the non-nuclear-weapon status of the zone. The fact that a regional State, South Africa, had admitted to having developed and manufactured nuclear weapons was considered as creating a situation different from those of the existing zones. All doubt as to the nuclear capability of South Africa having for the first time been lifted, it was stressed that a proposed article on declaration, dismantling, destruction, or conversion of nuclear explosive devices and the facilities used for their production prior to the creation of the nuclear-weapon-free zone, which had not featured in any of the existing treaties, would indeed have to be an indispensable part of the African treaty. Though President Frederick de

Klerk had stated in his revelation statement that the weapons produced as well as the facilities for their production had been dismantled, there was insistence on the need for international verification, both by the IAEA and the African body to be set up for supervising the implementation of the treaty.

Peaceful Nuclear Activities

This attracted particular interest. The Experts were emphatic that the treaty should strike a balance between non-proliferation and the great necessity to promote African expertise and cooperation in the peaceful uses of nuclear science and technology. Not only should the treaty not in any way obstruct such cooperation, it should contain provisions that encouraged and facilitated the acquisition of the knowledge needed for such cooperation. It should be recalled that in President De Klerk's disclosure on South Africa's nuclear programme on 24 March 1993, he said that the country would cooperate in creating an African NWFZ. Beyond that, he also indicated South Africa's willingness to cooperate in the peaceful uses of nuclear energy. The offer was further elaborated in the presentation by the Chief Executive of the South African Atomic Energy Agency, Dr. Waldo Stumpf during the PPNN meeting in Harare from April 1st to 4th (described earlier in Chapter 3). One of the South African observers at the Expert Group's meeting not unexpectedly therefore laid emphasis on the positive and beneficial aspects of nuclear energy for Africa.

Mechanism for Implementation

The authority that would be the executive body for the implementation of the treaty was considered in some detail. While accepting that such a body should be under the authority of the OAU, it was suggested that rather than being just an OAU Consultative Committee, it should have an identity of its own with clearly defined functions, as is the case with some existing OAU Commissions. It should have monitoring functions relating to compliance with the obligations undertaken by States parties, and be able to bring into effect the complaints procedure of the treaty in case of violation. It should also be empowered to encourage and promote cooperation in the peaceful uses of nuclear energy. A name suggested during the discussions by the present writer, namely, "African Commission on Nuclear Energy", was found appropriate by the experts and was provisionally accepted as the appellation of the body. It was later confirmed.

Safeguards

Application of safeguards was accepted as being appropriate to be given to the IAEA both in view of its expertise but also because it was considered that Africa could not afford to set up on its own the elaborate system that would be required. Therefore all parties to the treaty should be required to conclude an NPT type safeguards agreement with the IAEA within a specified time. However it was also agreed that the possibility of setting up an independent African inspection mechanism should not be totally ruled out and that provision for such eventuality should be reflected in the treaty. This possibility was evoked because of Africa's disappointment with the not-totally-transparent and rather unsatisfactory manner in which the issue of South Africa's nuclear capability had been dealt with by the IAEA during the apartheid era.

Complaints Procedure

It was recommended that a complaints procedure be incorporated into the treaty. This would range from bilateral consultations and arrangements between parties, to intervention, at the request of one of the parties involved, by the African Commission on Nuclear Energy to resolve the dispute. If that failed, the Commission could proceed to request the IAEA to undertake extraordinary inspections, following which the Commission would make appropriate recommendations to the parties to the treaty, who in turn might make recommendations to the OAU and eventually to the Security Council. Thus the experts recommended from the beginning a detailed procedure not found in earlier nuclear-weapon-free zone treaties, and which underscored the intimate link between a breach of obligations and threat to international peace and security.

Role of Non-African States

The role of non-African States generally, in support of the zonal treaty, was considered important as it would underscore the international significance of a NWFZ in the promotion of international peace and security. It was expected that the effectiveness of the zone would be greatly enhanced if all States respected its status. This universal and generalized commitment would be embodied in a resolution by the United Nations General Assembly that would be expected to take note of the treaty and would call upon all States to act in accordance with its provisions. Unanimous support of such a resolution would be the aim of the African parties to the treaty.

In addition to the generalized commitment however, there would have to be specific undertakings in a more legally binding form by two categories of States, namely, the nuclear-weapon States and the States with responsibilities for territories within the zone. For these purposes, three protocols were envisaged: the first would commit nuclear-weapon States not to use nuclear weapons against any State party or any territory within the zone even if that territory belonged to another nuclear-weapon State; the second would commit nuclear-weapon States not to test or assist or encourage the testing of nuclear explosive device in the zone; and the third would commit extra-zonal States responsible for territories in the zone to respect the status of those territories as nuclear weapon free and as such desist from carrying out any of the prohibited activities in them.

Physical Protection of Nuclear Materials

The issue of the physical protection of nuclear materials and facilities was considered of such vital importance that it deserved to be given adequate attention in the treaty. To this end the expertise of the representative of the IAEA was to be sought in the definition of nuclear installations and how best to frame the relevant provisions. While the Agency possessed a Convention on the Physical Protection of Nuclear Materials, the fact was that most African States were not parties to it. Thus, any reference to it in the African NWFZ treaty would have to be carefully formulated as not to commit all African States parties to it to be automatically bound by the IAEA Convention. As a complimentary measure, it was strongly recommended that there should be the prohibition of armed attack on nuclear installations in the zone. Thus parties to the treaty would undertake not to carry out such attack nor to assist or encourage any such attack.

The outlines of the Final Provisions of the Treaty on Amendments, Duration, and Entry into force were discussed and quickly agreed upon. Thus amendments would require a two-thirds majority of the parties for adoption; the entry into force of the treaty would require ratification by half the membership of the OAU plus one, that is, twenty-seven States; and the treaty should be of unlimited duration. It was agreed that provision be made for withdrawal from the treaty by any party; however the condition for such withdrawal was to be made rigorous and would be effective only after one year notice.

Time did not permit for any detailed negotiation of each article of the draft treaty in the United Nations Secretariat's working paper. The Group of Experts therefore decided to annex it to their report as the "Harare Draft".² In forwarding the report, the experts informed the Secretary-General of the United Nations that though they had made substantial progress, they could not complete the work and therefore requested him to arrange for a further meeting to enable them to continue.³

CHAPTER 6

NEGOTIATING AND DRAFTING THE TREATY (PART II): THE 1994 WINDHOEK AND ADDIS ABABA DRAFTING MEETINGS, AND REFERENCES WHERE APPROPRIATE TO THE 1995 JOHANNESBURG JOINT MEETING

INTRODUCTION

As a prelude to an account of the substantive negotiation of the text of the treaty, it is considered useful to anticipate the negotiating meetings held. In the resolution adopted after considering the report from the Harare meeting of the Group of Experts, the General Assembly requested the Secretary-General, in consultation with the OAU to take appropriate action to enable the group to meet during 1994 at Windhoek and Addis Ababa in order to finalize the drafting of the treaty on the African NWFZ.¹ The integrated report of those two meetings (held in Windhoek in March 1994 and Addis Ababa in May 1994) was submitted to the forty-ninth session of the General Assembly.² The report showed that there were still sections of the draft treaty that were uncompleted, particularly the map showing its limits. The General Assembly therefore decided after considering the report, to request the Secretary General in consultation with the OAU to take appropriate action to enable the United Nations/OAU Group of Experts to meet jointly with the Inter-Governmental Group of Experts of the OAU early in 1995 in order to finalize the drafting of the treaty and to submit the text to the General Assembly at its fiftieth session.³ Based on that resolution, the meeting in Johannesburg was convened in May-June 1995 and resulted in the final draft treaty, named the Treaty of Pelindaba.

For easy chronological account of the negotiating history of the articles of the treaty therefore, and because the real article by article detailed negotiation commenced in the Windhoek meeting of the United Nations/OAU Group of Experts, it will be desirable henceforth to trace the evolution

of each article from the Windhoek to the Johannesburg meetings. In that process references will also be made to the role played during the meetings by the non African States, namely the nuclear-weapon States and those that were internationally responsible for territories likely to fall within the zone. As mentioned earlier, the nuclear-weapon States were invited to hold consultations with the experts. They took advantage not only to comment and make suggestions on the parts of the treaty specifically addressed to them but also generally on other parts in which their interests, according to them, were affected. The States that were internationally responsible for territories in the zone were invited to the Johannesburg meeting only. References will also be made to the relevant comments and proposals made by OAU member States in response to the Tunis decision of the OAU summit.

Article 1: Definition/Usage of Terms

In commencing the drafting of articles at their Windhoek meeting, using the Harare draft as a basic text, the experts decided to leave the preamble part of the treaty until the completion of the substantive parts. They therefore started directly with Article 1.

This Article that in the Harare draft was called "Usage of Terms" was unaltered at the Windhoek and Addis Ababa meetings in 1994. However at the joint meeting of the United Nations/OAU Group of Experts and the OAU Inter-Governmental Group of Experts in Johannesburg in May/June 1995, the proposal was made to amend the title because the article contained not only established usage of terms but also new definitions of terms such as nuclear installation. Very pertinently, it was pointed out as an example that the term "African Nuclear-Weapon-Free Zone" was being defined for the first time in a treaty and that the definition agreed upon would henceforth establish the precedent on its usage thereafter. The proposal was widely supported and the title was therefore amended to "Definition/Usage of Terms" as occurs in the Pelindaba Treaty.

1 (a) "African Nuclear-Weapon-Free Zone"

The definition of the area to be covered by the African Nuclear-Weapon-Free Zone played a crucial part in the negotiations of the treaty and proved to be the most difficult element. The text of the article therefore changed almost from one negotiating meeting of the group of experts to another. Partly for that reason, the map to be illustrated in the appropriate

annex to the treaty was not available until the final negotiating meeting of the experts as its parameters changed during each meeting.

Article 1(a) of the Harare draft defined the zone as follows:

African Nuclear-Weapon-Free Zone means the continent of Africa, and the adjoining islands as described in annex I, and as illustrated by the map attached to the annex.

As has been shown earlier, the discussion that took place in Harare pointed to the need for a more inclusive definition which would incorporate the continent of Africa and island-States members of the OAU but also other islands which have been the subject of the many resolutions and decisions of the OAU as belonging to the continent. That position was again repeated at the Windhoek meeting, with the additional emphasis that since the treaty was primarily an African instrument, such a basic provision should ensure that no African country would consider itself or its territory excluded *ab initio*. Since the islands referred to as “adjoining islands” in the Harare draft could variously be interpreted as island-States members of the OAU as well as other island territories which were either undisputedly under the control of a colonial power or those that were being contested by some members of the OAU, it was necessary that the article be more specific, indicating that the “adjoining islands” were those other than island-States members of the OAU.

While agreeing with the need for such clarity, some experts however cautioned against the proposal for a blanket inclusion of other islands being claimed and which had been the subject of OAU resolutions. They argued that since some of the relevant OAU resolutions were contested by certain non-African powers, some of which would be expected to adhere to protocols to be annexed to the treaty, it might be impolitic to make general reference to them. A listing of the “other islands” in an annex would give the Organization the flexibility to be selective and perhaps be able therefore to avoid the inclusion of the most controversial cases. After further negotiations, consensus was reached to specifically mention island-States members of the OAU in the text for clarity, and to list in an annex the “adjoining islands”. Thus the text of the article was redrafted as follows:

African nuclear-weapon-free zone means the continent of Africa, island States members of the OAU and other adjoining islands listed in annex I and illustrated on the map attached.

The negotiation of this article was not confined only to the Expert Group. It was the subject of extensive discussion during the consultations by the experts with the nuclear-weapon States in the course of the Windhoek and the Addis Ababa meetings. Though the aim of the consultations was to discuss the appropriate protocols with them, three of the nuclear-weapon States, France, the United Kingdom and the United States, raised the issue of the definition of the zone. In that connection, the three nuclear-weapon States stressed that their willingness to cooperate with Africa by subscribing to the protocols to the treaty would depend on a clear and satisfactory definition of the zone.

France in particular stated that it would wish to know precisely which islands in the Indian Ocean (the Mozambique channel) and the Mediterranean Sea the zone would cover. To the suggestion that France should make available to the experts a list of its island possessions in the Indian Ocean, the representative of France submitted immediately in Windhoek a list of five islands called the Eparses Islands comprising Tromelin, the Glorious Islands, Juan de Nova, Bassas da India and Europa.⁴ France again repeated the same position in Addis Ababa in its written response to the request that all the nuclear-weapon States should submit written comments on the aspects of the draft treaty that they raised.⁵ Notwithstanding the oral and written comments of the nuclear-weapon States during the Addis Ababa meeting, the experts decided to maintain the text they agreed upon in the Windhoek meeting as reflected above.

1(b) "Territory"

The Harare draft of this article reflected the consensus reached during the consideration of the elements for the treaty that its terms should not violate any relevant treaty or convention, particularly in this case, the Convention on the Law of the Sea. Accordingly the article was drafted thus:

"Territory" means internal waters, territorial sea and archipelagic waters, the seabed and subsoil beneath and the land territory and the airspace above them.

It remained the same until the joint meeting of the United Nations/OAU Group of Experts and the OAU Inter-Governmental Group of Experts in Johannesburg in May/June 1995. In that meeting, a proposal was made to transfer the phrase “the land territory” to the beginning of the definition. The existing definition, it was pointed out could be interpreted as referring only to land territory related to territorial sea and archipelagic waters and not the entire land territory of Africa. By the proposal, even the Sahara desert would be covered as well as the general land territory of parties. With the acceptance of that proposal, the article became:

“Territory” means the land territory, internal waters, territorial seas and archipelagic waters and the airspace above them as well as the seabed and subsoil beneath.

1(c) “Nuclear Explosive Device”

The choice in the definition of the core of the prohibition was either to restrict it to nuclear weapons as in the case of the Latin American Nuclear-Weapon-Free Zone treaty, or to the wider nuclear explosive device, as in the case of the South Pacific Nuclear-Free-Zone treaty. In their discussion of the title of the treaty, the experts, it should be recalled, had agreed that though it would be known as a NWFZ treaty, it would not permit peaceful nuclear explosion, in light of the proliferation risk. Consequently, the core of the prohibition could not be limited to nuclear weapons, but would extend to any nuclear explosive device. The article as it appeared in the Harare draft followed closely the definition of the term nuclear explosive device by the IAEA and was identical to a similar article in the South Pacific Nuclear-Free Zone Treaty as follows:

“Nuclear explosive device” means any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used. The term includes such a weapon or device in unassembled and partly assembled forms, but does not include the means of transport or delivery of such a weapon or device if separable from and not an indivisible part of it.

No change whatsoever was made to the formulation throughout the negotiations of the treaty and it therefore remains the same in the Pelindaba Treaty.

1(d) "Stationing"

This article was not changed at all in the course of negotiating the treaty and remains in the Pelindaba Treaty as it occurred in the Harare draft:

"Stationing" means implantation, emplacement, transport on land or inland waters, stockpiling, storage, installation and deployment.

1(e) "Dumping"

The definition of the term Dumping was included in the Harare draft as follows:

"Dumping" means disposing of, unloading, depositing (i.e. its normal usage).

The occurrence of the definition was challenged by some experts as unnecessary and capable of being interpreted in a manner that could interfere with the legitimate activities of States, since they could dispose of, unload or deposit radioactive waste in a legitimate manner that would not constitute dumping. It was argued that existing instruments on Dumping defined it to mean dumping of wastes at sea. This normal meaning should not be interfered with, and a definition therefore in the African NWFZ treaty was considered unnecessary. It was therefore deleted completely, making the next issue defined to become new 1(e).

1(f) "Nuclear Installation"

The definition of nuclear installation in the Harare text is unique to the African treaty. It was felt necessary to include the definition in light of the recommendation to include a provision (not found in other nuclear-weapon-free zone treaties), prohibiting attack on nuclear installation within the zone. As it first appeared in the Harare draft, the article was as follows:

"Nuclear installation" includes nuclear power and research reactors, fuel fabrication, uranium enrichment, isotope separation and reprocessing facilities as well as any other installation with fresh or irradiated nuclear fuel and materials in any form and establishments storing significant quantities of radioactive materials.

During the negotiations in Windhoek, some experts while expressing general satisfaction with the inclusion of the article, proposed further

elaboration for purpose of clarity. The various proposals resulted in a reformulation of the article as follows:

“Nuclear installation” means a nuclear power reactor, a nuclear research reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant, a separate storage installation and any other installation or location in or at which fresh or irradiated nuclear material or significant quantities of radioactive materials are present.

In the consultations held with the nuclear-weapon States during the Windhoek meeting, the United States representative, as part of his wide-ranging comments that went beyond the areas originally conceived for the consultations, made extensive remarks on this article. He said that it was too broad, showing no regard for the purpose and intent of the installation in question. He particularly complained about the inclusion in the definition of “establishment storing significant quantities of radioactive materials” which he thought might encourage aggressor States to hide instruments for such aggression behind the cloak of such establishments. He proposed that the definition should be qualified to be restricted to establishments specifically devoted wholly to peaceful purposes.

Apart from the oral intervention in Windhoek, the United States again included its concern on the article among its written observations submitted to the Addis Ababa meeting.⁶ In reply to the concerns expressed, the Chairman of the expert group pointed out that the entire definition was predicated on peaceful uses and that no nuclear installation within the zone could in any case be intended or used for any other than wholly peaceful purposes, as such would be a gross violation of the treaty. The wording was therefore unchanged and occurs that way in the treaty.

Article 2: Application of the Treaty

The Harare draft of this article had consisted of only one paragraph reading:

Except where otherwise specified, this treaty and its protocols shall apply to the territory within the African nuclear-weapon-free zone.

During the negotiation in Windhoek, some of the experts proposed a second paragraph as occurred in the Treaty of Rarotonga, stating:

Nothing in this treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to freedom of the seas.

Though such an addition would merely acknowledge rather than confer rights, it was considered necessary to confirm the determination of ensuring that the African NWFZ treaty would respect the norms established by relevant international treaties. It would also reassure extra-zonal maritime States whose support for the treaty was considered essential. The initiative for adding the clause drew the attention of some of the nuclear-weapon States, one of which made reference to it during the consultations held with them in Windhoek. The United States' representative remarked that his country was pleased by the addition of the second paragraph that he observed was a great improvement on the Harare draft. Once that addition was agreed and made in Windhoek, the article remained unchanged.

Article 3: Renunciation of Nuclear Explosives

Following the extensive discussions that had been held in the preparatory stages, the Harare draft had reflected the general desire for a very comprehensive prohibition of activities that could lead to nuclear proliferation. Thus the list of prohibited activities had gone beyond those in the Tlatelolco and Rarotonga Treaties in that it included research, development and stockpiling. The parties would therefore undertake:

- (a) Not to undertake research on, develop, manufacture, stockpile or otherwise acquire, possess or have control over any nuclear explosive device by any means anywhere;
- (b) Not to seek or receive any assistance in the research on, development, manufacture, stockpiling or acquisition or possession of any nuclear explosive device;
- (c) Not to take any action to assist or encourage the research on, development, manufacture, stockpiling or acquisition, or possession of any nuclear explosive device by any State;
- (d) To prohibit in its territory the stationing of any nuclear explosive device.

Except for clause (d), which, as will be seen below under article 4, was considered, unrelated to the others, the remaining three clauses might have been expected to have been adopted without debate in Windhoek. However a proposal was made in a working paper submitted by the IAEA to include another clause that would prohibit “the production of highly enriched uranium and separated plutonium for the development of nuclear explosive devices”. The proposal was rejected by the experts many of whom recalled that in Harare it had been emphasized that Africa should not forgo the acquisition and use of technology that could prove vital in the future. In addition it was argued that non-proliferation requirements should be implemented in a positive manner through acts of transparency, and not through blanket prohibition and obligation to renounce all parts of the nuclear fuel cycle such as reprocessing and enrichment. Thus, clauses (a) to (c) of the article as reflected above were adopted by the experts.

During the consultations held in Windhoek with the nuclear-weapon States, the United States’ representative brought up the same suggestion as the IAEA for a prohibition on the production of highly enriched uranium and separated plutonium. In an extensive comment on the issue, he recalled United States’ longstanding policy of discouraging the global stockpiling and use of HEU and separated plutonium. He expressed the belief that the inclusion of a provision on the ban of the production by parties of HEU and separated plutonium would significantly strengthen the treaty. He argued that, most importantly, a continent-wide ban on the production of these materials would set a new standard for global non-proliferation behaviour among States, one that should reflect favourably on all treaty parties.⁷ Notwithstanding those arguments, the experts maintained their decision not to include the clause. They reasoned that though its immediate effect would have been only on South Africa as it alone had an HEU production plant, its inclusion might hamper the programmes of other African countries in the future.

The text of article 3(c) as contained in the Harare draft and adopted in Windhoek, was later amended at the Johannesburg meeting. During the consideration of the clause, it was pointed out that though it prohibited any action to assist or encourage the research on, development, manufacture, stockpiling or acquisition or possession of any nuclear explosive device *by any State*, it did not cover the possibility of assistance to non-State entities. It was agreed to plug the loophole by simply deleting the phrase *by any State*. The clause was amended accordingly to its present text, that is, “Not

to take any action to assist or encourage the research on, development, manufacture, stockpiling or acquisition or possession of any nuclear explosive device”.

Article 4: Prevention of Stationing of Nuclear Explosive Devices

The Harare draft of article 3, as shown earlier, had included as clause (d) the prohibition of the stationing of any nuclear explosive device in the territory of a party. In the course of negotiating the article in the Windhoek meeting, it was pointed out that the issue of prevention of stationing was not only very important, but was also quite distinct from the issue of renunciation of nuclear explosive devices. It was further suggested that it be reflected in a separate article. Thus a new article 4 was created with the appropriate heading.

The wording of article 3(d) of the Harare draft was transferred to the new article:

Each party undertakes to prohibit in its territory the stationing of any nuclear explosive device.

A proposal was made to add a second paragraph which, as in the Treaty of Rarotonga, would allow each party, in the exercise of its sovereign right, to decide to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage. This proposal evoked a long and lively debate with the supporters arguing on the necessity to preserve the right of States parties to conduct their bilateral relations in accordance with their national interests. It was pointed out that the occurrence of this clause in the Treaty of Rarotonga was the result of long reflection, which took account of the reality of the fact that nuclear-weapon States did not in any case usually disclose the presence or not of nuclear weapons on their ships or aircrafts when seeking clearance for visit or transit. Since such requests were generally granted in the interest of bilateral relations, it might as well be recognized in the treaty.

Opponents of the proposal however argued that the inclusion of the clause in the Treaty of Rarotonga could be justified on the grounds that there existed defence pacts between certain parties to that treaty and some

nuclear-weapon States, a fact which therefore obliged some parties to permit port calls by nuclear armed ships and aircrafts of their alliance partners. On the other hand no African State had such an agreement with any nuclear-weapon State and therefore no legal obligation to permit such visits. Insertion of the clause therefore might imply an unwitting invitation to nuclear-weapon States to clandestinely introduce nuclear weapons into the zone in violation of the basic objective of the treaty to keep Africa free of nuclear weapons at all times. The force of this argument swayed a consensus against the inclusion of the clause.

During the course of consultations in Windhoek with the nuclear-weapon States, the representative of the United States expressed regret that the clause had not been included, pointing out that it was of great interest to the United States. Though the experts did not respond positively to the remarks to add the clause, it was obvious that the issue had not been definitively settled.

Not surprisingly therefore it was re-opened by an expert at the next meeting of the group in Addis Ababa in May 1994. The argument was strongly made that some African States might find difficulty in adhering to the treaty if it did not accord them the right to make such sovereign decisions. Moreover, it was emphasized that some nuclear-weapon States might also have difficulty supporting the treaty if the flexibility for visits accorded by the Treaty of Rarotonga were denied. Representatives of some of the 14 African Embassies based in Addis Ababa that attended the negotiations as observers strongly supported the proposition that States parties should be allowed the exercise of sovereign rights in this instance. Though strong views against the proposition were also expressed, essentially that such a provision would weaken the treaty by providing a loophole which could be exploited by some regional States as well as by nuclear-weapon States to clandestinely introduce nuclear weapons into the zone, the concern for consensus on such a sensitive issue, led to agreement to add an appropriate paragraph identical to one in the Treaty of Rarotonga, which stated:

Each party in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircrafts to its ports and airfields, transit of its airspace by foreign aircrafts and navigation by foreign ships in its territorial sea and archipelagic waters in a manner not

covered by the right of innocent passage, archipelagic sea lane passage or transit passage of straits.

This formulation in the Addis Ababa draft was to be amended in the final meeting held in Johannesburg as will be shown in the appropriate chapter on that meeting.

Article 5. Prohibition of Testing of Nuclear Explosive Devices

This article did not give rise to any debate because nuclear testing has been from the beginning the subject of consensus among African States as the most important activity to be prohibited by the treaty. It should be recalled that the impetus for the 1964 OAU Declaration on the Denuclearization of Africa was nuclear testing by France in the African continent. The agreement reached during the consideration of the elements for the treaty not to limit prohibition on testing only to nuclear weapons but to extend it to all nuclear explosive devices, was considered justified in light of the evolution of perceptions in nuclear science the very limited benefits to be gained from the use of nuclear explosives.

In that connection, note was taken that the Treaty of Rarotonga had adopted the broader prohibition in its article 6. In scrutinizing that article however, it was also noted that no explicit undertaking was made by parties themselves not to test any nuclear explosive device. Rather, their undertaking was to prevent in their respective territories the testing of any nuclear explosive device. Though it was understood that the intention of those who drafted the article was that the wording prohibited each treaty party from testing in its territory, it was argued that such implicit prohibition was not strong enough and should be reflected more explicitly. Bearing this important fact in mind, the Harare draft improved on the text of the Rarotonga Treaty by providing a first clause by which each party undertakes:

Not to test any nuclear explosive device.

This was endorsed by the Windhoek meeting.

Similarly, another clause in the article that appeared in the Rarotonga Treaty as an undertaking by State parties not to collaborate in the testing of a nuclear explosive device, was considered to require the elaboration

contained in the Harare draft. It was noted that such an undertaking of non-collaboration should not be limited or be presumed to be limited to the geographical limit of the African nuclear-weapon-free zone. Rather it should be binding on each party at the global level, so as to remove the concern that a party that was able to collaborate with another State outside the zone could use the knowledge thus gained within the zone. Therefore the third clause of the article had to be of global application beyond that implied in the equivalent article in the Rarotonga Treaty. It was thus formulated in the Harare draft as follows:

Not to assist or encourage the testing of any nuclear explosive device by any State anywhere.

The resultant article 5, which did not undergo any further change thereafter, contained prohibitions that went further than in any of the existing NWFZ treaties.

Article 6. Declaration, Dismantling, Destruction or Conversion of Nuclear Explosive Devices and the Facilities of their Manufacture

This article's significance derived from the uniqueness of the African situation with respect to the timing of the creation of a NWFZ. Not having featured in any other similar treaty, it was seen from the beginning of the consideration of the elements of the treaty as one that would emphasize the peculiar nature of the African situation. Although most of the regional States had opted for a nuclear-weapon-free continent, one State in the region was suspected of developing a nuclear weapon capability. Thus even two years before President De Klerk admitted that South Africa had indeed developed that capability, African experts had postulated that for the effectiveness of the zone it was absolutely essential that South Africa must not only be a party but must declare its capabilities in the nuclear field, with a view to taking the necessary measures to ensure its reversal to a non-nuclear weapon status, if indeed it had acquired the capability.

President De Klerk's statement on the nature of the country's programme and capability just before the drafting of the treaty commenced confirmed the necessity for this article on declaration, dismantling, destruction or conversion to peaceful purposes under international supervision or with international verification. Thus, in the Harare draft, the article appeared with four clauses, dealing with each of the elements of

declaration, dismantling, and destruction, with a fourth dealing with the verification of the processes by each party undertaking:

- (a) To declare any capability for the manufacture of nuclear explosive devices;
- (b) To dismantle and destroy any nuclear explosive device that it has manufactured prior to the coming into force of this treaty;
- (c) To destroy facilities for the manufacture of nuclear explosive devices, or, where possible, to convert to peaceful uses;
- (d) To permit international inspectors to ascertain the processes of dismantling and destruction of the nuclear explosive devices, as well as the destruction or conversion of the facilities for their production.

The draft was found generally satisfactory except for clause (d) that assigned verification of the undertakings to “international inspectors”. Some experts expressed the need to be more specific about the identity of these international inspectors. The suggestion of the observer from the IAEA that such a responsibility should be entrusted to the IAEA and that the term be amended to “IAEA inspectors” led to a long discussion. The IAEA observer not only evoked the long experience of the Agency’s inspectors but also their posing hardly any risk of proliferation of knowledge of nuclear weapons when involved in the inspection of the South African facilities.

Some of the experts however argued that while the expertise and experience of IAEA inspectors was well known, Africa should not totally rely on the Agency for performing such a vital function in the treaty. They cited the fact that these IAEA experts had failed to confirm Africa’s earlier loud, bitter and accurate allegations of a South African nuclear weapon capability that posed a grave threat to the continent’s security. They saw that failure originating not in technical weakness but in lack of will that had its origin in political considerations. They pointed to the provision in the treaty for the creation of a mechanism for ensuring compliance, and argued that verification of dismantling, destruction, or conversion should be one of its most important responsibilities. This mechanism should be given the flexibility to call upon expertise from other sources than the Agency.

The discussion was also linked to the Complaints Procedure envisaged in one of the draft annexes to the treaty that provided for the use by the African Commission on Nuclear Energy not only of IAEA inspectors but also of regional inspectors. This was an indication that while not necessarily wishing to set up a parallel body (that would in any case be very expensive

for Africa), the continent nevertheless could not foreclose the development of certain expertise in the field of verification.

Eventually, the experts agreed to a joint role under the article for the IAEA and the Mechanism established by the zonal treaty for compliance, that is, the African Commission on Nuclear Energy. Thus the Windhoek draft amended paragraph (d) of the Harare draft as follows:

To permit the International Atomic Energy Agency (hereinafter referred to as the IAEA) and the Commission established in Article 12 to verify the process of dismantling and destruction of the nuclear explosive devices, as well as the destruction and conversion of the facilities for their destruction.

Thereafter the text of the article saw no further revision and thus appears as above in the Treaty of Pelindaba.

Article 7. Prohibition of the Dumping of Radioactive Wastes

In developing the elements for the treaty, the United Nations/OAU Group of Experts had called attention to the emotional issue of the dumping of toxic waste in Africa. African concern about this practice, and the danger it posed to the continent, had led to its being raised at the United Nations General Assembly and later the adoption in 1991 of the Bamako Convention on the Ban of the Import into Africa and Control of Trans-Boundary Movement and Management of Hazardous Wastes within Africa. The importance of the Bamako Convention lay in the fact of dealing with the peculiar nature of the problem of dumping in as much as it had been shown that certain African governments and individuals had encouraged the dumping of toxic waste in their countries for financial benefit. Having prohibited the practice in an international instrument covering all wastes in general, the Bamako Convention was seen as of relevance to the African NEFZ treaty.

For that reason, in clause (a) of the article dealing with dumping in the Harare draft, "Each party undertakes:"

- (a) To support implementation of and apply measures equivalent to those contained in the Bamako Convention on the Ban of the Import into Africa and the Control of Trans-Boundary Movement and

Management of Hazardous Wastes within Africa in so far as it is relevant to radioactive waste.

In the consideration of the article during the Windhoek meeting, some experts observed that as desirable as it was that all African countries should implement the Bamako Convention, many had not yet become parties and could not therefore legally be required to be bound by it. While parties to the Convention could be enjoined to effectively implement its terms, non-parties could only be encouraged to use its provisions as guidelines. It was agreed therefore to amend the text to read as follows:

To effectively implement or to use as guidelines the measures contained in the Bamako Convention on the Ban of the Import into Africa and Control of Trans-Boundary Movement and Management of Hazardous Wastes within Africa in so far as it is relevant to radioactive waste.

Clause (b) of the article in which parties undertake:

Not to take any action to assist or encourage the dumping of radioactive wastes and other radioactive matter anywhere within the African nuclear-weapon-free zone.

was considered satisfactory and adopted.

Article 8. Peaceful Nuclear Activities

One of the most important principles for the African NWFZ as developed in the Elements for the Treaty, was the encouragement of the peaceful uses of nuclear energy by African States. This was not seen as being inconsistent with the aim of non-proliferation of nuclear weapons. On the contrary, the promotion of cooperation within the zone on peaceful uses was seen as part of the multifaceted efforts for the region's development and an important instrument for building confidence among African States. Needless to note therefore that the approach to peaceful uses in the Rarotonga Treaty (article 4) that dealt with that issue exclusively in the context of safeguards, was considered unsatisfactory. Though the importance of verification of peaceful uses was not to be minimized, it needed not take centre stage from the importance of the activities to be verified. For the African nuclear-weapon-free zone therefore, two separate articles were proposed, the first to deal with peaceful uses, and the second to deal with verification of peaceful uses.

In elaborating the article on peaceful uses, the approach in the Tlatelolco Treaty (article 17) which affirmed that nothing in the treaty prejudiced the rights of the contracting parties to use nuclear energy for peaceful purposes especially for their economic development and social progress, was found appropriate. It therefore featured as paragraph 1 of article 8 that States:

Nothing in this treaty shall be interpreted as to prevent the use of nuclear science and technology for peaceful purposes.

To this was added two other paragraphs that took the issue of peaceful uses beyond the passive level of non-hindrance to the positive level of the promotion of the use of nuclear science and technology for economic and social development. These paragraphs were based to a great extent on the report of the seminar on Africa's Role in Nuclear Science for Peace and Development held in Kampala, Uganda on 12-16 March 1990. In its Recommendation No. 4 on cooperation, the seminar recommended *inter alia* that the OAU, and IAEA should foster cooperation among existing nuclear centres (in Africa) "with a view to facilitating exchange of information, sharing research and development facilities for the development of nuclear science and technology expertise in African countries, sharing training facilities for nuclear scientists and promoting cooperation in technical transfer and development of local capabilities in the manufacture of some equipment and in isotopes production and distribution".⁸

After considering the report of the Seminar, the OAU Council of Ministers, in its subsequent resolution expressed its conviction in the importance of Nuclear Science and Technology in the development of Africa and requested the OAU Secretary-General to monitor and report on the implementation of the recommendations of the seminar.⁹ Since that time, however, efforts at cooperation had been mainly encouraged by the IAEA under whose auspices was established the African Regional Cooperation Agreement for Research, Training, and Development Related to Nuclear Science and Technology (AFRA) for this purpose.¹⁰

Paragraphs 2 and 3 of article 8 were therefore drafted to reflect the situation and the hope reposed in further cooperation as follows:

2. As part of their efforts to strengthen their security, stability and development, the parties undertake to promote individually and collectively the use of nuclear science and technology for economic and social development. To this end they undertake to establish and strengthen mechanisms for cooperation at the bilateral, sub-regional and regional levels.
3. Parties are encouraged to make use of the programme of assistance available in the IAEA and, in this connection, to strengthen cooperation under the African Regional Cooperation Agreement for Research, Training and Development Related to Nuclear Science and Technology (hereinafter referred to as AFRA).

Article 9. Verification of Peaceful Uses

The first two clauses (a) and (b) of this article appeared in the Harare draft in the following manner:

Each party undertakes:

- (a) That all activities for the peaceful use of nuclear energy shall be conducted under strict non-proliferation measures to provide assurance of exclusively peaceful uses;
- (b) To conclude a comprehensive safeguards agreement with the IAEA;

At their Windhoek meeting, some textual modification was made to clause (b) adding at the end the phrase "... for the purpose of verifying compliance with the undertakings in subparagraph (a) of this article". There was an understanding that a clarification of the nature of the safeguards referred to in the clause would be elaborated in an annex. This was ultimately contained in annex II to the treaty.

At the Johannesburg joint meeting of the United Nations/ OAU Group and the OAU Intergovernmental Group of Experts, a textual modification was also proposed to clause (a) to read as follow: "To conduct all activities for the peaceful use of nuclear energy under strict non-proliferation measures to provide assurance of exclusively peaceful uses". Both clauses thus appear in the treaty as amended at the two meetings.

Clause (c) of the article as contained in the Harare draft was however the subject of prolonged debate in the Windhoek meeting. Its wording was as follows:

- (c) Not to provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material for peaceful purposes to:
 - (i) Any non-nuclear-weapon State unless subject to comprehensive safeguards agreement concluded with the International Atomic Energy Agency;
 - (ii) Any nuclear-weapon State unless subject to applicable safeguards agreement concluded with the International Atomic Energy Agency;

This formulation which had been patterned after Article 4 of the Rarotonga Treaty, was criticized by some experts on the ground that it might impose too demanding obligations on the African exporter of source or special fissionable material and therefore restrict their exports. While the conclusion of comprehensive safeguards agreement with the IAEA was necessary for non-nuclear-weapon States party to the NPT, it was the responsibility of such States as well as those non-parties to the treaty to do so before commencing any nuclear programme, and not that of an African exporter. As far as a nuclear-weapon State importer was concerned, no African exporter would be in a position to ensure that a nuclear-weapon State would comply with any safeguards agreement in respect of any particular export from an African supplier.

Other experts however supported the text as drafted, arguing in favour of the strict requirement of a comprehensive safeguards agreement with the IAEA as a condition of export to any non nuclear-weapon State. This was to affirm Africa's commitment to non-proliferation not only in its region but in other regions as well. As far as a nuclear-weapon State importer was concerned, even if they might eventually divert the material for other purposes, at the risk of not acting in good faith, it was still necessary to require these commitments as a condition for the export, to assure the African exporter that its material would only be used for peaceful purposes. In this connection, the observer from one of the States parties to the Rarotonga Treaty explained how compliance with the similar provision in that Treaty was required. She informed the meeting that her own country contented itself with demanding an assurance of peaceful use of export

from the country by a nuclear-weapon State importer. She admitted however that her country had no way of ensuring that the undertaking was kept.

In light of the various views expressed, a conclusion was drawn that it was incumbent on the African exporter to ensure that its exports to non-nuclear-weapon States would not contribute to the proliferation of nuclear weapons. It should therefore demand as a pre-condition the conclusion by such States of a comprehensive safeguards agreement with the IAEA. However as far as the nuclear-weapon States are concerned, their current status, which Africa wished would be reversed through nuclear disarmament, would make it impossible for an African exporter to enforce a requirement for peaceful use of its export to such countries. Therefore, consensus was reached to retain only clause c(i) concerning requirement of safeguards agreement by non-nuclear-weapon State importers and to delete clause c(ii) which required similar condition for nuclear-weapon State.

Article 10. Physical Protection of Nuclear Materials and Facilities

This is another novel element that had not been dealt with in any of the existing nuclear-weapon-free zone treaties. Its origin can be traced to the international concern over the security of nuclear materials following the collapse of the Berlin wall and the uncertainties that exploded in the former Soviet Union. This concern was considered as being relevant to Africa in the context of a NWFZ that was meant *inter alia* to encourage the uses of nuclear technology for peaceful purposes. International cooperation for the promotion of peaceful uses of nuclear energy would require assurance to Africa's partners of the safety of nuclear materials, facilities and equipment. Thus an article on physical protection was considered necessary both as a challenge for African countries as well as a confidence-building measure aimed at Africa's partners.

The Harare draft of the article consisted of two clauses whereby each party undertakes:

- (a) To maintain the highest standard of security and effective physical protection of nuclear materials, facilities and equipment to prevent theft or unauthorized use and handling;

- (b) To apply measures of physical protection that provide protection equivalent to that provided for in the Convention on Physical Protection of Materials and International Guidelines on Protection of Materials developed by the International Atomic Energy Agency for that purpose.

During the consideration of this article in the Windhoek meeting, attention was mainly focussed on clause (b). Some experts argued that while the IAEA Convention on Physical Protection was an appropriate reference instrument, the formulation of the clause should be such as to take account of the fact that many African countries had not yet become parties to the Convention, and should not therefore be obliged to apply it. Others argued that even those countries that had not adhered to the IAEA Convention should, as parties to the African NWFZ, be willing to apply measures equivalent to those provided for in the Convention. A consensus was reached to maintain the text with a slight rewording of the opening phrase for greater clarity as follows:

To apply measures of physical protection equivalent to those provided for ...

The same clause however was the subject of extensive comment by the representative of the United States during consultations held with the nuclear-weapon States in Windhoek. The representative observed with pleasure the inclusion of such an article in the draft as it would go a long way in meeting the growing concern of the United States at the danger posed by the laxity in some countries with significant nuclear programmes and in some cases, with significant numbers of nuclear weapons. He was fully satisfied with part (a) of the draft, which he observed, set the goal that the parties to the treaty wished to attain. However, he remarked that part (b) by committing parties exclusively to the IAEA Convention as the yardstick for their action, set a standard lower than what was intended in part (a). In his view, the IAEA Convention should be the minimum of the possible measures that parties to the African Nuclear-Weapon-Free Zone Treaty should implement towards meeting their target expressed in part (a). He therefore suggested that language should be found to make the relationship between the two parts of the article more explicit.

During further discussion at the Addis Ababa meeting, an expert made the point that the IAEA Convention dealt only with materials and not

facilities and equipment, as was the scope of part (a) of the article. It was suggested therefore that account could be taken of that fact, as well as of the comments of the observer from the United States, by linking together the two clauses of the article and reflecting in an appropriate manner that application of measures equivalent to those in the IAEA convention was not exhaustive but was to be among other possible measures. Thus the text was amended to read as follows:

To maintain the highest standards of security and effective physical protection of nuclear materials, facilities and equipment to prevent theft or unauthorized use and handling. To that end each party, *inter alia*, undertakes to apply measures of physical protection equivalent to those provided for in the Convention on Physical Protection of Material and in recommendations and guidelines developed by the IAEA for that purpose.

Article 11. Prohibition of Armed Attack on Nuclear Installations

The inclusion of an article of this nature, which had not featured in earlier treaties on nuclear-weapon-free zones, arose out of the concerns of African States following the Israeli attack on Iraqi nuclear installations in 1988. Even if most African States had no nuclear facilities, they were horrified by the implication that the nuclear programmes of developing States might be destroyed by external military action. The particular concerns of the North African countries that they might be subjected to similar attacks were widely shared. If these countries were to become parties to the African NWFZ, those of them that had commenced some nuclear activities and were geographically close to Israel needed some assurances that these facilities would not be attacked with impunity.

The relevant article appeared in the Harare draft as follows:

Each party undertakes not to take or assist or encourage any action aimed at an armed attack by conventional or other means against nuclear installations in the African nuclear-weapon-free zone.

The text generated considerable comments at the meetings of the Group of Experts in Windhoek and Addis Ababa. The first concern was whether it was sufficient to address the prohibition only to parties to the African NWFZ treaty. It was argued that the main danger of attack was from States outside the region, which therefore should be covered as well by the

prohibition. The second concern was whether immunity from attack on their nuclear installations should be extended only to parties to the treaty or to all States in the zone. The third was whether only safeguarded installations should be covered or whether coverage should be extended to all installations in States parties or in all States in the zone.

On the first concern, after prolonged debate by the Group of Experts, it was concluded that though the ideal would have been to require extra-zonal States to undertake the non-attack obligation in a protocol, the target States were unlikely to agree to become parties to such a protocol, rendering it a futile document. On the second and third points, it was concluded that all nuclear facilities in all States in the zone should be covered since any attack on a nuclear facility could be tantamount to the use of radiological weapons whose widespread effect would not respect national boundaries. The draft text of the article was therefore maintained.

However, in the course of consultations in Windhoek with the nuclear-weapon States, the United States observer made some comments on the wording of the article. He recommended that protection against attack should be accorded only to parties to the treaty. This was particularly necessary in view of the definition of the term *nuclear installations* in article 1, which in the view of the United States was too broad and which should have been narrowed to apply only to such sites that were wholly devoted to peaceful uses. Such a narrow definition would exclude the possibility of a State creating a sanctuary on a military site (such as an airfield) to conduct offensive operations against another by basing radioactive materials on the site. The United States concluded that the all-inclusive wording of the article, together with the wide definition of nuclear installations, could create a potentially dangerous loophole in the treaty. Notwithstanding these arguments, the experts confirmed that the text as drafted would best protect the interest of Africa while at the same time not promoting proliferation.

Article 12. Mechanism for Compliance

The necessity of setting up an organ for compliance with the undertakings in the treaty had been accepted from the beginning as a serious matter in implementing the African NWFZ concept in 1991. It was also accepted early that the reality of limited resources dictated that the organ be within the context of an already existing inter-African

organization, the OAU. Thus a middle of the road approach between the independent and elaborate organ created by the Treaty of Tlatelolco and the informal approach in the Control System of the Treaty of Rarotonga was contemplated. Putting the agreed outlines of the organ in treaty language was reflected in two parts, namely a main treaty article outlining the organ and its responsibilities, and an annex detailing the mode of selecting the organ and other procedural aspects of its functioning. The elaboration in the Harare draft of article 12, which deals with the first part, drew from the language of the Control System of the Rarotonga Treaty (article 8) with respect to reports and exchange of information, arranging consultations, reviewing the application of safeguards, and bringing into effect the Complaints procedure. To these elements were added others relating to the promotional responsibilities on peaceful uses of nuclear science and technology, which the African experts considered as crucial to the treaty. The article as appeared in the Harare draft was as follows:

1. For the purposes of ensuring compliance with their undertakings with respect to both the activities prohibited in the interest of non-proliferation and those permissible for the promotion of peaceful uses of nuclear energy, the Parties agree to establish the African Commission on Nuclear Energy (hereinafter referred to as the Commission).
2. The Commission shall be responsible for:
 - (a) Collating the reports and the exchange of information as provided for in article 12 (present article 13);
 - (b) Arranging consultations as provided for in article 13 (present article 19);
 - (c) Reviewing the application to peaceful nuclear activities of safeguards by the IAEA as elaborated in annex II;
 - (d) Bringing into effect the complaints procedure elaborated in annex IV;
 - (e) Encouraging regional programmes for cooperation in the peaceful uses of nuclear energy;
 - (f) Promoting international cooperation with extra-zonal States for the peaceful uses of nuclear energy.
3. The Commission shall meet once a year, and may meet in extraordinary session as may be required by the complaints procedure in annex IV.

In the consideration of the article in the Windhoek meeting, several amendments mainly of the nature of clarifications of the text were proposed and adopted. Thus in paragraph 1, it was agreed to immediately make the link between the article and its elaborating annex. Therefore the phrase:

“as set out in annex III” was added at the end of the paragraph.

In paragraph 2, no amendment was proposed to clause (a). However clause (b) was extensively amended. It was observed by an expert that the article to which the clause referred dealt with Amendments to the Treaty when in fact the role intended for the Commission went far beyond that issue and included the convening of conferences of parties on any issue relevant to the treaty. The clause was therefore redrafted as follows:

Arranging consultations as provided for in annex IV, as well as convening conferences of parties on the concurrence of a simple majority of State parties on any matter arising from the implementation of the treaty.

Clauses (c) and (d) were not amended. However for clauses (e) and (f), it was suggested that the use of the term nuclear energy at the end of these clauses was restrictive and did not take into account that the benefit which most African countries would likely derive for some time was in the secondary uses of nuclear science and technology. For that reason the appropriate term for the clauses should be “nuclear science and technology”. The proposal was accepted and the clauses were changed accordingly:

- (e) Encouraging regional programmes for cooperation in the peaceful uses of nuclear science and technology;
- (f) Promoting international cooperation with extra-zonal States for the peaceful uses of nuclear science and technology;

Paragraph 3 was also amended in the Windhoek meeting by the addition of the phrase “in ordinary session”, thus becoming:

The Commission shall meet in ordinary session once a year, and may meet in extraordinary session as may be required by the complaints procedure in annex IV.

It should be noted that further negotiations of this article took place at the Johannesburg meeting as will be seen later. It should also be pointed out that negotiations on the procedural aspects of setting up and the functioning of the Commission were undertaken in the context of the elaboration of annex III and will therefore be treated later.

Article 13. Report and Exchanges of Information

Reporting obligations for the parties feature in both the Tlatelolco and Rarotonga Treaties. In the case of the former, each party is required only to report that no prohibited activity occurred in its territory during the reporting period (article 14). The Rarotonga Treaty is more demanding in that it requires each party to report on any significant event, or matters arising under or in relation to the treaty (article 9). In the case of the African NWFZ treaty, it was considered that reporting obligation of State parties must be comprehensive, both for reasons of transparency and for encouraging cooperation through availability of information. Thus the Harare draft of the article was worded with those aims in mind:

1. Each party shall submit an annual report to the Commission on all its nuclear activities.
2. Each party shall promptly report to the Commission any significant event affecting the implementation of the treaty.
3. The Commission shall receive an annual report from the Secretariat of the African Regional Cooperation Agreement for Research Training and Development Related to Nuclear Science and Technology (AFRA) on its activities.

In the consideration of the article during the Windhoek meeting of the Group of Experts, attention was particularly focussed on paragraph 1 which some considered as too far reaching in that it required a report on all of a party's nuclear activities. While affirming the necessity for transparency and for cooperation among parties to the treaty, those experts expressed the view that the volume of information required to comply might be too much for some parties to assemble on an annual basis, and might be too heavy for the Commission itself to digest. They recommended that reporting obligation be limited to only those activities relevant to the treaty.

Other experts however advocated the maintenance of the text as drafted stressing that it was meant to reflect *inter alia* the difference

between the concept behind the reporting obligations of the Treaties of Tlatelolco and Rarotonga on the one hand, and that of the African NWFZ treaty on the other. In the two earlier Treaties, reporting was required exclusively as part of the complex measures of verification referred to as the control system. (c.f. article 12(1) of the Tlatelolco Treaty and article 8(2a) of the Rarotonga Treaty). However in the envisaged African treaty, reporting was to serve both as a means of verifying compliance with the prohibition and renunciation clauses and of encouraging cooperation among parties. It was further argued that even if initially the volume of some reports might be heavy, experience would later point to refined ways of reporting that could be less voluminous and yet be complete in essentials. To expedite such an ideal way of reporting, it was suggested that among the responsibilities that might be assigned to the Commission in the early years of operation was the development of a reporting format, which would assist parties in complying with their reporting obligations.

Following these exchanges, it was agreed that to avoid imposing on parties the obligation to include in their reports unnecessary details, the word “all” would be deleted, while the phrase “as well as other matters relating to the treaty” would be added as an assurance that no relevant information would be omitted. It was also agreed that provision should be made in the elaboration of the annex on the African Commission on Nuclear Energy for entrusting the Commission with drawing up a format for reporting by parties. Thus paragraph 1 was amended as follows:

Each party shall submit an annual report to the Commission on its nuclear activities as well as other matters relating to the treaty.

Paragraph 3 of the article that required an annual report from AFRA had also to be renegotiated. It was stated that since the Secretariat of AFRA was being managed by the IAEA, it could not be obliged to report to a non-IAEA body. Thus while the African Commission would be interested in a report on the activities of AFRA, it could only request it directly from the IAEA and not from the AFRA Secretariat. The paragraph was therefore amended as:

The Commission shall receive an annual report on the activities of AFRA.

No reference to the Secretariat was thereby made; however, neither was the new text specific as to who would submit the report to the

Commission or how the Commission would receive it. This doubt was clarified at the Johannesburg final negotiating meeting. At that meeting, the observer expert from the IAEA pointed out that his Agency which assured the Secretariat of AFRA would be able to provide a report on its activities on specific request by the African Commission on Nuclear Energy, but not as a treaty obligation. The text of the paragraph was thus amended again to be:

“The Commission shall request the IAEA to provide it with an annual report on the activities of AFRA”.

At the Johannesburg meeting also, another more substantive amendment was made to the Article, which will be discussed in the appropriate chapter.

Article 14. Conference of Parties

A separate article on the meeting of parties did not feature in the Harare draft of the treaty. Rather, it was subsumed under article 13 of that draft which was entitled Amendments and which provided in its paragraph 2 as follows:

A conference of parties shall be convened to consider such amendment.

At their meeting in Windhoek, some experts observed that the issue of amendments was totally different from that of meetings of parties whose purposes transcend the consideration of amendments only. Other issues that would necessitate convening such meetings were cited to include the election of the members of the Commission on Nuclear Energy, selection of its headquarters, and the adoption of its budget as well as a scale of assessment to be paid by parties. These elements formed the bases of a proposed new article, which was agreed upon and reflected as article 14 under the title: “Meeting of Parties”. It was formulated as follows:

1. A meeting of all parties to the treaty shall be convened by the Depositary as soon as possible after the entry into force of the treaty to, *inter alia*, elect members of the Commission and determine its headquarters. Further meetings of State parties shall be held as necessary and at least every three years, and convened in accordance with paragraph 2 (b) of article 12.

2. The meeting of State parties shall adopt the Commission's budget and a scale of assessment to be paid by the State parties.

The textual amendment of the title to become Conference of Parties was later proposed at the Johannesburg meeting, in order to be consistent, as the author of the proposal explained, with the normal terminology for regular gathering of parties to a treaty. That change also entailed the consequential substitution of the word "Conference" for "Meeting" in paragraphs 1 and 2 of the article. In the Johannesburg meeting, it was also agreed to increase the frequency of the Conference of Parties, from "at least every three years" to "at least every two years".

Article 15. Interpretation of the Treaty

This article also did not feature in the Harare draft of the treaty; it was proposed for inclusion during the Windhoek meeting under the title "Settlement of Disputes" and formulated as follows:

Any dispute arising out of the interpretation of the treaty shall be settled by negotiations or another procedure agreed to by parties, which may include recourse to an arbitral panel or to the International Court of Justice.

It featured as such in the Addis Ababa Draft. At the Johannesburg meeting however, the proposal for amendment of the article and its title were made. First it was remarked that the provision of the article dealt exclusively with dispute arising out of interpretation of the treaty and not with dispute of a general nature. For that reason, it was proposed that a more appropriate title for the article should be "Interpretation of the Treaty". Second, it was observed that the organ created by the treaty itself for its implementation, the Commission on Nuclear Energy, was, paradoxically, not included among the bodies, which could be called upon to mediate in case of dispute on interpretation. Indeed it was argued that in case of failure of bilateral negotiation between the parties to an interpretation dispute, the Commission should be the body of first recourse, and should therefore be included in the article. The two proposals were accepted. The title was therefore changed to "Interpretation of the Treaty" and the wording amended to:

Any dispute arising out of the interpretation of the treaty shall be settled by negotiations, by recourse to the Commission, or another procedure

agreed to by the parties, which may include recourse to an arbitral panel or to the International Court of Justice.

Article 16. Reservations

One of the agreed bases for assuring a credible African NWFZ was that the treaty should not be subject to reservations. This article, which appeared as article 14 of the initial Harare draft, did not give rise to any further discussion throughout the negotiation of the treaty.

Article 17. Duration

As included in the Harare draft of the treaty, the issue of Duration was combined with that of Withdrawal, in article 15 of the draft which was entitled: "Duration and Withdrawal", and was formulated as follows:

1. This treaty shall be of unlimited duration and shall remain in force indefinitely, provided that each 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 this treaty, have jeopardized its supreme interests.
2. Withdrawal shall be effected by a party giving notice which includes a statement of the extraordinary events it regards as having jeopardized its supreme interest, twelve months in advance to the Depositary. The Depositary shall circulate such notice to all other Parties.

The combination of the two issues in one article followed the examples of the Treaties of Tlatelolco and Rarotonga. (c.f. article 30 of Tlatelolco and article 13 of Rarotonga). At their meeting in Windhoek however, some experts proposed that the two issues be separated into different articles for the reason that while the one, Duration, connoted permanence as recommended by the first meeting of the group of experts, the other denoted an uncertainty which it was not the intention that the treaty should encourage. Indeed at the first meeting of the experts there had been some debate and divergence of views as to whether or not withdrawal should be permitted in the treaty. If consensus was ultimately reached to allow withdrawal because such a provision existed in all international treaties, it was felt by some experts that it should not be placed on the same pedestal as the issue of duration on which there had been spontaneous unanimity.

Agreement was reached to have two separate articles and the issue of Duration was formulated in article 17 simply as:

This treaty shall be of unlimited duration and shall remain in force indefinitely.

Another article on “Withdrawal” was also formulated separately and moved down, as will be seen later.

Article 18. Signature, Ratification and Entry into Force

The Harare draft, in what was then article 16 with the same title as the present article 18, was formulated as follows:

1. This treaty shall be open for signature by any State in the African Nuclear-Weapon-Free Zone. The treaty shall be subject to ratification.
2. This treaty shall enter into force on the date of deposit of the twenty-seventh instrument of ratification.
3. For a signatory, which ratifies this treaty after the date of the deposit of the twenty-seventh instrument of ratification, the treaty shall enter into force on the date of deposit of its instrument of ratification.
4. This treaty and the instrument of ratification shall be deposited with the Secretary-General of the Organization of African Unity, who is designated as depositary of the treaty.

During the Windhoek meeting of the experts, one major issue was raised as to the appropriateness of including paragraph 4. It was considered that the paragraph belonged more appropriately to another article entitled Depositary Functions. That observation was accepted and agreement was reached to transfer the paragraph. Having also been pointed out that the membership of the OAU was by then 54, the figure of 27 in paragraph 2 of the article was changed to 28.

However in their Addis Ababa meeting in May 1994, some of the observers from African embassies in Addis Ababa argued fervently for ratification by at least two thirds of OAU member States, on the grounds that the importance of the treaty justified such a high commitment among African States. Though several experts repeated the view that a two-thirds requirement for ratification would take too long a time for the entry into

force of the treaty, it was felt necessary to take into account the views of those representatives, who though not members of the group of experts would still have a role in the final decision when the draft treaty was ultimately submitted to the Organization. It was decided therefore to reflect in the Addis Ababa draft both simple majority of 28, and two-thirds majority of 35, in square brackets, for the OAU itself to finally decide. That decision was in fact taken at the joint meeting of the OAU Inter-Governmental Group of Experts and the United Nations/OAU Group of Experts in Johannesburg when the draft treaty was finalized. It was then agreed that a simple majority of 28 was the more realistic figure if the treaty were to enter into force without too long a delay.

Article 19. Amendments

The article on amendments, which featured in the Harare draft as article 13, had 4 paragraphs as follows:

1. Any amendment to the treaty proposed by a party shall be submitted to the Commission, which shall circulate it to all parties.
2. A Conference of Parties shall be convened to consider such amendment.
3. Decision on the adoption of such amendment shall be taken by a two-thirds majority of the parties.
4. An amendment so adopted shall enter into force after receipt by the depositary of the twenty-seventh instrument of ratification.

The discussion of the article in the Windhoek meeting centred on the method of the adoption of amendments as contained in paragraph 2. Though the draft had followed the example of the Tlatelolco Treaty in requiring the convening of a Conference of Parties for considering an amendment, doubts were raised by some experts as to the feasibility or indeed the necessity of convening a meeting of parties each time there was a proposal for an amendment. Some experts observed that amendments would be of varying degrees of importance. For a minor amendment, it was suggested that the Commission to which it would have been submitted in the first instance in keeping with paragraph 1, should only be required to circulate the proposal with a request that each party should indicate in a written response its support or opposition to it. If two thirds of parties respond in favour of the proposal, the amendment would be considered

adopted and would enter into force on the deposit of the required number of ratifications for amendments.

For a major amendment, however, it was suggested that in circulating it, the Commission would invite parties to indicate their concurrence to the convening of a conference to consider the amendment. On the positive response of a simple majority of parties, a conference would convene and would require a two-thirds majority of parties to adopt the amendment. Once adopted the amendment should enter into force on the receipt by the depositary of the twenty-eight instrument of ratification, that is, the same number prescribed for the entry into force of the treaty itself.

Though other experts raised doubts as to the wisdom of giving the Commission more than a post office role in handling amendments by investing it with the power to make judgement on which was a minor and which was a major amendment, it was decided by consensus to accept the suggestions on the condition that the formulation would not make an overt distinction between a minor or a major amendment. In the process of redrafting, paragraphs two and three in the draft were merged into one paragraph as follows:

Decision on the adoption of such an amendment shall be taken by a two-thirds majority of the parties either through written communication to the Commission or through a conference of parties convened upon the concurrence of a simple majority.

Article 20. Withdrawal

As was noted in discussing the evolution of article 17 above, it was decided at the Windhoek meeting that a separate article should be devoted to this issue. In transferring to the new article the relevant part of the Harare draft of the combined article, the experts had a discussion as to the length of notice to be given by a withdrawing party before withdrawal became effective. The Harare draft had opted for a twelve-month period, as is the case in the Treaty of Rarotonga (article 13). In the discussion in Windhoek, some experts expressed the view that that period was too long and that it be reduced to a period between the three months required by the Treaty of Tlatelolco (article 30) and the NPT (article X) and the twelve months in the Treaty of Rarotonga. Eventually a consensus was reached to maintain the twelve-month notification period and the text was redrafted as follows:

1. Each 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 this treaty have jeopardized its supreme interests.
2. Withdrawal shall be effected by a party giving notice which includes a statement of the extraordinary events it regards as having jeopardized its supreme interest, twelve-months in advance to the Depositary. The Depositary shall circulate such notice to all other parties.

During the Johannesburg meeting, the issue of Withdrawal was reopened with a strong argument that it should not be permitted. In light of the security interest of Africa implied in the treaty, some OAU governmental experts wondered why any African State would wish to withdraw from such a treaty except if its intention was to jeopardize the continent's security. The African Nuclear-Weapon-Free Zone Treaty, it was argued, was not to be treated like just another multilateral regional treaty to which African States might or might not adhere. The Apartheid South African experience had made it imperative that all African States should be transparent in the issue of nuclear weapons, which more than any other instrument of war, could pose a danger of immeasurable disaster for the continent as a whole. Though no State could be compelled to adhere to the treaty, voluntary adherence should signify a perpetual commitment.

Others, however, argued strongly in support of the retention of the article. Reference was made in particular to the NPT considered to be the centrepiece of the non-proliferation regime, which has an article on withdrawal. Just as adherence to a treaty was an act of sovereignty, so also should be the right to withdraw, which should therefore not be denied. In the end it had to be recognized that notwithstanding the great importance of the treaty for African security, the right of withdrawal had to be maintained. However, it was agreed that the article should be "downgraded" by being moved from being Article 18 to a position as close as possible to the last of the final clauses. It thus became Article 20.

Article 21. Depositary Functions

The first text of this article that appeared in the Harare draft as article 17 followed the examples of the Treaties of Tlatelolco and Rarotonga in placing in two separate articles the identity of the depositary authority and

the enumeration of the authority's functions. Thus the identity of the authority was contained in article 16 of the Harare draft entitled "Signature, Ratification and Entry into Force", while article 17 listed the functions as follows:

The depositary of this treaty shall:

- (a) Register this treaty and its protocols pursuant to Article 102 of the Charter of the United Nations;
- (b) Transmit certified copies of the treaty and its protocols to all States in the African Nuclear-Weapon-Free Zone and to all States eligible to become a party to the protocols to the treaty and shall notify them of signatures and ratifications of the treaty and its protocols.

As had been mentioned in dealing with article 18 earlier, the experts at their meeting in Windhoek decided to delete the identification of the depositary authority from the article on Signature, Ratification and Entry into Force, and transfer it to this article on Depositary Functions, with an addition that the text should be equally authentic in all the working languages of the OAU. Thus what became paragraph 1 of the article was redrafted as follows:

This treaty, of which the Arabic, English, French, and Portuguese texts are equally authentic, shall be deposited with the Secretary-General of the OAU, who is hereby designated as Depositary of the treaty.

The text of the old article in the Harare draft, which became paragraphs 2 and 3 was further elaborated for completeness with the addition of a new clause (a) to paragraph 2 as follows:

The Depositary shall:

- (a) Receive instruments of ratification;
- (b) Register this treaty and its protocols pursuant to Article 102 of the Charter of the United Nations;
- (c) Transmit certified copies of the treaty and its protocols to all States in the African Nuclear-Weapon-Free Zone and to all States eligible to become party to the protocols to the treaty, and shall notify them of signatures and ratifications of the treaty and its protocols.

The article as redrafted remained unchanged thereafter.

Article 22. Status of the Annexes

This article remained unchanged from its first text in the Harare draft, in which it appeared as article 18 as follows:

The annexes form an integral part of this treaty. Any reference to this treaty includes the annexes.

CHAPTER 7

NEGOTIATING AND DRAFTING THE TREATY (PART III): ANNEXES AND PROTOCOLS

ANNEXES

Annex I. Map of an African Nuclear-Weapon-Free Zone

The decision to attach in an annex to the treaty on the African nuclear-weapon-free zone a map showing the geographical limits of the zone was in part inspired by the example of the Treaty of Rarotonga. However it was also in recognition of the complexity of the issue and a desire to ensure that the long and complicated negotiations that it would entail should not impede progress on the negotiations of the other articles of the treaty. Being intimately linked to Article 1(a) on Definition of the African Nuclear-Weapon-Free Zone, annex I had to follow the long and delicate course of the negotiations of that article.

The Harare draft, which had adopted a minimalist approach to the definition of the zone in its article 1(a) as “the continent of Africa and the adjoining islands”, envisaged an annex which would list the “adjoining islands” and to which a map of the zone would be attached. However the Harare draft merely indicated in its annex that the description of the geographical parameters for the annex is to be discussed at a subsequent meeting after which the illustrative map would be drawn.

When the annex was negotiated in great detail in the Windhoek meeting of the experts, the view was widely shared that it should elaborate on the new text of article 1(a) as agreed earlier during the meeting. Since there was no doubt about “island States members of the OAU” the negotiations focussed on the term “other adjoining islands”. The idea of simply including in the annex all islands considered by the OAU in its

resolutions to be part of Africa had not met with consensus in negotiating article 1(a). The alternative was to make a selective listing of those islands considered less controversial. To these might be added other islands between the listed islands and continental Africa in order to ensure the contiguity of the zone. All would form the parameters of the illustrative map.

For the elaboration of the map, it was decided that an expert cartographer should be commissioned, using as his guideline the provisions of annex I. The United Nations Expert Adviser was given the responsibility of commissioning a cartographer. Before taking a decision on the annex however, the experts had to take account of the views of the nuclear-weapon States invited to the meeting.

As has been related earlier, during the consultations scheduled with the nuclear-weapon States to discuss the draft of the protocols to the treaty, three of the five commented on its area of application. Thus France, the United Kingdom and the United States each prefixed their substantive comments by indicating that while they supported the objectives of the treaty, their final attitude would only be determined when it had seen the full text and in particular the area of application. The representatives of the United Kingdom and United States indicated that they would make further detailed comments at a subsequent meeting. For his part, however, the representative of France advised that caution should be exercised in defining the area, as it should not include the territories belonging to his country.

No decision was taken as the experts deferred further consideration till their next meeting. At that meeting in Addis Ababa, in May 1994, considerable time was devoted to the annex. The OAU Secretariat submitted at the request of the experts a document showing a list of the islands and territories surrounding Africa which were under the jurisdiction of non-African powers and which were covered by Article 1(2) of the OAU Charter, and the various relevant resolutions of the Organization, together with a listing of those relevant resolutions.¹

The discussions among the experts focused on the need to take account of the territorial interests and claims of all members of the OAU, without which their adherence to the treaty could not be assured. However the consultations with the nuclear-weapon States in the course of the

meeting, made it clearer how their territorial interests in the area of application might become an issue greatly affecting their adherence to the protocols. The United Kingdom and the United States cautioned against the inclusion of the Chagos Archipelago otherwise referred to as the British Indian Ocean Territory (BIOT) either in the listing in annex I or in the map to be attached to the annex.² Mauritius, on the other hand, which had long laid claim to the Archipelago as part and parcel of its territory, and had wide support in the OAU for its claim, naturally insisted on its inclusion. France, whose representative had provided the experts at the Windhoek meeting with a list of its territories in the area, insisted in Addis Ababa that the islands of Reunion, Mayotte and the Epas Islands were considered as integral parts of France. Therefore, they could not be included in the zone except with respect to the application of protocol III.

During further discussions by the experts among themselves, it was found that the idea of listing “other adjoining islands” in annex I would prove very divisive among African States. That idea was thus abandoned in favour of a general reference to the relevant OAU resolutions and the addition of other islands to make for geographic contiguity of the entire zone. Annex I was therefore formulated as follows under the title “African Nuclear-Weapon-Free Zone:”

This will encompass the Continent of Africa, island States members of the Organization of African Unity, and all islands considered by the Organization of African Unity in its resolutions to be part of Africa, as well as other islands between those islands and continental Africa. This is illustrated in the attached map.

It should immediately be pointed out that this annex and the closely related issue of the map and protocol III was re-opened at the joint meeting of the United Nations/OAU and the Inter-Governmental Group of Experts held to finalise the drafting of the treaty in Johannesburg in May/June 1995. An account of the long and difficult negotiations will be given in a later Chapter on the joint meeting.

Annex II. Safeguards of the International Atomic Energy Agency

Article 9 (b) of the draft treaty required each party to conclude a Comprehensive Safeguards Agreement with the International Atomic Energy Agency in order to verify compliance with undertakings connected

with peaceful uses of nuclear energy. To emphasize the importance attached to safeguards, it was considered necessary to specify in detailed form the nature of the requirement. The observer from a party to the Rarotonga Treaty, who had participated in the Consideration of the Elements for the African Nuclear-Weapon-Free Zone Treaty, had also drawn attention to the fact that parties to the Rarotonga Treaty found it necessary to do the same in one of its annexes. The Harare draft had therefore drawn largely on the equivalent annex in the Rotatonga Treaty as follows:

1. The safeguards referred to in Article ----- shall in respect of each party be applied by the International Atomic Energy Agency as set forth in an agreement negotiated and concluded with the International Atomic Energy Agency on all source or special fissionable material in all nuclear activities within the territory of the party, under its jurisdiction or carried out under its control anywhere.
2. The Agreement referred to in paragraph 1 shall be, or shall be equivalent in its scope and effect to, the agreement required in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. Each party shall take all appropriate steps to ensure that the Agreement referred to in paragraph 1 is in force for it not later than eighteen months after the date of entry into force for that party of this treaty.
3. For the purpose of this treaty, the safeguards referred to in paragraph 1 shall have as their purpose the verification of the non-diversion of nuclear material from nuclear activities to nuclear explosive devices or for purposes unknown.
4. Each party shall transmit to the Commission for its information, a copy of the overall conclusions of the most recent report by the IAEA on its inspection activities in the territory of the party concerned, and advise the Commission promptly of any subsequent findings of the IAEA in relation to those conclusions. The information furnished by the contracting parties shall not be, totally or partially, disclosed or transmitted to third parties by the addressees of the reports, except when the contracting parties give their express consent.

In their consideration of the annex in the Windhoek meeting, the text was found generally satisfactory. Some amendments were however proposed and accepted. These are (i) the specification of "subparagraph (b)

of article 9 “ in the first line of paragraph 1; and (ii) the specification of IAEA document (INFCIRC/153 corrected) in paragraph 2 after nuclear weapons, and (iii) the addition of “and review” after “for its information” in line 1 of paragraph 4.

Further amendments were made at the Johannesburg meeting as will be shown in the next chapter.

Annex III. African Commission on Nuclear Energy

Article 12 of the draft treaty provided for the elaboration of the details on the African Commission on Nuclear Energy in annex III. As in the case of the article itself, many of the elements required to draft the annex had been the subject of discussions at the preparatory stages and broad agreement had been reached on most. The Harare draft tried to reflect the agreed elements as follows:

1. There is hereby established an African Commission on Nuclear Energy which shall meet from time to time pursuant to articles 7, 8, 11 and 13 and annex IV. (The articles were as contained in the draft.)
2. The Commission shall be composed of twelve members elected by parties to the treaty, bearing in mind their expertise and interest in the subject matter of the treaty, equitable geographical distribution, as well as the need to include countries with advanced nuclear programmes.
3. Members of the Commission shall be elected for a three-year period. A quorum shall be constituted by representatives of two-thirds of the members of the Commission. Decisions of the Commission shall be taken by a two-thirds majority of those present and voting. The Commission shall adopt such other rules of procedure as it sees fit.
4. (a) The costs of the Commission, including the costs of extraordinary inspections, pursuant to annex IV to this treaty, shall be borne by the parties to the treaty in accordance with the OAU scale of assessment.

(b) The Commission may also seek special funding should this be required.

Extensive negotiations took place in the consideration of the annex at the Windhoek meeting of the experts, leading to its major redrafting as follows:

Paragraph 1: The contents of the paragraph as contained in the Harare draft, was considered superfluous having already been embodied in article 12. It was therefore deleted.

Paragraph 2: An important point that needed to be clarified was raised concerning membership of the Commission. The figure of 12 members was not contested. However, the mode of their election needed to be further refined to show whether they were to be elected in their personal capacities as independent experts, or were to be designated by and therefore representatives of States parties.

Some experts held the view that the effectiveness and efficiency of the Commission would be greatly enhanced if it were composed strictly of independent experts rather than “political” experts. Others expressed the contrary view emphasising the need for constant political support for the programmes and actions of the Commission. Such support could not be assured if the Commission were seen as an organ removed from the political realities of Africa. After further negotiations, it was agreed that it was preferable that members of the Commission should be States parties that would then nominate individuals with the relevant expertise for election to be their representatives. In redrafting the paragraph, the indication of the three-year term of office, which featured in paragraph 3 of the Harare draft, was considered more appropriate in this paragraph, and was therefore added. The text as redrafted became the new paragraph1 thus:

The Commission established in Article 12 shall be composed of twelve members elected by parties to the treaty for a three-year period, bearing in mind the need for rotation as well as to include members with advanced nuclear programmes. Each member shall have one representative nominated with particular regard for his/her expertise in the subject matter of the treaty.

It is pertinent to quickly observe here that there could be different interpretations of the wording as to whether a State would be first elected into the Commission and thereafter designate someone of its choice to represent it, or that in seeking election into the Commission a State party

would submit for the election the name of its designated representative. It should be clarified that the intention of the drafters was the latter interpretation.

Paragraph 3: In considering this paragraph some experts pointed out that it should be read in conjunction with article 12(3) of the draft treaty, which stipulated that the Commission should meet only once a year in ordinary session. They suggested that it was necessary to find a way of ensuring the conduct of the Commission's responsibilities and the follow-up of its decisions during the inter-sessional period. It was therefore proposed that provision should be made for a Bureau of the Commission, and a Secretary who would be in charge of the Secretariat. The Bureau would consist of the Commission's Chairman, the Vice-Chairman and the Secretary. The proposal was found very pertinent and was accepted. However some connected details had to be patiently negotiated.

It was accepted that the Commission itself would elect the Chairman and the Vice-Chairman. How to designate the Secretary, and his exact title was not as obvious. Some experts recommended that the Secretary should also be elected by the Commission, citing the example of the Secretary-General of OPANAL. Other experts pointed out that it had been agreed during the consideration of the elements for the treaty that it would be under the auspices of the OAU and that any organ created would be linked to the OAU. Hence the Commission should be seen as one of the Specialised Commissions of the Organizations.

In that connection it was pointed out that each of the existing Specialised Commissions was headed by an Executive Secretary who was appointed by the Secretary-General of the OAU. They recommended therefore that the same title should be given to the Commission's Secretary and the same procedure should be followed for his appointment. In reaction, some experts made the point that parties to the treaty might not necessarily be the same as OAU membership, which would lead to the OAU Secretary-General acting on behalf of non-members. Besides, they suggested that in making a unilateral appointment, the OAU Secretary-General might not give due weight to the very specialised nature of the Commission's responsibilities. A compromise formula was found whereby the title of the Secretary would be Executive Secretary, and he would be appointed by the OAU Secretary-General, but only after a request from the

parties to the treaty and in consultation with the Chairman of the Commission.

Other procedural issues dealt with in paragraph 3 of the Harare draft were renegotiated. The stipulation of a two-thirds majority for a quorum and for decision-making was questioned by some experts who argued that it was too high and that a lower percentage should be substituted. They further argued that it should be the Commission's responsibility to work out its rules of procedure, which would normally include the issues of a quorum and of decision-making. Other experts argued in favour of the figure of two-thirds, which they believed was intended to emphasize the seriousness with which members of the Commission should take their responsibilities and that this should be primarily reflected in their attendance at meetings. Agreement was reached on a compromise which would stipulate the two-thirds majority to be applicable for the first meeting of the Commission during which it would consider the two issues of quorum and decision making as part of the elaboration of its rules of procedure.

With all the issues raised and the agreements reached, the paragraph now renumbered 2 as redrafted came out as follows:

The Commission shall have a Bureau consisting of the Chairman, the Vice-Chairman and the Executive Secretary. It shall elect its Chairman and Vice-Chairman. The Secretary-General of the Organization of African Unity, at the request of parties to the treaty and in consultation with the Chairman, shall designate the Executive Secretary of the Commission. For the first meeting a quorum shall be constituted by representatives of two-thirds of the members of the Commission. For that meeting decisions of the Commission shall be taken as far as possible by consensus or otherwise by a two-thirds majority of the members of the Commission. The Commission shall adopt its rules of procedure at that meeting.

Before considering paragraph 4 of the Harare draft dealing with the costs of the Commission, some experts recalled that during the negotiation of article 13 of the draft treaty, it had been agreed that the Commission would have the responsibility of developing a format for reporting which would guide parties in complying with their reporting obligation. An additional paragraph was thus proposed for inclusion in the annex. The proposal was accepted and the new paragraph 3 read as follows:

The Commission shall develop a format for reporting by States as required under articles 12 and 13.

In considering paragraph 4 of the Harare draft, several important amendments were made. With respect to clause (a) of the paragraph, the distinction between parties to the treaty and OAU membership was again raised and reference was made to the compromise, which had led to an agreed formulation of the new paragraph 2 of the annex. Bearing that in mind, it was proposed that the scale of assessment for the Commission's budget should not be linked to that of the OAU, but should be left to parties to determine.

Also to be changed was the reference to "extraordinary inspections", a term which was thoroughly examined in the course of negotiating annex IV of the treaty. Agreement to use the term "special inspections" in that annex led to a consequential change also in this annex. The clause was thus redrafted as follows:

The costs of the Commission, including the costs of special inspections pursuant to annex IV to the treaty, shall be borne by the parties to the treaty in accordance with a scale of assessment to be determined by the parties;

With respect to clause 4(b) of the Harare draft, while the principle of outside funding for some of the activities of the Commission was accepted, it was considered necessary to emphasize that such donations are consistent with the purposes and objectives of the treaty. Thus the clause was redrafted as follows:

The Commission may also accept additional funds from other sources provided such donations are consistent with the purposes and objectives of the treaty;

Finally, a new clause (c) was proposed to recall in the annex, the method for the adoption of the budget, which had earlier been specified in article 14. The new clause stipulated:

The budget of the Commission shall be adopted in accordance with paragraph 2 of article 14.

The text of the annex as contained in the Addis Ababa Draft saw further amendments in the Johannesburg meeting. Two amendments were proposed and adopted. The term “special inspections” in paragraph 4(a) again had to be changed following the use of the term “inspections” in annex IV.

The second change was a proposal to delete clause (c) of the paragraph since that provision had been clearly specified in article 14(2). It was accordingly deleted.

Annex IV. Complaints Procedure and Settlement of Disputes

The necessity for the inclusion in the treaty of a complaints procedure arose from the desire to enforce transparency, enhance the effectiveness of the mechanism for ensuring compliance and avoid the temptation for unilateral action by a party which might suspect another of breaching its treaty obligation. To these ends, an elaborate complaints procedure along the model in the Treaty of Rarotonga was considered necessary to be embodied in a separate annex to the treaty. The Harare draft of the annex was entitled “Complaints Procedure”, and carried that title until the last negotiating meeting in Johannesburg when it was changed to the above title, for the reason which was cogently explained by the author of the proposal, and will be seen later. Besides the heading, however, it is pertinent to note that the entire text as contained in the Harare Draft was the subject of intense negotiation right from the Windhoek meeting. It is therefore necessary, for clarity to reproduce hereunder the Harare text:

1. A party which considers that there are grounds for a complaint that another party is in breach of its obligations under this treaty shall bring the subject-matter of the complaint to the attention of the party complained of, and shall allow the latter reasonable opportunity to provide it with an explanation and to resolve the matter. This may include technical visits agreed upon between the parties.
2. If the matter is not so resolved, the complainant party may bring the complaint to the Commission.
3. The Commission, taking into account of efforts made under paragraph 1, shall afford the party complained of a reasonable opportunity to provide it with an explanation of the matter.

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4. If, after considering any explanation given to it by the representatives of the party complained of, the Commission decides that there is sufficient substance in the complaint to warrant an extraordinary inspection in the territory of that party or elsewhere, the Commission shall request the IAEA to conduct such inspection as soon as possible. The Commission may request that its representatives accompany the inspection team.
 - (a) The request shall indicate the tasks and objectives of such inspection, as well as any confidentiality requirements.
 - (b) If the party complained of so requests, IAEA shall be accompanied by representatives of the party provided that the inspectors shall not be thereby delayed or otherwise impeded in exercise of their functions.
 - (c) Each party shall give the IAEA and or Regional inspectors full and free access to all information and places within each territory which may be deemed relevant by the inspectors to the implementation of the extraordinary inspection.
 - (d) The party complained of shall take all appropriate steps to facilitate the work of IAEA and or Regional inspectors, and shall accord to the inspectors the same privileges and immunities as those set forth in the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.
 - (e) The International Atomic Energy Agency and or Regional inspectors shall report in writing as quickly as possible to the Commission, outlining their activities, setting out relevant facts and information as ascertained by it, with supporting evidence and documentation as appropriate, and stating their conclusions. The Commission shall report fully to all States parties to the treaty giving its decision as to whether the party complained of is in breach of its obligations under this treaty.
 - (f) If the Commission has decided that the party complained of is in breach of its obligations under this treaty, or that the above provisions have not been complied with, or at any time at the request of either the complainant or the complained-of party, the Commission shall meet promptly to discuss the matter.
 - (g) The costs of such inspections shall be borne by the Commission.
 5. Extraordinary inspections will not prejudice the rights and the power of the International Atomic Energy Agency to carry out special inspections in accordance with the agreements referred to in paragraph 1 of annex II to this treaty.

Negotiating the text of the annex took considerable time in the Windhoek meeting of the Group of Experts because of the technical nature, and the special interest of the IAEA whose expert observer played an active role. The first three paragraphs drew no amendment. Much time was however spent on paragraph 4. The term “extraordinary inspection”, which described the nature of the inspection to be carried out by the IAEA at the request of the Commission in case of a breach by a State party, was closely analysed. That term had been used instead of the term “special inspection” used in the equivalent paragraph in the Rarotonga Treaty because of the difference in the body to carry out the inspection.

In the case of the Rarotonga Treaty, it was the Consultative Committee of the treaty parties that would both decide on the inspection and nominate special inspectors for the task. Since it would not involve the IAEA, which had the mandate under the treaty to carry out normal inspections in enforcement of the Safeguards agreement concluded with respect to the treaty, the use of that term did not conflict with the special inspection, which the Agency could decide on its own to conduct. In the case of the draft African Nuclear-Weapon-Free Zone Treaty, however, it was the IAEA that was being given the responsibility to carry out an inspection that might become necessary when a party was suspected of violation of its obligation. The desire to differentiate between that inspection at the request of the African Commission on Nuclear Energy and any special inspection at the initiative of the IAEA itself, led to the use of the term “extraordinary inspection”.

On closer examination it was pointed out that the term “extraordinary”, which also features in the IAEA’s own terminology has implications much wider than the context in which it was being used in the African draft. An extraordinary inspection by the IAEA, as explained by the IAEA expert observer, connoted a predetermined case of a possible threat to international peace and security, involving therefore the United Nations Security Council. Since this was beyond the intention of the draft African treaty, that term had to be changed. Confronted with the difficulty of finding an appropriate terminology, the experts decided to use the IAEA term of “special inspections”.

In redrafting the relevant sentence, it was also proposed that the term “elsewhere” needed to be clarified to express in unambiguous manner the intention of the draft, which was to cover a case in which the suspected

activity was in a territory within the zone under the jurisdiction of a non-African State. Thus the phrase “or territory of a party to protocol III” was substituted.

The second sentence of the paragraph provided that the Commission “may request that its representatives accompany the inspection team”. In the view of some experts, that formulation was unsatisfactory since it provided the IAEA with the possibility of rejecting such a request. Yet for these experts, to develop greater expertise in nuclear science and technology in Africa, which was one of the objectives of the treaty, there had to be a way of enabling them to learn more about implementing inspections. It was therefore necessary that, whenever possible, the IAEA inspectors who would carry out special inspections at the request of the Commission should be accompanied by the Commission’s designated inspectors. This should not be subject to the specific consent of the Agency.

The IAEA expert observer raised serious objections to such propositions on two counts. First that once the main responsibility for enforcing safeguards arising from the treaty has been conferred on the IAEA in article 9, and further elaborated in annex II, it was not necessary for Africa to seek to duplicate that competence by attempting to create its own inspectors. Secondly, the Agency would be most reluctant to have its inspectors accompanied by non-Agency inspectors, and in particular those from non-nuclear-weapon States, who would pose the risk of nuclear proliferation by being involved in sensitive aspects of the nuclear fuel cycle. An animated debate ensued between the IAEA observer and some experts who objected to what was considered as an attempt by the Agency to impose its own non-proliferation agenda on Africa and to introduce into the African treaty conditions which had not featured in any previous nuclear-weapon-free zone treaty.

In conclusion it was proposed and accepted that the sentence be amended thus:

The Commission may also designate its representatives to accompany the Agency’s inspection team.

To further demonstrate the determination that Africa should develop the necessary expertise, a new paragraph was proposed to the annex that stipulated:

The Commission may also establish its own inspection mechanisms.

In considering paragraph 4(f) it was thought that it gave no indication what further action was to be taken by the Commission after it had met and decided that the party complained of was in breach of its obligations under the treaty. Since the Commission was not the supreme body even within the hierarchy of the institutions of the treaty, it would need to report on such serious issue to the Conference of States Parties. In addition, however, and considering that action might be needed which was beyond the capacity of the Conference, provision was necessary to bring the issue to the attention of higher-level regional and global institutions. Thus the OAU and as a last resort, the United Nations Security Council should be involved. These proposals were formulated in two new clauses (f) and (g) in place of the old (f) as follows:

- (f) If the Commission considers that the party complained of is in breach of its obligations under this treaty, or that the above provisions have not been complied with, States parties to the treaty shall meet in extraordinary session to discuss the matter;
- (g) The State parties convened in extraordinary session under paragraph 6 below may, as necessary, make recommendations to the party held to be in breach of its obligations and to the Organization of African Unity. The Organization of African Unity may, if necessary, refer the matter to the United Nations Security Council.

The issue of the costs of special inspections, which was addressed in existing clause (g) of the Harare draft, was also raised. Some experts believed that though such costs should normally be borne by the Commission, it was necessary to make provision against abuse of the procedure through unfounded allegations. It was noted that there had been international concern about the possibility of such abuse, leading to the insertion in the complaints procedure of the Chemical Weapons Convention of a provision to discourage such practice. Other experts however cautioned against discouraging parties from making complaints, stating that if an allegation was found to be invalid after a special inspection it would not necessarily imply that the party that made it was trying to abuse the procedure. A consensus was finally reached to maintain the provision that the Commission would bear the cost of extraordinary inspections but that in case of abuse of the procedure, the Commission would decide

whether the requesting State should bear part of the cost. The sub-clause was thus reformulated as follows:

The costs involved in the procedure outlined above shall be borne by the Commission. In the case of abuse, the Commission shall decide whether the requesting State party should bear any of the financial implications.

Notwithstanding the extensive negotiations over this annex, which was reflected in the Addis Ababa draft, it underwent further significant changes at the Johannesburg meeting as will be seen in the next Chapter.

PROTOCOLS

At the early stage of consideration of the elements for the treaty, there had been agreement on the necessity for protocols to the treaty aimed at the nuclear-weapon States and other States that are internationally responsible for territories within the zone. The option chosen was to elaborate three protocols as in the Rarotonga Treaty, rather than the two protocols of the Tlatelolco Treaty where security assurances were combined with non-testing of nuclear weapons within the zone. The issues that arose thereafter were the order of priority to be accorded to the protocols and the manner of ensuring that the States to which they were intended would quickly adhere.

The Treaties of Tlatelolco and Roratonga seemed to have accorded priority to the protocol designed to ensure that extra-zonal States that were internationally responsible for territories in the zone respected its status. The African experts for their part concluded that the African NWFZ treaty would be primarily a regional security instrument against nuclear weapons. Therefore security against use or threat of use of those weapons was the paramount issue to which first priority should be accorded. Second priority would be the protocol on non-testing of nuclear explosive device within the zone, and finally the protocol on respect of the status of the zone by States with responsibilities for territories within its area of application.

To avoid long delays before signature and ratifications of the protocols, it had been decided during the consideration of the elements and modalities for drafting the treaty to invite those States that would be expected to adhere to the protocols for appropriate consultations. The

drafters of the treaty benefited from those consultations, which were very useful in relation both to the protocols and some other aspects of the treaty, as has already been seen in the account of the Windhoek and subsequent negotiating meetings.

Preamble to the Protocols

The Harare draft of the treaty contained a very brief preamble common to all three protocols on the model of the Rarotonga Treaty, which stated:

The parties to this protocol,
Noting the African Nuclear-Weapon-Free Zone Treaty (the Treaty)
Have agreed as follows:

At their Windhoek meeting, some experts expressed the need for more detailed preambles to the three protocols, as was the case in the protocols to the Treaty of Tlatelolco. Such preamble, it was argued, should express the firm conviction of the parties of the need for the total elimination of nuclear weapons from the world. It should situate the African NWFZ within that context as an important contribution to its accomplishment, since it would in itself be an important non-proliferation measure that would enhance regional and international peace and security and would contribute to general and complete disarmament. The preamble would then express the will of the protocol parties to contribute to the effectiveness of the African NWFZ. As in the protocols to the Treaties of Tlatelolco and Rarotonga, the same preambular paragraph should apply to all three protocols.

Based on those agreed guidelines, the preamble to the protocols was redrafted as follows:

The parties to this protocol,
Convinced of the need to take all steps in achieving the ultimate goal of a world entirely free of nuclear weapons as well as the obligations of all States to contribute to this end,
Convinced also that the African Nuclear-Weapon-Free Zone Treaty, negotiated and signed in accordance with the Declaration on the Denuclearization of Africa (AHG/Res.11(1) 1964, resolutions CM/Res1342(LIV) 1991 and CM/Res.1395(LVI) Rev.1 1992 of the Council of Ministers of the Organization of African Unity and United Nations

General Assembly Resolution 48/86 of 16 December 1993, constitutes an important measure towards ensuring the non-proliferation of nuclear weapons, promoting general and complete disarmament, and enhancing regional and international peace and security, Desirous of contributing in all appropriate manners to the effectiveness of the treaty
Have agreed as follows:

In the consultations held with the nuclear-weapon States in Windhoek, the experts were surprised at the reaction of some of them to the preamble. Since the text made available to the nuclear-weapon States prior to the Windhoek meeting was the Harare draft of the treaty which, as noted above, contained only a short preamble, the United States representative expressed surprise that the revised text drafted in Windhoek had such an extensive preamble. He said that the United States would have preferred that there was no preamble to any of the protocols. He then proceeded to give his "first impression" pending detailed study by his government.

He said the first paragraph, which referred to steps in achieving a world entirely free of nuclear weapons, could interfere with the global responsibilities of the United States, which had always insisted that nuclear-weapon-free zones should not interfere with existing security arrangements or the right to self-defence under the Charter of the United Nations. However he saw no difficulties with the other paragraphs. In reply, the Chairman of the Group of Experts explained the rationale for the long preamble. Addressing the specific concerns of the United States on paragraph 1, the Chairman observed that the aim of a world free of nuclear weapons expressed in it was a universal aim contained in the Final Document of the First Special Session of the United Nations General Assembly on Disarmament, a document which was adopted by consensus. He therefore expressed the hope that after further reflection on the text, the United States would agree that the aspiration expressed therein could not be construed to interfere with any country's national or global responsibilities.

It is to be noted that at the second consultation with the nuclear-weapon States in Addis Ababa in May 1994, the representatives of France and the United Kingdom made observations similar to those of the United States on the first paragraph. In a written comment on the draft, France proposed that the paragraph be deleted. As for the United Kingdom, it

stated in its written comment that it could not sign any of the three protocols if the first paragraph of the preamble was retained. It considered that the United Kingdom's nuclear weapons would continue to have a positive role to play in a stable system of war prevention. The United Kingdom considered that a world without nuclear weapons was not a practical and realistic policy goal in the short to medium term, although it remained a desirable ultimate goal. The United Kingdom concluded its comments by suggesting that the paragraph be replaced with "language used in the opening three paragraphs of the preamble of the NPT".

The Chairman of the group of experts repeated to the nuclear-weapon States the assurance given to the representative of the United States that the first paragraph had not sought to establish any new principle but had only taken up the principle of the ultimate objective of a nuclear-free world which had been accepted by consensus in 1978 at the first Special Session of the General Assembly devoted to disarmament. He further stated that if, as admitted by the United Kingdom, such an objective remained a desirable ultimate goal, there was no reason why it could not be stipulated as such in an instrument on non-proliferation.

Notwithstanding the views of the three nuclear-weapon States, the experts felt strongly that the preambular paragraph was essential and decided to maintain it. The only change that was made thereafter occurred at the negotiating meeting in Johannesburg in 1995.

Protocol I (Non Use or Threat of Use of Nuclear Explosive Device)

Article 1

The Harare draft of the article stipulated as follows:

Each party undertakes not to use or threaten to use under any circumstances a nuclear explosive device against:

- (a) parties to the treaty; or
- (b) any territory within the African Nuclear-Weapon-Free Zone as defined in annex I of the treaty.

In the Windhoek meeting, some of the experts reverted to the controversy whether any benefits conferred by the treaty should be limited only to territories of parties or shall cover all territories in the zone. Obviously, partisans of the restriction, they proposed the deletion of clause

(b), arguing in favour of confining the non-use assurance only to parties to the treaty. To extend the benefit to all countries within the zone, it was argued, would be to encourage some African States not to become parties since they would still enjoy the same security assurances even without assuming the non-proliferation obligations in the treaty. Other experts however argued that any use of nuclear weapons on any part of the zone would certainly endanger the entire zone including the parties to the treaty. They further argued that the inclusion of the phrase under any circumstances was meant as total prohibition of the use of nuclear weapons by the nuclear-weapon States irrespective of the status of any State or territory within the zone. After considerable debate, the view that maximum coverage of the entire zone should be sought prevailed and the clause was retained.

However, during consultations with the nuclear-weapon States, strong views were expressed on the article, which led later to its amendment. First at the Windhoek meeting and again at the Addis Ababa meeting, France, the United Kingdom and the United States objected to the phrase “under any circumstances” in the chapeau of the article. Elaborating on his objection, the representative of the United States noted that the phrase had not been used in the Additional Protocol to the Treaty of Tlatelolco to which the United States was party; nor had it been used in the equivalent protocol to the Treaty of Rarotonga. The United States could not give such a blanket undertaking with respect to the African Nuclear-Weapon-Free Zone as it would conflict with its regular undertaking on negative security assurances which were intended to become void if a party to a Nuclear-Weapon-Free Zone Treaty were to wage war against the United States in association with a nuclear-weapon State. France and the United Kingdom raised similar objections, emphasising that total renunciation of possible use of nuclear weapons would be contrary to the deterrent value of their nuclear strategy.

Article 1(b), which extended the negative security assurances to “any territory within the African Nuclear-Weapon-Free Zone”, also drew extensive comments from the nuclear-weapon States. The representative of the United States observed that the extension of benefit thereby to African States not parties to the treaty was unacceptable and in any case would reduce the incentive for States to become parties. He suggested that the paragraph be amended so that it would concern only territories within the zone for which parties to protocol III were internationally responsible and

on behalf of which non-proliferation obligations would have been assumed by the administering authority.

The representative of France remarked that the article went beyond the coverage of the equivalent protocol in the Treaty of Rarotonga. He stated in addition that his country had great difficulty with the formulation given that the geographical area of application of the zone had not yet been clarified. For the Russian Federation, while its representative did not raise a specific objection, he stated that his country would not use nuclear weapons against non-nuclear-weapon States that were signatory to the NPT except where they were at war with Russia in association with a nuclear-weapon State. Where non nuclear-weapon State were not party to the NPT but were involved in the African NWFZ “Russia would consider the issue of guarantees on the basis of obligations undertaken under the nuclear-weapon-free zone treaty”.

At their meeting in Addis Ababa, the experts reconsidered the article, bearing in mind the comments made by the nuclear-weapon States. They decided to delete the phrase “under any circumstances” from the chapeau to read as follows:

Each party undertakes not to use or threaten to use a nuclear explosive device against:

- (a) parties to the Treaty;
- (b) Any territory within the African Nuclear-Weapon-Free Zone for which a State that has become a party to protocol III is internationally responsible as defined in annex I.

A drafting adjustment was later made to (a) to read “any party to the Treaty” as will be found in the final text of the treaty.

Article 2

This article appeared in the Harare draft as follows:

Each party undertakes not to contribute to any act of a party to the treaty which constitutes a violation of the treaty, or any act of another party to a protocol which constitutes a violation of the protocol.

It should be observed that a similar article occurred in protocol I of the Rarotonga Treaty. Though it occurred initially as an article in protocol I only,

the intention was that it should be applicable to all three protocols such that any party to protocol I was automatically committed to respect obligations undertaken by parties to other protocols even if it was not itself a party to that protocol. For Africa, its rationale derived from the concern that a nuclear-weapon State which might legally not have international responsibility for a territory in the zone and therefore not be liable to becoming party to protocol III might be in effective control of the territory through an agreement with the legally responsible State, and could therefore conceivably undertake in the territory some of the prohibited activities in the zone. The case of Diego Garcia in the Chagos Archipelago was of great concern to the OAU in this context, given that it was administered by the United Kingdom but used as a military base by the United States.

Neither comment nor amendment was proposed to the article by any expert at the meeting in Windhoek. However in the consultation with the nuclear-weapon States at that meeting, the representative of the United States observed that the formulation might imply that a party to that protocol also undertook obligations with respect to protocol III to which it is not a party. He believed that the implied linkage of protocol I and protocol III would create considerable problems, as the United States' Senate was unlikely to ratify the country's signature of protocol I. He observed that for the United States, each protocol should stand on its own without linkage to another protocol. If the experts considered that article 2 was important, he said, it could be inserted into each of the three protocols, such that only States parties to each protocol would undertake the obligations contained in that article as well as its other articles. In that case he further proposed, the term "protocol party" would be substituted for "each party" at the beginning of each article of each protocol.

In reflecting on the comments of the United States representative, some of the experts expressed the view that though a similar article did indeed occur in the Rarotonga Treaty, the fact that the United States had not yet adhered to it made it difficult to cite it as a precedent. The question was whether the intention of the draft necessarily demanded the maintenance of the text as it was, or whether an amended text along the lines that was suggested by the representative of the United States could serve the same purpose. After considerable discussion of the issues raised, a consensus was reached that while an amendment could be made, it should be formulated in a manner that would commit each protocol party

to respect not only that protocol but the treaty as a whole. The article was thereafter redrafted as follows:

Each protocol party undertakes not to contribute to any act which constitutes a violation of the treaty or this protocol.

Once it was accepted for protocol I, identical formulations were introduced into the other protocols.

Article 3

This article was formulated in the Harare draft along the pattern of the Rarotonga Treaty, making it optional for protocol parties to inform the depositary of acceptance of any alteration to its obligation as a result of an amendment to the treaty. It was formulated as follows:

Each party may, by written notification to the depositary, indicate its acceptance from the date of notification of any alteration to its obligations under this Protocol brought about by the entry into force of an amendment to the treaty pursuant to article 13 of the treaty.

In the Windhoek meeting, some experts proposed that the article should be formulated in a manner to ensure uniformity of practice among all protocol parties. Since it was necessary to know the attitude of all protocol parties to any treaty amendment that might affect their obligations, the only way was to make it obligatory for all to so inform the depositary. It was agreed therefore to replace “may” with “undertakes” in the first line of the article.

Articles 4, 5 and 6

These did not change from the Harare draft and appear as such in the Pelindaba Treaty.

Article 7

The article appeared in the Harare draft as follows:

This protocol shall enter into force for each State on the date of its deposit with the depositary of its instrument of ratification.

In the course of the consultations with the nuclear-weapon States in Windhoek, the representative of the United States suggested that the article

should be redrafted to clarify that a protocol would not come into force for a protocol party before the main treaty on the African Nuclear-Weapon-Free Zone came into force. On reflection, the experts agreed that though the possibility evoked by the representative of the United States was not the intention of the draft, that interpretation was possible in case of early ratification by a protocol party. The article was therefore redrafted as:

This protocol shall enter into force for each State on the date of its deposit with the depositary of its instrument of ratification or the date of entry into force of the treaty whichever is later.

It was not changed thereafter.

Protocol II (Non testing of Nuclear Explosive Device)

The Harare draft of protocol II had the same very short preamble as protocol I. The expanded preamble of protocol I was automatically inserted into protocol II as decided earlier.

Article 1

In the Harare draft, each party undertakes:

Not to test or assist or encourage the testing of any nuclear explosive device anywhere within the African nuclear-weapon-free zone.

Containing the main obligation of the nuclear-weapon States, it drew no comment in the Windhoek meeting nor at any subsequent negotiating meeting.

Article 2

It should be recalled that in negotiating article 2 of protocol I, it was agreed that the new text as redrafted in Windhoek would be inserted into all three protocols. Thus the revised text whereby “each protocol party undertakes not to contribute to any act that constitutes a violation of the treaty or of this protocol” was inserted in protocol II as the new article 2.

Article 3

This article, which was article 2 of the protocol in the Harare draft, had the same formulation as article three of protocol I in the Harare draft. The amendment made to the latter was therefore reflected in its reformulation.

Articles 4, 5 and 6

These featured as articles 3, 4, and 5, in the Harare draft. They saw no change whatsoever in the course of the negotiations and remained as the original in the Pelindaba Treaty.

Article 7

This article concerning entry into force for each protocol party, which featured as article 6 in the Harare draft had exactly the same wording as article 7 of protocol I in the Harare draft. The amendment to article 7 of protocol I in the Windhoek meeting was also made applicable to the equivalent article, which became article 7 in protocol II.

Protocol III (Application of the Treaty in Respect of Territories within the Zone)

As in the case of protocol II, the preamble agreed upon in Windhoek for protocol I, was also inserted into protocol III, to replace the preamble in the Harare draft.

Article 1

In the Harare draft, this article appeared in a long form as follows:

Each party undertakes to apply, in respect of the territories for which it is internationally responsible situated within the African Nuclear-Weapon-Free Zone, the prohibitions contained in articles 3, 5, 6, 7, 8, 9 of the treaty, in so far as they relate to research, development, manufacture, stockpiling, stationing and testing of any nuclear explosive devices, as well as dumping of nuclear waste, ensuring physical protection and prohibition of armed attacks on nuclear installations within those territories, and the safeguards specified in articles 11(2 c) and annex II of the treaty.

In discussing the article in the Windhoek meeting, some experts pointed out that it could be shortened by deleting the specification of what the cited articles relate to. It was proposed also to delete the reference to article 11 on the Mechanism, as the reference to annex II on IAEA safeguards was sufficient to cover the point. Thus the article was redrafted as follows:

Each protocol party undertakes to apply, in respect of the territories for which it is internationally responsible situated within the African nuclear-weapon-free zone, the provisions contained in articles 3,4,5,6,7,8,9, and 10 of the treaty and to ensure the application of safeguards specified in annex II of the treaty.

It was not changed thereafter and occurs as such in the Pelindaba Treaty.

Article 2

An article identical to the reformulated article 2 of protocol I was inserted into protocol III as a new article 2.

Article 3

Appearing as article 2 in the Harare draft of this protocol I, it had the same formulation as article 3 of protocol I in the draft. The amendment to the latter therefore became applicable to it.

Article 4

The identity of the States that should be parties to the protocol was not as clear as in the cases of protocols I and II which were for the nuclear-weapon States. Since the zone of application of the treaty had not been clarified, there were some doubts as to which administering powers would be involved. Thus the Harare draft (article 3 of the protocol) left the issue open.

In considering the protocol in their Windhoek meeting, and as has been explained in the evolution of negotiations of annex I, the experts were uncertain about the various relevant OAU resolutions which could be used as bases for identifying which States were to be called upon to adhere to the protocol. They had an inconclusive debate and decided that the completion of the article had to await conclusion of negotiations of annex I of the treaty to be pursued in the subsequent meeting.

During their meeting in Addis Ababa in May 1994, the experts had taken a decision on annex I on the basis of the inclusion within the zone (besides the continent and island-States members of the OAU) of all islands considered by the OAU in its resolutions to be part of Africa as well as other islands between those islands and continental Africa.

Based on that definition of the zone, the experts were able to reach a consensus on the inclusion of all the territories claimed by France partly in light of their proximity to the continent and partly in accordance with OAU resolutions. They also agreed on the inclusion of the territories claimed by Spain on the basis of a resolution of the OAU. They decided on the inclusion of the Portuguese territory of the Azores purely on the basis of proximity to the continent though no resolution on its being part of Africa had been adopted.

The inclusion of the Chagos Archipelago was more problematic. The existence of OAU resolutions supporting the claim of Mauritius and the insistence of the expert from that country notwithstanding, it was recognized that the possible effect of its inclusion as belonging to Mauritius and therefore a part of the zone could be to deter the United Kingdom and the United States from adhering to protocols I and II. Virtually all the experts believed that would make the treaty ineffective. On the other hand to include the United Kingdom as signatory to protocol III was equally unacceptable, as it would satisfy neither the United Kingdom nor Mauritius. The experts therefore decided to defer any decision on the status of the Archipelago until further negotiations have been carried out, presumably by the OAU itself.

Therefore the signatories to protocol III were listed in Article 4 as France, Spain and Portugal in the Addis Ababa draft. The inclusion of Portugal was re-opened in the last negotiating meeting by the experts in Johannesburg in May/June 1995 as will be shown in the next Chapter, which led to its deletion.

Articles 5 and 6

Articles 5 and 6 only saw changes in the numbering from 4 and 5 respectively consequent upon the insertion, as has been shown earlier, of a new article 2. However they remained throughout the negotiations unchanged as drafted in the Harare draft

Article 7

This article relating to entry into force featured as article 6 in the Harare draft and had the same wording as article 7 of protocol I. The amendment that was agreed upon for the article in the latter protocol was also applied to this article.

The Preamble to the Treaty

As was decided at the beginning of the treaty drafting work, the experts turned to the preambular part of the treaty only after they had completed the draft of the substantive part. It should be recalled that at the second meeting on the consideration of the elements for the treaty held in Lome in April 1992, the experts had identified various elements that might be included in the preamble to the treaty. Those elements were used as a basis for further negotiations and elaborated upon in further discussions. The experts also benefited from a draft submitted by the United Nations adviser, as well as from the preambles of the Tlatelolco and Rarotonga Treaties.

The main points that were considered vital to include in the preambles were agreed to be:

- (i) Underline the primordial role of the OAU by concentrating on its 1964 Declaration and relevant subsequent resolutions as the guiding instructions for the treaty;
- (ii) Situate the African Nuclear-Weapon-Free Zone within the context of steps towards achieving a world entirely free of nuclear weapons;
- (iii) Emphasize the contribution of the African Nuclear-Weapon-Free Zone to the strengthening of the non-proliferation regime and enhancing regional and international peace and security;
- (iv) While reaffirming the importance of the Non-Proliferation Treaty stress also the desire of African States to take advantage of its Article IV on the inalienable right of all State parties to peaceful uses of nuclear energy;
- (v) Emphasize the African determination to promote regional cooperation for peaceful uses of nuclear energy;
- (vi) Stress also the determination to keep Africa free of environmental pollution by radioactive matters.

The draft of the preamble as formulated by the experts in the Windhoek and Addis Ababa meetings was only slightly modified in the joint meeting in Johannesburg. At that meeting, a new paragraph was added which took note of existing nuclear-weapon-free zones and recognized that the creation of others, especially in the Middle East, would enhance the security of States parties to the African nuclear-weapon-free zone. Though the paragraph was meant specifically to address the preoccupation of the North African States, it was considered necessary to expand its reference to

the security of parties to the African nuclear-weapon-free zone generally partly for reason of solidarity but also out of recognition that attack with nuclear weapons on any part of the continent might affect the entire continent. In the Johannesburg meeting also, the benefits of the African nuclear-weapon-free zone outlined in paragraph V, was completed with the addition of its importance in promoting cooperation in the peaceful uses of nuclear energy.

The drafting of the preamble meant the conclusion of the work of the United Nations/OAU Group of Experts as mandated by the General Assembly of the United Nations. The Group was however conscious that the OAU Inter-Governmental Group of Experts which was expected to join in the negotiations at Windhoek and Addis Ababa had not been able to participate in the deliberations. Once the Addis Ababa draft³ of the treaty was adopted therefore, the United Nations/OAU Group of Experts requested its Chairman to submit its report and the draft of the treaty not only to the Secretary-General of the United Nations for submission to the United Nations General Assembly at its forty-ninth session in September 1994⁴, but also to the Secretary-General of the OAU for submission to the OAU Council of Ministers at its sixtieth ordinary session to be held in Tunis in June 1994. Thus in a letter dated 14 May 1994, the Chairman of the Group submitted the report and the Addis Ababa draft to the OAU Secretary-General.⁵

Action by the OAU

In forwarding the report to the Council of Ministers meeting in Tunis, the OAU Secretary-General remarked that it had not been possible for the OAU to convene its own Inter-Governmental Group of Experts (IGG) to hold the Windhoek and Addis Ababa negotiating meetings jointly with the United Nations/OAU Group of Experts. In the circumstance, he recommended that the Council might wish to take note of the draft text (of the treaty), decide to refer it to member States, and to convene the Inter-Governmental Group of Experts formally to study it together with the comments and observations of OAU member States with a view to submitting a final text to the sixty-first ordinary session of the Council to be held in February 1995.

After due consideration at its sixtieth Ordinary Session in Tunis, the OAU Council of Ministers took note of the draft text of the treaty and decided by its resolution CM/Res.1529 (LX):⁶

- (i) to refer it, along with a relevant map of the proposed zone (which however was not ready), to member States for their comments and observations which should be submitted by the end of November 1994;
- (ii) to request the OAU Secretary-General to convene in December 1994 a meeting of the OAU Inter-Governmental Group of Experts, and in consultation with the United Nations Secretary-General, to also convene a joint meeting of the Inter-Governmental Group of Experts and the United Nations/OAU Group of Experts to study the draft text of the treaty together with the comments and observations of member States with a view to submitting a final text to the sixty-second Ordinary Session of the Council in June 1995;
- (iii) to appeal to the Secretary-General of the United Nations to defer the submission of the text of the treaty to the General Assembly until its fiftieth session in 1995;
- (iv) to appeal to the United Nations to provide assistance for the organization of the joint meeting proposed for the IGG and the United Nations/OAU Group of Experts.

Barely two weeks after the Tunis meeting, the Secretariat of the OAU by note verbal of 23 June 1994 forwarded to member States the text of the Addis Ababa draft treaty and requested their comments and observations on it. Unfortunately, the relevant map that the OAU resolution had expected to be forwarded along with the draft treaty was not available. By the deadline for the submission of comments and observations, only about ten member States of the OAU had done so. Among these, several pointed out the absence of the map and requested that it be forwarded to them urgently. The most insistent was Mauritius, which in its reply of 22 September 1994 to the OAU Secretariat stated that its government had a problem regarding the definition of the zone of application of the proposed treaty and especially in respect of the Chagos Archipelago. The note further remarked that the map mentioned in article 1 part (I) and annex I was not attached and therefore the Government of the Republic of Mauritius was not in a position to submit its comments on the issue.⁷

In the light of the very small number of member States that sent their comments, the OAU Secretariat was obliged on 31 January 1995 to send a reminder in which it also announced its intention to convene a meeting of the OAU Inter-Governmental Group of Experts prior to the joint meeting of the IGG and the United Nations/OAU Group, and requested States members of the IGG to designate their experts. As will be seen later this preliminary meeting of the IGG never took place.

Action at the United Nations General Assembly's Forty-Ninth Session

The report of the Windhoek and Addis Ababa meetings of the United Nations/OAU Group of Experts was duly submitted by the United Nations Secretary-General to the forty-ninth session of the General Assembly in document A/49/436. The only recommendation made by the experts was that the United Nations might continue to provide support services to the OAU until the final conclusion of the African Nuclear-Weapon-Free Zone Treaty. Along with the report of the Group of Experts, there was also submitted to the General Assembly, a relevant report that it had requested. It should be noted that resolution 48/86 also requested the Secretary-General to report at its forty-ninth session in 1994 on the progress made by the Director-General of the IAEA in ensuring the full implementation of the Safeguards agreement with South Africa.

The response from the IAEA Director-General informed the United Nations Secretary-General that following the declaration by the South African President in March 1993 that his country had manufactured some nuclear weapons but had dismantled and destroyed them, Agency experts had visited the facilities of the abandoned programme at the invitation of the South African government. They reviewed associated historical data in order to assess the status of the nuclear weapons programme and verify that all the nuclear material used in the programme had been fully accounted for and placed under Agency safeguards. By September 1993 on the basis of detailed examination of the production capacity of the pilot enrichment plant, of operating records and of supporting technical data, the IAEA found it reasonable to conclude that the amounts of HEU which could have been produced by the pilot enrichment plant were consistent with the amounts declared in the initial report.⁸

The debate on the report by the General Assembly was very positive, not only because of the progress made in the drafting of the treaty, but also

the positive report of the Director-General of the IAEA. In addition, the following developments occurred in the course of 1994:

- The installation in South Africa of Nelson Mandela as President following the first democratic non-racial election. This removed any doubt about South Africa's political acceptability in the international community;
- An invitation to South Africa, following the installation of the Government of National Unity, to resume participation in all activities of the IAEA.⁹

In the resolution which it adopted after considering the report,¹⁰ the General Assembly, *inter alia*, encouraged the African States to continue their commendable efforts towards finalizing the draft treaty and, in support of the decision of the OAU Council of Ministers, requested the Secretary-General in consultation with the OAU to take appropriate action to enable the United Nations/OAU Group of Experts and the OAU IGG to meet jointly early in 1995 for this purpose.

CHAPTER 8

NEGOTIATING AND DRAFTING THE TREATY (PART IV):

JOINT MEETING OF THE UNITED NATIONS/OAU GROUP OF EXPERTS AND THE OAU INTER-GOVERNMENTAL GROUP, JOHANNESBURG

It should be recalled that resolution CM/Res.1529 (LX), adopted by the OAU Council of Ministers after considering the draft treaty prepared by the United Nations/OAU Group of Experts, requested the OAU Secretary-General to convene in December 1994 a meeting of the OAU IGG. This was to enable it to have a first look at the draft prior to its joint meeting with the drafters, that is, the United Nations/OAU Group of Experts. That meeting however never took place due, as a member of the OAU Secretariat later explained, to the unavailability of the map of the zone. Being the most important issue outstanding, it was clear that its availability was absolutely indispensable for any final negotiating meeting. Indeed the unavailability of the map also explained, in part, the delay of the joint meeting between the two groups, which was not held until the end of May 1995.

In the period leading to the Johannesburg meeting, which was finally fixed for 29 May to 2 June 1995, a number of inputs were generated from several sources, which affected the conduct of the meeting. Among these were:

- (i) comments by several OAU member States on the draft prepared by the United Nations/OAU Group. These were in response to requests by the OAU Secretariat;
- (ii) additional consultations held particularly with the three nuclear-weapon States, France, United Kingdom and United States, with respect to the inclusion of earmarked territories on which they had earlier expressed strong views;

- (iii) the availability for the first time of the map delineating the zone.

The participation of the OAU IGG for the first time in negotiating the treaty implied that it was inevitable that the entire Addis Ababa draft was open to comments, and if need be, to renegotiation. Therefore the procedure adopted was to go through the draft article by article, ending with the preamble. In the process several amendments were proposed and adopted. Many of these have been reflected in the record of the progressive negotiations of the treaty articles contained in Chapters 4 and 5. The focus in this chapter will be on those articles which could only be finalized or which saw major changes to the Addis Ababa draft in Johannesburg during that meeting.

ARTICLE 1: DEFINITION/USAGE OF TERMS

As was shown earlier,¹ the title of this article remained as “Usage of Terms” from the first draft of the treaty, known as the Harare draft, until the Addis Ababa draft. It was changed to the present title in the course of the Johannesburg meeting, after the observation that some of the terms therein were being defined for the first time.

Apart from the amendment of the title, several parts of the article also saw major amendments. This was particularly the case of clause (a).

Article 1(a) “African Nuclear-Weapon-Free Zone”

This clause containing the definition of the area was scrutinized because of its importance as the defining summary of the treaty. The negotiations on the clause were influenced by:

- (i) the result of the informal consultations that were undertaken after the Addis Ababa meeting of the United Nations/OAU Group of Experts, both in the capitals of the nuclear-weapon States concerned and in New York during the April/May 1995 NPT Review and Extension Conference;
- (ii) the bilateral consultations between interested States;
- (iii) the pertinent written comments submitted by OAU member States, as well as the oral comments of members of the OAU IGG; and
- (iv) the written and oral comments of the foreign powers with territories which were being considered for inclusion in the zone.

The written comments by members of the OAU and particularly Mauritius, insisted on the need for the article to faithfully reflect not only the Charter of the OAU, but also all the pertinent resolutions dealing with the territories of member States of the Organization. By omitting any reference to those pertinent resolutions, Mauritius found the article as contained in the Addis Ababa draft as unacceptable. Further reference to the extensive comments of Mauritius will be made in discussing the map of the zone. Many of the OAU Inter-Governmental Group of Experts who were participating in negotiating the treaty for the first time, also spoke in support of the position taken by Mauritius.

Among the non-African States with interest in the area, which might be encompassed by the zone, France and the United Kingdom submitted a joint paper containing several proposals.² They suggested that article 1(a) in the Addis Ababa draft, which stipulated that,

African Nuclear-Weapon-Free Zone means the continent of Africa, island States members of the OAU and other adjoining islands listed in annex I and illustrated on the map attached”

should be reformulated as follows:

African nuclear-weapon-free zone means the territory and islands indicated on the map in annex I and any territorial waters appertaining thereto”.

The joint proposal also recommended that annex I of the Addis Ababa draft should be deleted and that the annex should only contain a map entitled “African Nuclear-Weapon-Free Zone”. This map should not have the names of the territories and islands indicated on it. The BIOT should be shown on the map in a box with a note (either next to or inside the box) stating that the area inside the box is not included in the zone.

The Anglo-French paper generated considerable attention. The first part, which proposed a reformulation of article 1(a), was considered by the negotiators as unsatisfactory in many respects. In its vague reference to territories and islands it did not make a distinction between the territories of member States of the OAU and those territories that were territories administered by foreign powers, and thus would fall under protocol III and have a different status. It also avoided any reference to the OAU’s own

definition of Africa, and particularly the relevant OAU resolutions supporting claims by member States to some of the administered territories. As the second part of the proposal envisaged the deletion of annex I, this confirmed that the omission was deliberate.

Faced with the criticism of Mauritius and many of the OAU Inter-Governmental Group of Experts on the incompleteness of the definition in article 1(a) on the one hand, and the watered down Anglo-French proposal which deleted the text of annex I on the other, the Group of Experts went into a lengthy negotiation to find a way out. The negotiators finally agreed to a reformulation of article 1(a) which offered a more comprehensive reflection of the position of the OAU, and which took account of the possibility of an eventual deletion of annex I in the Addis Ababa draft. The text borrowed extensively from the wording of that annex with appropriate modification for consistency. Thus it became:

African Nuclear-Weapon-Free Zone means the territory of the continent of Africa, islands States members of OAU and all islands considered by the Organization of African Unity in its resolutions to be part of Africa, as well as other islands between those islands and continental Africa.

Final decision on the deletion of the text in annex I was deferred until that annex and the map were negotiated later.

Articles 1(f) “Nuclear Material”

No definition of the term nuclear material featured in the Harare draft and was not proposed for inclusion during the meetings of the Group of Experts in Windhoek and Addis Ababa. The proposal to include such a definition was thus first made at the Joint meeting in Johannesburg. In making the proposal, the initiator stated that since there was an article in the draft Treaty on Physical Protection of Nuclear Materials, it was necessary to be clear what those materials were. It should be recalled that the relevant article is unique to the African Nuclear-Weapon-Free Zone Treaty. The proposed formulation defined nuclear material as:

any source material or special fissionable material as defined in Article XX of the Statute of the IAEA with the understanding that source material is interpreted as not applying to ore or ore residue, in particular to yellow cake, a concentrate consisting essentially of UO.

Having been accepted in principle, the formulation was refined to its present form in the Pelindaba Treaty, that is:

Nuclear material means any source material or special fissionable material as defined in Article XX of the Statute of the International Atomic Energy Agency (IAEA) and as amended from time to time by the IAEA.

Article 4: Prevention of Stationing of Nuclear Explosive Devices

Among the articles on which OAU member States had sent written comments was this article. The focus of the comments was article 4(2) which had been the subject of long negotiation in the meetings of the United Nations/OAU Group of Experts in Windhoek and Addis Ababa. In its long comment on the article, Ethiopia argued that the discretionary right given in that article was relevant only in the context of ships and aircraft that carry nuclear explosive devices. Since, ideally the treaty should prohibit any visits of such nature, exercise of discretionary sovereign right to permit such visits should have been circumscribed by a specific time limit. The absence of such a time limit opened the risk that discretionary rights could be abused to violate the prohibition on stationing which was so crucial to the treaty. Ethiopia believed that the exercise of the discretionary rights of States parties to the treaty would be reasonable only if transits by such carriers were to be restricted to the shortest routes and the shortest possible transit time.³

This concern was supported by some of the OAU-IGG experts who argued for the deletion of the article which they believed could create a loophole under which parties would allow visits to the zone by nuclear-armed vessels. Other experts, however, recalled that the first draft of the treaty did not contain such a clause, though it was known that the Treaty of Rarotonga had included it. When it was first suggested that such a clause be inserted into the draft treaty at the meeting of the OAU/United Nations Group of Experts in Windhoek in March 1994, a long discussion had taken place based on the risks implicit in giving such discretionary right to States parties. It became clear at that meeting that the precedent in the Treaty of Rarotonga for its parties to have such discretionary rights was considered very important in meeting the interests of some of the nuclear-weapon States. Such a provision had therefore been included in the draft treaty, as

it was believed that its non-inclusion could lead to great difficulties in persuading the nuclear-weapon States to adhere to its protocols.

After some further discussions of the issue, it was agreed that the clause could not be deleted as had been proposed without creating great difficulties in soliciting the support of some of the nuclear-weapon States for the treaty. However, a formula had to be found to ensure that the exercise of this discretionary right would not affect the effectiveness of the treaty. To that end, a compromise was proposed whereby the right given in the article would be exercised “without prejudice to the purposes and objectives of the treaty”. Thus that phrase was added as the beginning of article 4(2). The article read:

without prejudice to the purposes and objectives of the treaty, each party in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lane passage, or transit passage of straits.

This formulation reassured the African States that were intent on the maximum effectiveness of the treaty without provoking the objection of the nuclear-weapon States that had insisted on the inclusion of the clause. However this issue was to be raised again in the context of Article 13 as will be seen later.

Article 12: Mechanism for Compliance

Two points were raised about the text of this article as contained in the Addis Ababa draft. First, it was suggested that the limited enumeration of the undertakings of parties to the treaty as contained in paragraph 1 might imply an unintended limitation of the responsibilities of the Commission. Thus, it was proposed that instead of the formulation which began with “For the purpose of ensuring compliance with their undertakings with respect to both the activities prohibited in the interest of non-proliferation and those permissible for the promotion of peaceful uses of nuclear science and technology...” the following be substituted: “For the purpose of ensuring compliance with their undertakings under this treaty...” The proposal was accepted.

Second, with respect to clause (e) of paragraph 2, it was proposed to add that the Commission should encourage cooperation at the sub-regional level in addition to the regional level. The clause was amended by the addition of the phrase “and sub-regional” between regional and programmes in the first line, such that it became: “Encouraging regional and sub-regional programmes of cooperation in the peaceful uses of nuclear science and technology”.

Article 13: Report and Exchanges of Information.

The extensive negotiation which took place on Article 4(2) concerning permission for visits by foreign ships and aircraft in a manner not covered by the rights of innocent passage re-echoed again in the negotiation of this article. Following the reluctance with which some experts accepted the retention of article 4(2) they demanded that the reporting obligation in article 13.1 should make mandatory the inclusion of a report on any exercise of rights conferred in Article 4(2). This proposal evoked a lengthy debate on its merits and demerits. Opponents expressed the fear that singling out that article could divert attention from other important aspects that should be reported upon. It might also imply a questioning of the exercise of a party’s sovereign right as contained in the article.

As a compromise, it was finally agreed that the African Commission on Nuclear Energy should be required to ensure that the reporting format that it was required to develop in annex III (2) would assure comprehensive reporting by States, including activities under article 4.2. To that end, article 13.1 was amended to oblige parties to conform with the Commission’s reporting format, by the addition of an appropriate phrase to the end of the text in the Addis Ababa draft. The new text therefore read:

Each party shall submit an annual report to the Commission on its nuclear activities as well as other matters relating to the treaty in accordance with the format for reporting developed by the Commission.

ANNEX I: AFRICAN NUCLEAR-WEAPON-FREE ZONE

The resumption of the negotiation of annex I in the Johannesburg joint meeting was greatly facilitated by the availability for the first time, of the map of the zone. In drawing it, the cartographer took as his guidance the

text of annex I of the Addis Ababa draft which stated that the African nuclear-weapon-free zone “will encompass the continent of Africa, island States members of the Organization of African Unity, and all islands considered by the Organization of African Unity in its resolutions to be part of Africa, as well as other islands between those islands and continental Africa”.

Thus besides continental Africa and island-States members of the OAU the map also encompassed the Chagos Archipelago, the French territories of Reunion, Mayotte, Tromelin, Juan de Nova, Europa, Bassa da India, the Spanish possession of Canary Islands, and Portugal’s territory of Madeira. Before taking a final decision on the map, the experts had a full day of consultations with the invited States with international responsibilities for territories that might be included in

the zone, namely France, the United Kingdom, the United States, Portugal and Spain. It was agreed to hold the consultations with these States in sequence following which the experts would meet alone to arrive at their decisions.

Chagos Archipelago

The question of the Chagos Archipelago proved, as in previous negotiating meetings, to be the most difficult. It involved the interests of two nuclear-weapon States, one (the United Kingdom) with international responsibility, one (the United States) to which part of the Archipelago was leased for security purposes. To further compound the dilemma, France had joined the United Kingdom in submitting a paper that extensively dealt with the issue of the Archipelago.⁴ Consultations therefore commenced with this issue.

Not surprisingly, the representative of the United Kingdom emphasized that unless the issue was satisfactorily resolved, it could constitute an obstacle to his country’s adherence to any of the protocols of the treaty. The preference of the United Kingdom was that the Archipelago be not included in the African Nuclear-Weapon-Free Zone. Making reference to the paper jointly submitted by the United Kingdom and France, the representative reiterated that, as a compromise, the map of the zone, which should have no names on it, could show the British Indian Ocean Territory but in a box with a note (either next to or inside the box) stating that the area inside the box was not included in the zone.

The United States representative supported the position of the United Kingdom, advising that the treaty should steer clear of sovereignty disputes. To that end the United States preferred the non-inclusion of the Chagos Archipelago in the zone. It should be noted that the United States' interest in this issue derived from the fact that the Archipelago was reported to be a staging base for American nuclear-capable P-3 naval aircraft; a support facility for carrier battle groups operating in the Indian Ocean; and was also used for a range of communications satellite tracking and monitoring activities.⁵ Indeed the military activities in the Archipelago were the initial cause of the focus of African attention on the island of Diego Garcia, which led the OAU to express its concern "that the militarization of Diego Garcia is a threat to Africa and to the Indian Ocean as a zone of peace."⁶

In a quick reaction to the statements by the representatives of the United Kingdom and the United States, the expert from Mauritius stated that the Chagos Archipelago had to be part of the African nuclear-weapon-free zone because it was part of the territory of Mauritius. He cited Chapter XI, Section III of the country's constitution that contained the definition of the extent of the territory of the country. He affirmed that in consideration of the support of the OAU to his country's claim to the Archipelago, the Foreign Minister of Mauritius had in a letter to the OAU Secretary-General on the draft African Nuclear-Weapon-Free Zone Treaty stated *inter alia* "it is absolutely essential for the OAU to insist that the Chagos Archipelago be included in the zone". In the same letter, the Foreign Minister referred to the issue of sovereignty stating "Mauritius is prepared to accept the inclusion of a clause in the treaty explaining the positions of both the United Kingdom and Mauritius". This had already been communicated to the United Kingdom along with a proposed form of words as follows:

"Nothing in the present treaty or resulting from it is to be interpreted as a change in the position of or affecting the claim of the Republic of Mauritius or that of the United Kingdom with regard to sovereignty or territorial and maritime jurisdiction over the Chagos Archipelago and the surrounding maritime areas".⁷

Under the circumstances, concluded the expert from Mauritius, it was totally unacceptable to have a nameless map or one that carried the United Kingdom's suggested note that the Chagos Archipelago was not part of the zone.

French Islands

Apart from supporting the United Kingdom's position on the Chagos Archipelago, the representative of France made it clear that France was prepared to show its cooperation with African countries in their endeavour to make their continent a nuclear-weapon-free zone. France had no objection therefore to the inclusion of its territories in the Indian Ocean within the zone, provided it was made clear in the treaty that there was no dispute regarding sovereignty over the territories, which were integral parts of France.

Canary Islands

The representative of Spain reaffirmed his country's commitment to non-proliferation, including its support for the creation of regional nuclear-weapon-free zones under the appropriate conditions. He said that Spain would undertake a careful legal study of protocol III, which would be open for its signature and would adopt an appropriate final decision in the light of the conclusions reached by the experts after the discussions and consultations in Johannesburg. He concluded that his country would prefer that it be made clear that Spain was in *de jure* control of these Islands rather than being merely recognized as internationally responsible for them.

Madeira Archipelago

The representative of Portugal was emphatic in rejecting the inclusion of the Madeira archipelago in the zone. He contended that Madeira was, according to the Portuguese Constitution, an integral part of Portugal and a part of Europe and had been so considered since Portuguese Navigators discovered it almost 600 years ago. The archipelago, he contended, did not fall under the scope of article 1 of protocol III, which dealt with territories for which some States were internationally responsible. He also emphasized that the archipelago did not meet the criterion of proximity to the African continent as it was farther from the continent than many countries in Europe. Portugal, he concluded, would not agree that any part of its national territory be included in the African Nuclear-Weapon-Free Zone.

Follow-Up Consideration by the Experts

In their deliberations after the consultations with the five States, and using the criteria they agreed upon in the new article 1(a) the experts were quick to reach consensus (i) that it was necessary to identify in the map the

States, island-States and territories that would form part of the zone; (ii) that there was no valid basis for including the Madeira Archipelago in the zone as it was not covered by any OAU resolution and was included only on the basis of the issue of contiguity contained in annex I of the Addis Ababa draft. As for the Chagos Archipelago, they agreed that it had to be included in the zone. Nevertheless a way had to be found for a compromise between the positions of Mauritius and the United Kingdom so as to ensure that Mauritius was a party to the treaty and that the United Kingdom adhered to the protocols. The Chairman of the meeting (the present author) was requested to conduct further consultations with all the interested parties and report back.

In the course of those further consultations, a compromise was proposed between the proposal of the United Kingdom to insert the Archipelago in a box in the map with an indication that it was not part of the zone and the position of Mauritius to include the Archipelago in the map as part of its territory and thus outside the scope of protocol III. This consisted of inserting the Archipelago in a box on the map with a remark that it appeared on the map “without prejudice to question of sovereignty, or its future status”.

When consulted, however, the expert from Mauritius rejected the idea for the reason that it called into question the sovereignty claim of his country over the Archipelago. When consulted also, the United Kingdom’s representative found the wording unsatisfactory, as it did not make explicit that the Archipelago did not form part of the zone. He was however prepared to accept a modification that would indicate that the Archipelago appeared on the map “without prejudice to question of sovereignty, or its present or future status with respect to the African Nuclear-Weapon-Free Zone”. However this was seen as totally unacceptable to the expert from Mauritius.

The chairman therefore had to report back to the experts on his compromise proposal, the reaction of Mauritius and that of the United Kingdom. As they were contrary to the resolution of the OAU, the proposals of the United Kingdom either not to include the Archipelago in the map, or to include it in a box with the note that it did not form part of the zone, were unacceptable to most of the experts. They argued that it had not only called into question the issue of sovereignty, but also the inclusion of the Archipelago in the zone provisionally, pending the resolution of the issue of

sovereignty. This would thereafter determine whether it would remain an integral part of the zone or would fall under protocol III.

After further negotiations among themselves, the experts agreed to accept the Chairman's proposal of including the archipelago in the zone but with an annotation that its appearance as part of the zone is "without prejudice to the question of sovereignty or its future status". Though the expert from Mauritius expressed reservation on the compromise, other experts felt that they had gone as far as they could in trying on the one hand to respect the claim of Mauritius while at the same time avoiding a total alienation of the United Kingdom. They accepted the notice given by Mauritius that it reserved the right to raise the issue during the final consideration of the draft treaty by the OAU Council of Ministers or even at the level of the Heads of State.

As will be seen later, this issue was finally settled by the OAU Heads of State on the basis of the recommendation of the OAU Council of Ministers.

After their negotiation on the map of the zone, the experts reverted to that part of the Anglo-French joint proposal submitted during the negotiation of Article 1(a) of the draft treaty which suggested the deletion of annex I and replacement only by the map which would be entitled "African Nuclear-Weapon-Free Zone". It was widely considered that the comprehensive definition of the new Article 1(a) and the faithful reflection in the new map of the zone made any further enumeration in an annex unnecessary. A consensus was thus reached to delete the text of annex I as proposed by France and the United Kingdom and to feature only the map as the annex with the title "Map of an African Nuclear-Weapon-Free Zone". Furthermore since the issue of the inclusion of the Madeira archipelago had been rejected, it was decided to delete from the new article 1a the last phrase "as well as other islands between those islands and continental Africa".

ANNEX II: SAFEGUARDS OF THE INTERNATIONAL ATOMIC ENERGY AGENCY

Though exhaustively negotiated in the earlier meetings, this annex saw important amendments made again. The necessity for IAEA safeguards was

recognized as fundamental to cooperation for the peaceful uses of nuclear energy. To that end African States were to be encouraged to conclude such agreements. The importance of the annex was thus emphasized, but it was also suggested that a way should be introduced to make compliance by State parties non cumbersome. It was noted that though many African States were parties to the NPT, they had not concluded the required safeguards agreement mandated by that treaty mainly because of complaint that the procedure for negotiating it was not easy particularly for States that had practically no nuclear programme. To simplify compliance with Article 9 of the African Nuclear-Weapon-Free Zone Treaty therefore, it was suggested that those African States that had concluded the NPT safeguards agreement with the IAEA should not have the additional burden of going through a similar process in the context of the new treaty. An appropriate provision was thus suggested for addition to paragraph 2 of the annex as follows:

A party that has already entered into a safeguards agreement with the IAEA is deemed to have already complied with the requirement.

This was inserted immediately after the first sentence.

Another important amendment emanated from the observation by an expert that the Commission has no way of knowing about any adverse finding on the nuclear activities of any party whose programme was inspected by the IAEA. The Annual report required in Article 13 did not specify the inclusion of such an IAEA report. Thus State parties were under no obligation to include it in their annual report. Even if some chose to include it, the practice would not be uniform, as others might not do the same thing. To fill the gap it was proposed to begin paragraph 4 of the annex with specific mention of that obligation as follows:

Each party shall include in its annual report to the Commission, in conformity with article 13, for its information and review, a copy of the overall conclusions of the most recent report by the IAEA on its inspection activities in the territory of the party concerned and advise the Commission promptly of any change in those conclusions. The information furnished by the party shall not be, totally or partially, disclosed or transmitted to third parties, by the addressees of the reports, except when that party gives its express consent.

ANNEX IV: COMPLAINTS PROCEDURE

The text of annex IV as agreed in the Addis Ababa Draft saw a few significant changes in Johannesburg. The first change related to the title. An expert pointed out that the title did not fully reflect its contents and therefore its importance. Apart from indicating the manner of lodging complaints against a State party, it also elaborated the procedure for dispute settlement, which ranged from bilateral contacts, through action by the Commission and action by the OAU to the possibility of action by the United Nations Security Council. The proposal that the title therefore should be changed to “Complaints Procedure and Settlement of Disputes” was accepted, and the title changed accordingly.

A second amendment related to the necessity for the complaint and settlement mechanism to be precise, so that it could be applied in a consistent manner. This applied in particular to the timeframe for a State party against which a complaint was made to respond either to the complainant or to the Commission. It was proposed therefore to fix the precise time in the annex, instead of the imprecise provision of allowing the party complained of “reasonable opportunity” to provide its explanation, which had been included in paragraphs 1 and 3 of the annex in the Addis Ababa draft. A complainant would now allow the party complained of thirty days for explanation, with a view to bilaterally resolving the matter. If the matter was not resolved and was referred to the Commission, it would allow the party complained of forty-five days to provide its views on the matter. The proposal was accepted and paragraphs 1 and 3 were amended accordingly. The new text was therefore as follows:

The party which considers that there are grounds for a complaint that another party or a party to protocol III is in breach of its obligations under this treaty shall bring the subject-matter of the complaint to the attention of the party complained of and shall allow the latter thirty days to provide it with an explanation and to resolve the matter. This may include technical visits agreed upon between the parties.

If the matter is not so resolved, the complainant party may bring this complaint to the Commission.

The Commission, taking account of efforts made under paragraph 1 above, shall afford and party complained of forty-five days to provide it with an explanation of the matter”.

A third amendment was made in connection with how to characterize an inspection carried out by the IAEA at the request of the Commission in paragraph 4. It should be recalled that the term “extraordinary inspection” in the Harare draft was changed to “special inspection” at the Windhoek meeting. An expert pointed out that even the term “special inspection” had a connotation more serious than might be applicable in the situation to be dealt with. It portended a situation considered to pose grave threat to international peace and security, a determination that could only be made by United Nations Security Council. It was therefore necessary to use a different term for the activity envisaged in this annex.

After considerable exchange of views, it was finally agreed to use the simple term “inspection” bearing in mind that any reference to such an inspection would always be made within the context of this paragraph, which would also define its tasks and objectives. Thus the term “inspection” was substituted for “special inspection” wherever it occurred in paragraph 4 of this annex to the Pelindaba Treaty.

A final amendment that arose out of the change of terminology from “special inspections” to “inspections” was the deletion of paragraph 6 of the annex that had existed since the Harare draft, and was designed to emphasize the right of the IAEA to undertake its own “special inspections” at its own discretion. With the change of terminology in paragraph 4 of the annex, it was felt that no confusion could arise as to necessitate any clarification.

PROTOCOLS

In considering the protocols to the treaty in the Johannesburg meeting, very few amendments were made, as the Addis Ababa draft was found very satisfactory. Nevertheless, the view was expressed that although the preambles in the draft had sought to introduce a reflection of African aspirations in creating the zone, it had not sufficiently reflected the benefits to be derived from the peaceful uses of nuclear energy in Africa. It was therefore proposed that an additional phrase be added to the second

preambular paragraph specifying the role of the treaty in promoting cooperation in the peaceful uses of nuclear energy. Thus that paragraph in each protocol was amended as follows:

Convinced also that the African Nuclear-Weapon-Free Zone Treaty, negotiated and signed in accordance with the Declaration on the Denuclearization of Africa (AHG/Res.II (1)) of 1964, resolutions CM/Res 1342(LIV) of 1991, and CM/Res.1395(LVI) Rev.1 of 1992 of the Council of Ministers of the Organization of African Unity, and the United Nations General Assembly Resolution 48/86 of 16 December 1993, constitutes an important measure towards ensuring the non proliferation of nuclear weapons, promoting cooperation in the peaceful uses of nuclear energy, promoting general and complete disarmament, and enhancing regional and international peace and security;

The only amendment to the operative parts of any of the protocols affected article 4 of protocol III, which named the States that were expected to be parties to the protocol as France and Spain. The deletion of Portugal from the list agreed upon in the Addis Ababa Draft was consequential to the agreement reached on Article 1(a) and on the map of the zone.

As mentioned already in Chapter 5, the preamble to the treaty as contained in the Addis Ababa draft was considered satisfactory. Only one amendment was made to paragraph V and one addition which features as present paragraph VIII.

FROM THE JOHANNESBURG DRAFT TO THE ADOPTION OF THE PELINDABA TREATY

Consideration of the protocols therefore effectively ended the treaty negotiations by the joint meeting. In adopting the agreed text, the issue of the name to be given to it was resolved easily by the very appropriate suggestion of the South African expert. It should be recalled that in keeping with the custom of naming the draft of the treaty as it evolved after the city in which the experts held their meeting, the final draft should have been called the Johannesburg Draft. However the South African expert suggested that the draft text should be named after the location of the headquarters of the South African Atomic Energy Corporation, namely Pelindaba, about thirty kilometres to the west of Johannesburg.

The proposal appeared appropriate for two reasons: first, the South African Atomic Energy Corporation was the symbol of the change of the South African nuclear programme from being a threat to the rest of Africa, to what might become the hub of continental cooperation in the peaceful uses of nuclear energy; second, Pelindaba, which derives from the Zulu words “phelile indaba” meaning “the matter is settled or the discussion is closed”, was eminently appropriate for the final agreement on negotiations that had lasted from 1993 when the first meeting on the draft treaty was held.

The proposal was therefore enthusiastically accepted and it was further decided that the formal adoption of the final draft text by the experts should be held at the Atomic Energy Corporation headquarters in Pelindaba. Thus it was that the adoption of the text and the closing ceremony of the Joint meeting took place in the afternoon of 2 June 1995 in Pelindaba with the participation of Dr. J.W.L. de Villiers, Chairman of the Corporation and Dr W.E. Stumpf, the Chief Executive. Having adopted the text, the experts requested the Chairman to transmit it to the Secretary-General of the OAU, as well as the Secretary-General of the United Nations, for appropriate action by each.⁸

ACTION BY THE OAU

On receipt of the Pelindaba draft text, the OAU Secretary-General submitted it to the sixty-second Ordinary Session of the OAU Council of Ministers, held in Addis Ababa on 21-23 June 1995. In its consideration of the draft treaty, the only part that was re-opened for negotiation was annex I containing the map of the zone. The Foreign Minister of Mauritius recalled that the expert from his country had made a reservation on the decision taken at the Johannesburg final meeting of experts on the inclusion of the Chagos Archipelago in the map of the zone with an annotation “without prejudice to the question of sovereignty or its future status”. He once again recalled the resolutions of the OAU supporting his country’s claim of sovereignty over the Archipelago as well as the Organization’s resolution expressing concern on the militarization of Diego Garcia, which posed a threat to Africa. On both counts, the Archipelago should be part of the African Nuclear-Weapon-Free Zone. Several other Ministers supported the position of Mauritius.

In taking a decision, the Council of Ministers took account of Mauritius's flexibility in accepting in its letter to the United Kingdom that the inclusion of the Archipelago in the zone did not affect the claim of Mauritius or the United Kingdom with regard to sovereignty.

In recommending the adoption of the draft treaty to the thirty-first Ordinary Session of the Heads of State, the Council amended the annotation in the map of the zone on the Chagos Archipelago to read "without prejudice to the question of sovereignty". The Council also endorsed the offer of Egypt to host the signing ceremony and that of South Africa to host the headquarters of the African Nuclear Energy Commission.⁹ At its meeting in Addis Ababa on 24–28 June 1995, the OAU Assembly of Heads of State approved the treaty as amended by the Council of Ministers. The Assembly also accepted the invitation of Egypt that the formal signing ceremony should take place in Cairo, and the offer of South Africa to host the headquarters of the African Nuclear Energy Commission.

Proceeding of the Signing Ceremony in Cairo

Following consultations with the OAU Secretary-General, the Government of Egypt issued invitations for an OAU Ministerial Conference to be convened in Cairo on 11 April 1996 for a ceremony to sign the Pelindaba Treaty. The present writer as Chairman of the Group of Experts that drafted the treaty was also invited. The meeting did convene on the appointed day, at which 41 OAU member States signed the treaty. Three nuclear-weapon States, China, the United Kingdom and the United States signed protocols I and II, while France signed protocols I to III. Neither Russia nor Spain attended the Cairo signing ceremony. However Russia later signed protocols I and II on 5 November, 1996. On the other hand, Spain has yet to sign protocol III at the time of this writing.

At the signing ceremony, the African States signatories issued the Cairo Declaration in which they solemnly declared that the signing of the treaty further consolidated global efforts towards the non-proliferation of nuclear weapons, including the objectives of the NPT and was a highly significant contribution to the enhancement of international peace and security. They therefore encouraged one another to ratify the treaty as soon as possible so that the treaty could enter into force. They further called upon the nuclear-weapon States and the States identified in protocol III to sign and ratify the appropriate protocols as soon as possible.¹⁰

DECLARATIONS BY THE UNITED KINGDOM AND THE UNITED STATES ON SIGNING PROTOCOLS I AND II

It is pertinent to call attention to the statements made by the United Kingdom and the United States, particularly as they concerned Security Assurances and the inclusion of the Chagos Archipelago in the African Nuclear-Weapon-Free Zone following their signature of protocols I and II.

The United Kingdom stated that it had no doubt as to its sovereignty over the British Indian Ocean Territory and did not accept the inclusion of the Territory within the African NWFZ without the consent of the United Kingdom government. It declined the acceptance of any legal obligations in respect of that Territory by its adherence to protocols I and II. With respect to protocol I, the United Kingdom stated that it would not be bound by its undertaking under article 1, in the following situations:

- (i) in the case of an invasion or any other attack on the United Kingdom, its dependent territories, its armed forces or other troops, its allies or a State towards which it has a security commitment, carried out or sustained by a party to the treaty in association or alliance with a nuclear-weapon State;
- (ii) if any party to the treaty is in material breach of its own non-proliferation obligations under the treaty.

Finally, the United Kingdom stated in connection with article 6 of protocols I and II, that it reserved the right to withdraw from the protocols on giving notice of withdrawal to the Depositary three months in advance (instead of the twelve months stipulated in the article).¹¹

In its "Declarations and Understandings", the United States gave its understandings of the terms "Dumping" and "Inland Waterways". With respect to protocol I, it stated that it would consider that an invasion or any other attack on the United States, its territories, its armed forces or other troops, its allies or a State toward which it has a security commitment, carried out or sustained by a party to the treaty in association or alliance with a nuclear-weapon State, would be incompatible with the party's corresponding obligations under the treaty. On the inclusion of the Chagos Archipelago in the map of the African Nuclear-Weapon-Free Zone, the United States noted that the United Kingdom of Great Britain and Northern Ireland was not eligible to become a party either to the treaty or to protocol

III. Thus, neither the treaty nor protocol III applied to the activities of the United Kingdom, the United States or any other State not party to the treaty on the island of Diego Garcia or elsewhere in the British Indian Ocean Territories. It concluded that no change was therefore required in United States armed forces operations in Diego Garcia and elsewhere in the British Indian Ocean Territories.¹²

A number of African States, the United Nations Secretary-General's representative and the Director General of the IAEA also made statements essentially emphasizing the importance of the treaty and urging its early ratification. Thus was concluded the saga of the "Treaty or Convention on the Denuclearization of Africa" which began with the Declaration on the Denuclearization of Africa adopted by the OAU Assembly of Heads of State and Government in Cairo in July 1964.

CHAPTER 9

GLOBAL AND AFRICAN IMPLICATIONS OF THE TREATY AND PROSPECTS FOR IMPLEMENTATION

Negotiations of the Pelindaba Treaty took place at a time of momentous global changes. This provided the ideal background to negotiating a treaty whose antecedent, the OAU Declaration on the Denuclearization of Africa, was conceived in the global context. Though Africa-specific, the Declaration was meant to foreshadow Africa's contribution to the global quest of the 1960s to address the nuclear threat to international peace and security. It should be recalled that the first resolution by the OAU inaugural session in 1963 which envisaged both the Declaration and negotiations of a treaty was adopted under the item General and Complete Disarmament.

The Pelindaba Treaty therefore portends in its security ramifications, global and African significance. It drew from the examples of the Treaties of Tlatelolco and Rarotonga, which preceded it. More importantly, however, it went far beyond the scope of the two to emphasize that its vision and relevance should go beyond Africa. It contains several articles which have not previously appeared in any regional nuclear-weapon-free zone treaty and which while enhancing Africa's security, can be applicable in constructing new or strengthening existing nuclear-weapon-free zones.

Notable among the new articles are 1(e) which defined for the first time the term "nuclear installation". The definition became necessary because of the perceived necessity to include in the Pelindaba Treaty an article (article 11 in the treaty) on the prohibition of attack on any nuclear installation within the zone. It was necessary to assure all African States, particularly in the North African region that their peaceful nuclear installations would not be subject to unilateral and arbitrary attack either by or with the assistance or connivance or encouragement of any party. The

hope is that the norm it establishes, (that of non-unilateralism and arbitrariness in dealing with any suspicious programme in any region), will be applicable in other regions of the world. The complimentary elaborate Complaints Procedure and Settlement of Disputes in annex IV show that the treaty could not be used by any party to conduct illegal activities unchallenged. Similarly, articles 10 and 7, which are unique to the Pelindaba Treaty, are meant to enhance the security of parties as well as of the zone. The former on Physical Protection of Nuclear Materials and Installations imposed on parties the obligation to adopt the strictest measures of protection of nuclear materials, facilities and equipment to prevent unauthorized used and handling; and the latter obliged each party to prohibit *inter alia* the dumping of radioactive wastes and other radioactive matters anywhere within the African nuclear-weapon-free zone. These are relevant also to other regions.

Article 6 on Declaration, Dismantling, Destruction or Conversion of Nuclear Explosives Devices and the Facilities also appeared for the first time in a regional nuclear-weapon-free zone treaty. It was aimed primarily at South Africa whose nuclear programme was the greatest source of security threat to Africa. Beyond Africa however, the article demonstrated for the first time that prior possession of nuclear capability by a State in a region should not by itself be a barrier to a regional nuclear-weapon-free zone. The solution of the African situation should thus provide an example and encouragement to other regions where prior possession of nuclear weapon would have been considered an insurmountable obstacle. It should be noted that the transparency of South Africa on its nuclear capability became its first and an important confidence-building measure with other African States. It formed the foundation of its present total acceptance. It is to be noted that even an elected African-led government that insisted on preserving the nuclear-weapon capability of the old regime would have been perceived as a threat to African security. This should constitute a worthwhile example to the region of the Middle East in particular where the fundamental political issue is complicated by suspicious nuclear programme of a State in the region.

As has been demonstrated in this work, the final agreement on the area of application of the treaty took long and arduous negotiations. It had on the one hand to preserve the territorial interests of all African States and on the other to avoid alienating others especially nuclear-weapon States whose support of the treaty was indispensable. While therefore encompassing the

territory of Africa, island-States members of the OAU and all islands considered by the OAU in its resolutions to be part of Africa, it avoided the inclusion of any large sea areas so as to respect freedom of navigation in the Law of the Sea convention. In addition, while conforming to the principle of preserving the interests of the African States, the long negotiation of the article with the nuclear-weapon States with declared interest showed the care to ensure their support. Otherwise, without their support through becoming parties to the appropriate protocols, the treaty would have been ineffective *ab initio*. In this connection, the consultations with the nuclear-weapon States on all areas of interest to them during the negotiating stages of the treaty should become an example of a productive approach to a regional NWFZ treaty. Even though no compromise on African interests and security was made in most cases, the openness of the invitation to the nuclear-weapon States and others with interest in the area, facilitated their support. It is instructive that the Pelindaba Treaty has attracted the fastest signature and ratification of the appropriate protocols by nuclear-weapon States.

The delay of ratification by enough African States to bring the treaty into force over five years after its signature is unfortunate. While not unusual in the attitude adopted towards other regional multilateral instruments, it is another example of the necessity for African countries to review their relevant national procedures. It should be noted, however, that the prospects for the treaty's coming into force are improving at the time of writing this work with the personal interest being shown by some Heads of State. The initiative to insert the issue on the agenda of the thirty-seventh Summit of the OAU held in Lusaka in July 2001 was taken by the President of the Federal Republic of Nigeria. The discussion which was qualified as "one of the milestone achievements of the Summit" provided the stimulus for the resolution adopted at the seventy-fifth meeting of the OAU Council of Ministers held in Addis Ababa in March 2002. That resolution *inter alia* reaffirmed the importance of the treaty, regretted that only a few OAU member States had so far ratified it, and called upon those States that had not ratified to do so in order that it might be brought into force by the next Summit to be held in South Africa in July 2002. (Res/CM/Dec 644 (LXXV). Though the prospects of meeting the deadline of July 2002 for entry into force look dim at the time of writing this work, the resolution will at least hopefully set in motion the ratification procedures in States that have not yet ratified.

Its coming into force will open vast benefits for African security as shown above. It will in addition provide a stimulus for African cooperation in the peaceful uses of nuclear energy for socio-economic development of the continent. The general elementary state of the development of nuclear energy in Africa as shown in Chapter 2, fully justified the pro-active role foreseen in the treaty. Articles 8.2 and 8.3 were emphatic in the far-reaching commitments to be undertaken by parties to “strengthen their security, stability and development” by promoting “individually and collectively the use of nuclear science and technology for economic and social development”.

In order to assist the process, the treaty’s implementation mechanism—the African Commission on Nuclear Energy—was charged with encouraging regional and sub-regional programmes for cooperation, and to promote international cooperation with extra-zonal States in the peaceful uses of nuclear science and technology. (Articles 12.2 e and f)

As was mentioned in Chapter 2, an effort had been made in this direction when the OAU sponsored a seminar on “Africa’s Role in Nuclear Science and Technology” in Kampala, Uganda in March 1990. The immediate aftermath was the creation of AFRA by some African States members of the IAEA. As can be seen in the Supplement to this work on “The Treaty of Pelindaba and the Challenge of Cooperation in the Peaceful Uses of Nuclear Science and Technology in Africa”, the effect of AFRA has been limited due mainly to its limited mandate and resources. The Pelindaba Treaty sought to provide the possibilities for wide-ranging cooperation whose limitation can only arise from the will of African States to take maximum advantage. The potential advantages to African States are examined in detail in the Introduction. The areas identified in the Introduction show practical points of cooperation that can deepen inter-African measures for individual and collective progress in an important scientific development so far largely neglected by the Continent. Early ratification by States parties and entry into force of the Pelindaba Treaty will be an indication that Africa while further demonstrating its collective commitment to non-proliferation of nuclear weapons, is ready to become an active participant in the beneficent uses of nuclear energy.

NOTES

Chapter 1

1. The United States dropped the first atomic bomb ever used on Hiroshima on 6 August 1945 killing about 110,000 people. On 9 August another atomic bomb was dropped on Nagasaki, killing about 95,000 people.
2. It should be recalled that the negotiating conference for the Charter of the United Nations convened in San Francisco in April 1945 and completed work on the document in June 1945.
3. William Epstein, *Disarmament, Twenty-Five Years of Effort*, Toronto: Canadian Institute of International Affairs, 1971.
4. UNGA Res.(1), 24 January 1946.
5. Ben Sanders, "The Nature of the Nuclear Non-Proliferation Regime", in Darryl Howlett (ed.), *Africa and Nuclear Non-Proliferation*, PPNN Papers, 1993, p. 3.
6. *United Nations and Disarmament 1945-1970*, Geneva: United Nations, p. 269.
7. For an account of the negotiations, see *United Nations and Disarmament 1945-1970*, pp. 268-292.
8. A/Res/2028 (XX), November 1965. See Appendix 2.
9. The norm established by the Treaty has been breached, openly once by India and Pakistan which exploded nuclear weapons tests in 1998. It should be stated however that South Africa in its days as a pariah State, isolated by the United Nations because of its policy of apartheid, secretly developed a nuclear weapons capacity. Israel is also widely believed to possess a nuclear weapons capability.
10. "Principles and Objectives for Nuclear Non-Proliferation and Disarmament", NPT Review and Extension Conference 1995, A/PV.697, paragraph 136.
11. See A/10027/Add.1, 1975.
12. For text of the resolution see Appendix 3.
13. Final document, Tenth Special Session of the United Nations General Assembly 1978, paragraphs 60 and 61.
14. "Principles and Objectives for Nuclear Non-Proliferation and Disarmament", paragraphs 5 and 6.

15. See for example Jozef Goldblat, "Nuclear-Weapon-Free Zones, A History and Assessment", *The Non-Proliferation Review*, CNS Monterey Institute of International Studies, Vol. 4, Spring/Summer 1997.
16. Anatoly Dobrynin, *In Confidence*, New York: Random House, 1995, p. 74.
17. A graphic account of the evolution of events in those ominous days can be found in *ibid.*, pp. 81-94.
18. For text of the Treaty see *UN Treaty Series*, New York: United Nations, 1968.
19. For text of the Treaty see *ibid.*
20. For text of the Treaty see *ibid.*
21. Xjang Kigu, "South East Asia Nuclear-Weapon-Free Zone Treaty: Prospects for its entry into force", *Kathumandu Process 3*, Kathumandu: United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific, 24-26 February 1997, p. 82.
22. See Norachit Sinhaseni, "South East Asia Nuclear-Weapon-Free Zone: Next Steps", *Disarmament*, Vol. XXX, No. 1, 1997, pp. 63-70.
23. For text of the Law of Mongolia on its nuclear-weapon-free status, see Appendix 31.
24. See UNGA doc A/C.1/55/py 6, 5 October 2000.
25. Res. 3265A, 1974.
26. Res. 3265A, 1974.
27. Res. 3263, 1974.
28. UNGA doc A/451435 (October 1990), Report of Group of Experts on a Middle East Nuclear-Weapon-Free Zone.
29. For text of the Almaty Declaration see UNGA doc A/52/11.

Chapter 2

1. The Uranium Institute, "Uranium History, Uranium Statistics and History", <http://www.world-nuclear.org>, p. 1.
2. United Nations, "South Africa's Plan and Capability in the Nuclear Field", United Nations Studies Series 2, Geneva: United Nations, 1981 p. 4.
3. *Ibid.*, p. 6.
4. Guy Martin, "Uranium: A Case-Study in Franco-African Relations", *The Journal of African Studies*, Vol. 27, No. 4, 1989, p. 629.
5. OECD, *Uranium Resources, Production and Demand 1989*, Paris: OECD, 1990.

6. OECD, *Uranium Resources, Production and Demand 1999*, Paris: OECD, 2000, p. 160.
7. Oye Ogunbadejo, "Africa's Nuclear Capability", *Journal of Modern African Studies*, Vol. 22, No. 1, 1984, pp. 39-40.
8. Guy Martin, "Uranium: A Case-Study in Franco-African Relations", p. 635.
9. OECD, *Uranium Resources, Production and Demand 1989*. OECD, *Uranium Resources, Production and Demand 1990*. OECD, *Uranium Resources, Production and Demand 1991*. OECD, *Uranium Resources, Production and Demand 2000*.
10. Guy Martin, "Uranium: A Case-Study in Franco-African Relations", p. 636.
11. *Ibid.*, p. 638.
12. Oye Ogunbadejo, "Africa's Nuclear Capability", p. 37-38.
13. *Ibid.*, p. 38.
14. Nigeria's Foreign Minister Professor Bolaji Akinyemi was among the first of Nigerian leaders who advocated such a policy. He probably coined the term "black bomb". President Shehu Shagari who was elected in 1979 argued that Nigeria ought to become "nuclearized" as a response to South Africa's capability. So did his Defence Minister, Professor Iya Abubakar.
15. Ghana Atomic Energy Commission, *Ghana Atomic Energy at a Glance*, 3rd edition, Accra: Ghana Atomic Energy Commission, 1998.
16. IAEA, *Nuclear Research Reactors in the World*, Vienna: IAEA, 2000.
17. Oye Ogunbadejo, "Africa's Nuclear Capability", p. 26.
18. *Ibid.*, pp. 26- 27.
19. IAEA, *Nuclear Research Reactors in the World*, Vienna: IAEA, p. 40.
20. Oye Ogunbadejo, "Africa's Nuclear Capability", p. 28.
21. Quoted in *ibid.*, p. 26.
22. IAEA, *Nuclear Power Reactors in the World*, Vienna: IAEA, 1999.

Chapter 3

1. See Benson Agu, African Nuclear-Weapon-Free Zone and Regional Cooperation in Peaceful Nuclear Application, *Disarmament*, Vol. XIX, No. 1, 1996, p. 28.
2. G. Idang, *Nigeria: Internal Politics and Foreign Policy, 1960-1966*, Ibadan, Nigeria: Ibadan University Press, 1973.
3. W. Scott Thompson, *Ghana's Foreign Policy, 1957-1966: Diplomacy, Ideology and the New State*, Princeton: Princeton Press, 1969.

4. UNGA Res.1652 (XVI), 24 November 1961.
5. Text of the resolution in Appendix 4.
6. Draft Convention for the Denuclearization of Africa, for the full text see Appendix 5.
7. OAU AHG/Res II(i), July 1964. See text in Appendix 1.
8. UNGA Res.2033(XX), December 1965. See text in Appendix 6.
9. David Fisher, "The Pelindaba Treaty: Africa Joins the Nuclear-Free World", *Arms Control Today*, Vol. 25, No. 10, December 1995/January 1996, pp. 9-14.
10. Paul Stober, "De Klerk's three Nuclear Lies", *The Weekly Mail and Guardian*, Johannesburg, 11 February 1994.
11. Peter Hounan and Steve McQuillan, *The Mini-Nuke Conspiracy*, London and Boston: Faber and Faber, 1995.
12. Ibid.
13. Soviet President Leonard Breshnev alerted United States President Carter in a letter dated 6 August 1977. The Soviet News Agency, TASS, reported the South African test preparation on 9 August 1977. See Appendix 7.
14. On 22 August 1977, the French Foreign Minister, Louis de Guiringaud officially warned South Africa against conducting a nuclear weapon test. See Appendix 8.
15. The Nigerian Permanent Representative to the United Nations, Ambassador B. A. Clark who was also Chairman of the United Nations Committee Against Apartheid raised the issue in the Plenary Session of the United Nations General Assembly. On the same day, the present author who was the Nigerian Permanent Representative to the United Nations in Geneva and Chief Delegate to the United Nations General Assembly 1st Committee during the session also raised the issue in that Committee.
16. See UNGA doc. A/10027/Add 1,1975.
17. Richard Betts, *A Diplomatic Bomb for South Africa*, *International Security*, Vol. 4, No. 2, p. 110.
18. See Canada's study, *Nuclear-Weapon-Free Zone: A Comparative Perspective*, Ottawa: Government of Canada, April 1997.
19. Quoted in Report of the United Nations Group of Experts on South Africa's Plan and Capability in the Nuclear Field, doc A/35/358, p. 32.
20. Ibid.
21. See doc A/45/571.

Chapter 4

1. Francis Fukuyama, "The End of History", *The National Interest*, Summer 1989, pp. 3-18.
2. Barry Buzan, "New Patterns of Global Security in the Twenty-First Century", *International Affairs*, Vol. 67, No. 3, 1991, pp. 431- 451.
3. See record of South African Parliament, 27 February 1989.
4. "Storing South Africa's Uranium", *Foreign Report*, Summer 1993.
5. Res.45/56A of 4 December 1990; see Appendix 11 for text.
6. For a complete list, see UN doc A/C. 1/46/9, pp. 2- 3.
7. See UNGA Res.3472B (XXX), 1975. Text in Appendix 3.
8. OAU Res.CM/res. 676 (XXXI), see Appendix 12 for text.
9. For text of the 1st report of the United Nations/OAU Group of Experts see UN doc/A/C.1/46/9.
10. OAU Res.CM.res. 1342 (LIV), May 1991.
11. UNGA Res.46/43B, 9 December 1991.
12. The 2nd report of the United Nations/OAU Group of Experts is contained in UN doc A/47/468, 23 October 1992.
13. OAU doc. CM/res. 1395 (LVI), June 1992.
14. UNGA Res.47/76 of 15 December 1992. See Appendix 9 for text.
15. PPNN is an international NGO whose aim is the strengthening of the nuclear non-proliferation regime. To that end, it seeks to diffuse information of a general nature on issues relating to nuclear weapons and non-proliferation partly through its publication and partly through seminars and training programmes for diplomats. It is based in the Mountbatten Centre for International Studies, University of Southampton, United Kingdom. It is structured around a Core Group of acknowledged authorities in the field of nuclear non-proliferation and disarmament. The present writer was at the time a member of the Core Group.
16. See extracts of President De Klerk's statement in Appendix 10.

Chapter 5

1. For list of participants, see Report of the meeting in UN doc. A/48/371 of 18 October 1993, pp. 3- 4.
2. Annex to *ibid.*, pp. 5-28.
3. See letter of transmittal of Report to United Nations Secretary-General doc. A/48/371, pp. 3-4.

Chapter 6

1. UNGA Res.48/86, 1993.
2. UN doc. A/49/436, 1994.
3. See UNGA Res.49/138, December 1994. See text in Appendix 19.
4. See letter from the French Embassy on Windhoek, Namibia in Appendix 30.
5. See Commentaires de la France sur le projet de traité in Appendix 30.
6. See Appendix 18 entitled "Views of the United States on the draft of an African Nuclear-Weapon-Free Zone Treaty".
7. Ibid.
8. See doc. OAU/SEN/NS/RPT (I) for further details.
9. OAU Res.CM/Res/1323 (LIII), March 1991.
10. The African Regional Cooperation Agreement for Research, Training and Development Related to Nuclear Science and Technology (AFRA) was established in 1990 at the initiative of some African countries members of the IAEA, under the auspices of the Agency. Its aim is to promote regional cooperation in the field of nuclear science and technology. It has since been promoting important activities in the areas of food and agriculture, human health, industrial application, and the enhancement of capabilities in the areas of nuclear technology.

Chapter 7

1. For details see the list in Appendix 21.
2. Although Diego Garcia in the Chagos Archipelago was claimed by the United Kingdom, which referred to it as the British Indian Ocean Territory, it was being used by the United States under a lease agreement. The territory was being claimed by Mauritius as part of its national territory. Since the claim had been supported by the OAU in a resolution, it was presumed and Mauritius fervently insisted, that the Archipelago would be part of the area of the African Nuclear-Weapon-Free Zone Treaty.
3. Text of Addis Ababa Draft in Appendix 14.
4. See text of letter in Appendix 15 (A).
5. See Appendix 15 (B).
6. See text of res. in Appendix 16.
7. See Appendix 20, Compendium of comments by Member States of the OAU.

8. See text in Appendix 17.
9. Ibid.
10. UNGA Res. 49/138, 19 December 1994. Text in Appendix 19.

Chapter 8

1. See Chapter 6.
2. For text of the Anglo-French Joint Paper, see Appendix 22.
3. Ethiopia's full comments can be found in Appendix 20.
4. See Appendix 22.
5. David Fisher, "The Pelindaba Treaty".
6. OAU doc. AHG/Res. 99(XVII).
7. For text of the letter, see Appendix 23.
8. Letters of transmission in Appendix 24 (A) and Appendix 24 (B).
9. OAU Res.CM/Res. 11592 (LXII/Rev 1). See text in Appendix 25.
10. For text of the Cairo Declaration see Appendix 26.
11. See Appendix 27 for text of Statement of the United Kingdom.
12. See Appendix 28 for text of Statement of the United States.

APPENDIX 1

Organization of African Unity • Organisation de l'Unité africaine

AHG/Res.11 (I)

DENUCLEARIZATION OF AFRICA

We, the Heads of African State and Government, meeting in the First Ordinary Session of the Assembly of the Organization of African Unity, in Cairo, UAR, from 17 to 21 July 1964,

Conscious of our responsibilities towards our peoples and our obligations under the Charter of the United Nations and the Charter of the Organization of African Unity to exert every effort to strengthen international peace and security;

Determined that conditions conducive to international peace and security should prevail to save mankind from the scourge of nuclear war;

Deeply concerned with the effects resulting from the dissemination of nuclear weapons;

Confirming resolution 1652 (XVI) of the General Assembly of the United Nations which called upon all States to respect the Continent of Africa as a nuclear-free zone;

Reaffirming the Resolution on General Disarmament adopted by the Conference of Heads of State and Government in Addis Ababa in May 1963;

Bearing in mind that the General Assembly of the United Nations in its Sixteenth Session called upon "All States, and in particular upon the States at present possessing nuclear weapons, to use their best endeavors to secure the conclusion of an international agreement containing provisions under which the nuclear States would undertake to refrain from

relinquishing control of nuclear weapons and from transmitting the information necessary for their manufacture to States not possessing such weapons, and (containing) provisions under which States not possessing nuclear weapons would undertake not to manufacture or otherwise acquire control of such weapons";

Convinced that it is imperative to exert new efforts towards the achievement of an early solution to the problem of general disarmament.

1. SOLEMNLY DECLARE their readiness to undertake in an International Treaty to be concluded under the auspices of the United Nations not to manufacture or acquire control of nuclear weapons;
2. CALL UPON all peace-loving nations to adhere to the same undertaking;
3. CALL UPON all nuclear powers to respect and abide by this Declaration;
4. INVITE the General Assembly of the United Nations, in its 19th Regular Session, to approve this Declaration and take the necessary measures to convene an International Conference with a view to concluding an international treaty.

APPENDIX 2

UNITED NATIONS
GENERAL ASSEMBLY

A/RES/2028 (XX)
23 November 1965

Twentieth Session
Agenda Item 106

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY
on the report of the First Committee (A/6097 and Corr.1)
2028 (XX). Non-proliferation of nuclear weapons

The General Assembly,

Conscious of its responsibility under the Charter of the United Nations for disarmament and the consolidation of peace;

Mindful of its responsibility in accordance with Article 11, paragraph 1, of the Charter, which stipulates that the General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both;

Recalling its resolution 1665 (XVI) of 4 December 1961 and 1908 (XVIII) of 27 November 1963;

Recognizing the urgency and great importance of the question of preventing the proliferation of nuclear weapons;

Noting with satisfaction the efforts of Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden and the United Arab Republic to achieve the solution of the problem of non-proliferation of nuclear weapons, as contained in their joint memorandum of 15 September 1965;¹

Convinced that the proliferation of nuclear weapons would endanger the security of all States and make more difficult the achievement of general and complete disarmament under effective international control;

Noting the declaration adopted by the Summit Conference of Heads of State and Government of the Organization of African Unity at its first regular session, held at Cairo in July 1964,² and the Declaration entitled "Programme for Peace and International Cooperation"³ adopted by the Second Conference of Heads of State or Government of Non-Aligned Countries, held at Cairo in October 1964;

Noting also the draft treaties to prevent the proliferation of nuclear weapons submitted by the United States of America⁴ and the Union of Soviet Socialist Republics,⁵ respectively;

Noting further that a draft unilateral non-acquisition declaration has been submitted by Italy;⁶

Convinced that General Assembly resolutions 1652 (XVI) of 24 November 1961 and 1911 (XVIII) of 27 November 1963 aim at preventing the proliferation of nuclear weapons;

Believing that it is imperative to exert further efforts to conclude a treaty to prevent the proliferation of nuclear weapons;

1. *Urges* all States to take all steps necessary for the early conclusion of a treaty to prevent the proliferation of nuclear weapons;

2. *Calls upon* the Conference of the Eighteen-Nation Committee on Disarmament to give urgent consideration to the question of non-proliferation of nuclear weapons and, to that end, to reconvene as early as possible with a view to negotiating an international treaty to prevent the proliferation of nuclear weapons, based on the following main principles:

(a) The treaty should be void of any loop-holes which might permit nuclear or non-nuclear Powers to proliferate, directly or indirectly, nuclear weapons in any form;

(b) The treaty should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers;

(c) The treaty should be a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament;

(d) There should be acceptable and workable provisions to ensure the effectiveness of the treaty;

(e) Nothing in the treaty should adversely affect the right of any group of States to conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories;

3. *Transmits* the records of the First Committee relating to the discussion of the item entitled "Non-proliferation of nuclear weapons", together with all other relevant documents, to the Eighteen-Nation Committee for its consideration;

4. *Requests* the Eighteen-Nation Committee to submit to the General Assembly at an early date a report on the results of its work on a treaty to prevent the proliferation of nuclear weapons.

1382nd plenary meeting
19 November 1965

Notes

1. See A/5986, annex I.
2. See the resolution entitled "Denuclearization of Africa" adopted by the Summit Conference of Heads of State and Government.
3. See A/5763.
4. See A/5986, annex I.
5. See A/5976.
6. See A/5986, annex I.

APPENDIX 3

3472 (XXX). Comprehensive study of the question of nuclear-weapon-free zones in all its aspects

...

B

The General Assembly,

Recalling that, as set forth in the Charter of the United Nations, the Organization is based on the principle of the sovereign equality of all its Members and that, in conformity with the provisions of the Charter, international relations should be governed, among other fundamental principles, by those relating to the prohibition of the threat or use of force and to non-intervention,

Bearing in mind that nuclear-weapon-free zones constitute one of the most effective means for preventing the proliferation, both horizontal and vertical, of nuclear weapons and for contributing to the elimination of the danger of a nuclear holocaust.

Reaffirming the principle defined in its resolution 2028 (XX) of 19 November 1965, which established the necessity that there should be an acceptable balance of mutual responsibilities and obligations of the nuclear-weapon and non-nuclear-weapon States,

Reaffirming also the request made in its resolution 2153 A (XXI) of 17 November 1966 to all nuclear-weapon States to refrain from the use, or the threat of use, of nuclear weapons against States which conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories,

Having examined the comprehensive study of the question of nuclear-weapon-free zones in all its aspects carried out under the auspices of the Conference of the Committee on Disarmament by the *Ad Hoc* Group of Qualified Governmental Experts for the Study of the Question of Nuclear-

Weapon-Free Zones in pursuance of General Assembly resolution 3261.F (XXIX) of 9 December 1974.

Having also examined the comments made by States Members of the Conference of the Committee on Disarmament regarding that study, the text of which is annexed to the special report in which the Conference transmitted the study to the General Assembly,

Bearing in mind that, without prejudice to the results that may be obtained through any further examination of this matter, from the analysis of the contents of the special report it is already possible at this time to draw certain incontrovertible conclusions,

Noting that from among those conclusions it would seem advisable to stress the necessity that the General Assembly define the concept of a nuclear-weapon-free zone and the scope of the principal obligations of the nuclear-weapon States towards such zones and towards the States included therein,

Convinced that in so doing it will strengthen the new efforts recently undertaken and the realizations already achieved for the establishment of nuclear-weapon-free zones,

Solemnly adopts the following declaration:

I. Definition of the concept of a nuclear-weapon-free zone

1. A "nuclear-weapon-free zone" shall, as a general rule, be deemed to be any zone, recognized as such by the General Assembly of the United Nations, which any group of States, in the free exercise of their sovereignty, has established by virtue of a treaty or convention whereby:

(a) The statute of total absence of nuclear weapons to which the zone shall be subject, including the procedure for the delimitation of the zone, is defined;

(b) An international system of verification and control is established to guarantee compliance with the obligations deriving from that statute.

II. Definition of the principal obligations of the nuclear-weapon States towards nuclear-weapon-free zones and towards the States included therein

2. In every case of a nuclear-weapon-free zone that has been recognized as such by the General Assembly, all nuclear-weapon States shall undertake or reaffirm, in a solemn international instrument having full legally binding force, such as a treaty, a convention or a protocol, the following obligations:

(a) To respect in all its parts the statute of total absence of nuclear weapons defined in the treaty or convention which serves as the constitutive instrument of the zone;

(b) To refrain from contributing in any way to the performance in the territories forming part of the zone of acts which involve a violation of the aforesaid treaty or convention;

(c) To refrain from using or threatening to use nuclear weapons against the States included in the zone

III. Scope of the definitions

3. The above definitions in no way impair the resolutions which the General Assembly has adopted or may adopt with regard to specific cases of nuclear-weapon-free zones nor the rights emanating for the Member States from such resolutions.

2437th plenary meeting
11 December 1974

APPENDIX 4

– D –

Agenda Item III: General Disarmament

The Summit Conference of Independent African States meeting, Addis Ababa, Ethiopia, from 22 to 25 May 1963,

Having considered all aspects of the questions of general disarmament,

Unanimously convinced of the imperious and urgent necessity of coordinating and intensifying their efforts to contribute to the achievement of a realistic disarmament programme through the signing, by all States concerned, of a treaty on general and complete disarmament under strict and effective international control,

Have agreed unanimously to concert and coordinate their efforts and actions in this field, and to this end have decided on the following measures:

1. To affirm and respect the principle of declaring Africa a denuclearized zone to oppose all nuclear and thermo-nuclear tests, as well as the manufacture of nuclear weapons; and to promote the peaceful uses of nuclear energy;
2. The destruction of existing nuclear weapons;
3. To undertake to bring about, by means of negotiation, the end of military occupation of the African continent and the elimination of military bases and nuclear tests, which elimination constitutes a basic element of African Independence and Unity;
4. To appeal to the Great Powers to:
 - (a) reduce conventional weapons;
 - (b) put an end to the arms race; and
 - (c) sign a general and complete disarmament agreement under strict and effective international control;

5. To appeal to the Great Powers, in particular to the Soviet Union and the United States of America, to use their best endeavours to secure the objectives stated above.

APPENDIX 5

ORGANIZATION OF
AFRICAN UNITY
Provisional Secretariat
P.O. Box 3243

ORGANISATION DE
L'UNITÉ AFRICAINE
Secrétariat provisoire
B.P. 3243

ADDIS ABABA

CM/3
16 January 1964

Council of Ministers
Second Session
Lagos, February 1964

DRAFT CONVENTION FOR THE DENUCLEARIZATION OF THE CONTINENT OF AFRICA

Whereas the community of nations as represented by the United Nations has adopted measures on general and complete disarmament, on the question of the cessation of nuclear and thermo-nuclear tests, on the prevention of the wider dissemination of nuclear weapons;

Whereas the community of nations as represented by the United Nations has declared that "both concern for the future of mankind and the fundamental principles of international law impose a responsibility on all States concerning actions which might have harmful biological consequences for the existing and future generations of peoples of other States, by increasing the levels of radio-active fall-out";

Whereas the community of nations as represented by the United Nations has declared that:

- “(a) The use of nuclear and thermo-nuclear weapons is contrary to the spirit, letter and aims of the United Nations and, as such, a direct violation of the Charter of the United Nations;
- “(b) The use of nuclear and thermo-nuclear weapons would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind and civilization and, as such, is contrary to the rules of international law and to the laws of humanity;
- “(c) The use of nuclear and thermo-nuclear weapons is a war directed not against an enemy or enemies alone but also against mankind in general, since the peoples of the world not involved in such a war will be subjected to all the evils generated by the use of such weapons;
- “(d) Any State using nuclear and thermo-nuclear weapons is to be considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity and as committing a crime against mankind and civilization;”

Whereas the community of nations as represented by the United Nations has adopted a resolution calling on all Member States:

- “(a) To refrain from carrying out or continuing to carry out in Africa nuclear tests in any form;
- “(b) To refrain from using the territory, territorial waters or air space of Africa for testing, storing or transporting nuclear weapons;
- “(c) To consider and respect the continent of Africa as a denuclearized zone”;

Whereas the recent conclusion of the Treaty of 5 August 1963 banning weapon tests in the atmosphere, in outer space and under water has created an auspicious atmosphere for parallel progress towards the prevention of the further spread of nuclear weapons;

Whereas Members of the Organization of African Unity have adopted the following measures at the Summit Conference held in Addis Ababa, Ethiopia, from 22 to 25 May 1965;

“Having considered all aspects of the questions of general disarmament;

“Unanimously convinced of the imperious and urgent necessity of coordinating and intensifying their efforts to contribute to the achievement of a realistic disarmament programme through the signing, by all States concerned, of a treaty on general and complete disarmament under strict and effective international control;

“Have agreed unanimously to concert and coordinate their efforts and actions in these various fields, and to this end have decided on the following measures:

1. To affirm and respect the principle of declaring Africa a denuclearized zone; to oppose all nuclear and thermo-nuclear tests, as well as the manufacture of nuclear weapons;
2. The destruction of existing nuclear weapons;
3. To undertake to bring about, by means of negotiation, the end of military occupation of the African continent and the elimination of military bases and nuclear tests, which elimination constitutes a basic element of African Independence and Unity;
4. To appeal to the great Powers to:
 - (a) reduce conventional weapons;
 - (b) put an end to the arms race; and
 - (c) sign a general and complete disarmament agreement under strict and effective international control;
5. To appeal to the great Powers, in particular to the Soviet Union and the United States of America, to use their best endeavours to secure the objectives stated above.”

Whereas several regions of the world are considering signing multilateral agreements whereby countries would undertake not to manufacture, receive, store or test nuclear weapons or nuclear launching devices;

NOW THEREFORE the Members of the Organization of African Unity have resolved to subscribe to the following Convention for the denuclearization of the Continent of Africa.

Article I

Members of the Organization of African Unity undertake:

- a) to prohibit, prevent and not carry out any nuclear weapons test as well as the manufacture of nuclear weapons, or any other nuclear explosion at any place under their respective jurisdictions and control;
- b) not to receive nuclear weapons including nuclear launching devices at any place under their respective jurisdictions and control;
- c) to prevent carrying out or continuing to carry out in their respective territories nuclear tests in any form;
- d) to prevent from using the territory, territorial waters and air space under their respective jurisdictions for testing, storing or transporting nuclear weapons.

Article II

1. This Convention shall be open for signature to all independent sovereign African States and shall be ratified by the signatory States in accordance with their respective constitutional processes.
2. The original instrument, done, if possible in African languages, in English and French, all texts being equally authentic, shall be deposited with the Government of ... which shall transmit certified copies thereof to all independent sovereign African States.
3. Instruments of ratification shall be deposited with the Government of ..., which shall notify all Signatories of each such deposit.
4. This Convention shall enter into force immediately upon receipt by the Government of ... of the instruments of ratification from two thirds of the Signatory States
5. This Convention shall, after due ratification, be registered with the Secretariat of the United Nations through the Government of ... in conformity with Article 102 of the Charter of the United Nations.
6. Immediately after the ratification of this Convention by two-thirds (2/3) of the Member States of the Organization of African Unity, this Convention shall be open for adherence to third parties, in particular to the nuclear Powers.

In WITNESS WHEREOF, the under signed Member States of the Organization of African Unity have signed this Convention.

Done in ... this ... day of ... 19... in the English and French languages.

APPENDIX 6

2033 (XX). Declaration on the Denuclearization of Africa

The General Assembly,

Believing in the vital necessity of saving contemporary and future generations from the scourge of a nuclear war,

Recalling its resolution 1652 (XVI) of 24 November 1961, which called upon all Member States to refrain from testing, storing or transporting nuclear weapons in Africa and to consider and respect the continent as a denuclearized zone,

Recalling its resolution 2028 (XX) of 19 November 1965 on the non-proliferation of nuclear weapons,

Observing that proposals for the establishment of denuclearized zones in various other areas of the world have also met with general approval,

Convinced that the denuclearization of various areas of the world would help to achieve the desired goal of prohibiting the use of nuclear weapons,

Considering that the Assembly of Heads of State and Government of the Organization of African Unity, at its first regular session, held at Cairo from 17 to 21 July 1964, issued a solemn declaration on the denuclearization of Africa¹ in which the Heads of State and Government announced their readiness to undertake, in an international treaty to be concluded under the auspices of the United Nations, not to manufacture or acquire control of nuclear weapons,

Noting that this declaration on the denuclearization of Africa was endorsed by the Heads of State or Government of Non-Aligned Countries in the Declaration issued on 10 October 1964², at the close of their Second Conference, held at Cairo,

Recognizing that the denuclearization of Africa would be a practical step towards the prevention of the further spread of nuclear weapons in the

world and towards the achievement of general and complete disarmament and of the objectives of the United Nations,

1. *Reaffirms* its call upon all States to respect the continent of Africa as a nuclear-free zone;

2. *Endorses* the declaration on the denuclearization of Africa issued by the Heads of State and Government of African countries;

3. *Calls upon* all States to respect and abide by the aforementioned declaration;

4. *Calls upon* all States to refrain from the use, or the threat of use, of nuclear weapons on the African continent;

5. *Calls upon* all States to refrain from testing, manufacturing, using or deploying nuclear weapons on the continent of Africa, and from acquiring such weapons or taking any action which would compel African States to take similar action;

6. *Urges* those States possessing nuclear weapons and capability not to transfer nuclear weapons, scientific data or technological assistance to the national control of any State, either directly or indirectly, in any form which may be used to assist such States in the manufacture or use of nuclear weapons in Africa;

7. *Expresses the hope* that the African States will initiate studies, as they deem appropriate, with a view to implementing the denuclearization of Africa, and take the necessary measures through the Organization of African Unity to achieve this end;

8. *Urges* the African States to keep the United Nations informed of any further developments in this regard;

9. *Requests* the Secretary-General to extend to the Organization of African Unity such facilities and assistance as may be requested in order to achieve the aims to the present resolution.

1388th plenary meeting,
3 December 1965

Notes

1. See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 105, document A/5975.
2. See A/5763.

APPENDIX 7

South Africa: USSR Alerted US on A-Test

The Soviet Union had alerted the US that South Africa was preparing a site for a nuclear weapons test, and it had asked for Western cooperation to dissuade Pretoria from going through with an explosion, according to press reports August 28-29. The successful cooperation between Moscow and Washington in heading off a South African explosion had helped to ease some of the tension in East-West relations, according to the accounts of the diplomatic maneuverings leading up to the warnings to Pretoria. [See *1977 South Africa: Pretoria Warned on A-Bomb.*]

According to the reports, the Soviet Union had informed the US August 6 that a South African nuclear test was imminent. In a personal message to President Carter, Soviet President Leonid Brezhnev said Soviet intelligence satellites had discovered a nuclear testing site in the Kalahari Desert, and he asked Carter for help in stopping the planned test. (The Soviet Union could not deal with South Africa by itself because it had no diplomatic relations with Pretoria.)

Carter sent Brezhnev a personal reply August 15, stating that US reconnaissance satellites had confirmed the Soviet report and committing his Administration to halting a South African test. US ambassador-at-large Gerard Smith was dispatched to Paris August 17 to present the data to French President Valery Giscard d'Estaing. That information was cited by French Foreign Minister Louis de Guiringaud August 22 when he warned South Africa against staging a nuclear explosion. (In addition to France, the US had received support from Great Britain and West Germany.)

The August 6 note from Brezhnev served as the basis for the August 9 Tass report that South Africa had almost completed production of an atomic bomb. The report did not mention Brezhnev's note to Carter nor did it say how the Soviet Union had learned of South Africa's intentions.

APPENDIX 8

South Africa: Pretoria Warned on A-Bomb

France August 22 officially warned South Africa that "serious consequences" would result if South Africa staged a nuclear weapons test. Foreign Minister Louis de Guiringaud said France had received information that a South African atomic detonation was imminent. [See *1977 South Africa: A-Bomb Capacity Reported.*]

South African Prime Minister John Vorster August 23 denied that South Africa was developing atomic weapons. It was his first public statement on the subject. In previous speeches, he merely had given assurances that the South African nuclear program was for peaceful purposes only.

The French warning followed an accusation August 9 by the USSR that South Africa was "nearing completion" of an atomic bomb. The Soviet news agency Tass had accused the North Atlantic Treaty Organization and Israel of assisting South African atomic development in defiance of a United Nations resolution barring arms aid to South Africa.

Tass repeated its accusation August 14, adding that Pretoria would obtain plutonium, an atomic weapons fuel, from two nuclear reactors France had agreed to sell to South Africa in 1976. (De Guiringaud denied that the French plants could be used for producing plutonium.)

The US State Department August 20 said Washington had formally asked Pretoria whether it intended to test a nuclear weapon. A spokesman said the US was seeking to convince South Africa to place its nuclear reactors under the safeguards established by the Nuclear Non-proliferation Treaty, which South Africa had not signed.

South African Foreign Minister Roelof Botha August 21 said reports that South Africa was about to test an atomic bomb were "wholly and totally unfounded." He added that such a rumor was a Soviet "camouflage action to hide [Moscow's] own aggression in Africa."

APPENDIX 9

UNITED NATIONS
General Assembly

A/RES/47/76
14 January 1993

Forty-seventh session
Agenda item 59

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY [on the report of the First Committee (A/47/689)]

47/76. Implementation of the Declaration on the Denuclearization of Africa

The General Assembly,

Bearing in mind the Declaration on the Denuclearization of Africa¹ adopted by the Assembly of Heads of State and Government of the Organization of African Unity at its first ordinary session, held at Cairo from 17 to 21 July 1964, in which they solemnly declare their readiness to undertake, through an international agreement to be concluded under United Nations auspices, not to manufacture or acquire control of atomic weapons,

Recalling its resolution 1652 (XVI) of 24 November 1961, its earliest on the subject, as well as all its previous resolutions on the implementation of the Declaration on the Denuclearization of Africa,

Calling upon all States to consider and respect the continent of Africa and its surrounding areas as a nuclear-weapon-free zone,

Bearing in mind also the provisions of resolutions CM/Res.1342 (LIV)² and CM/Res.1395 (LVI) Rev.1³ on the implementation of the Declaration on the Denuclearization of Africa adopted by the Council of Ministers of the Organization of African Unity at its fifty-fourth and fifty-sixth ordinary

sessions, held at Abuja from 27 May to 1 June 1991 and at Dakar from 22 to 28 June 1992, respectively,

Noting the accession by South Africa to the Treaty on the Non-Proliferation of Nuclear Weapons⁴ on 10 July 1991,

Noting also that the Government of South Africa has concluded a safeguards agreement with the International Atomic Energy Agency and committed itself to early and full implementation of the agreement,

Recalling resolution GC (XXXVI)/RES/577 on South Africa's nuclear capabilities, adopted on 25 September 1992 by the General Conference of the International Atomic Energy Agency⁵,

Stressing that the full disclosure of South Africa's nuclear installations and materials is essential to the peace and security of the region and to the success of efforts exerted towards the establishment of a nuclear-weapon-free zone for Africa,

Having considered the report of the Second Meeting of the Group of Experts to Examine the Modalities and Elements for the Preparation and Implementation of a Convention or Treaty on the Denuclearization of Africa⁶, set up jointly by the Organization of African Unity and the United Nations, held at Lomé from 28 to 30 April 1992,

Convinced that the evolution of the international situation is conducive to the implementation of the Declaration on the Denuclearization of Africa of 1964, as well as the relevant provisions of the Declaration on Security, Disarmament and Development of 1968 of the Organization of African Unity,

1. *Reaffirms* that the implementation of the Declaration on the Denuclearization of Africa adopted by the Assembly of Heads of State and Government of the Organization of African Unity would be an important measure to prevent the proliferation of nuclear weapons and to promote international peace and security;

2. *Strongly renews its call* upon all States to consider and respect the continent of Africa and its surrounding areas as a nuclear-weapon-free zone;

3. *Takes note* of the report of the Director General of the International Atomic Energy Agency on the implementation of the safeguards agreement between the Government of South Africa and the Agency, including the

verification of the completeness of the inventory of South Africa's nuclear installations and material⁷;

4. *Calls upon* South Africa to continue to comply fully with the implementation of its safeguards agreement with the International Atomic Energy Agency;

5. *Commends* the Secretary-General for the diligence with which he has rendered effective assistance to the Organization of African Unity in organizing the meetings of the above-mentioned Group of Experts;

6. *Requests* the Secretary-General, in consultation with the Organization of African Unity, to take appropriate action to enable the Group of Experts designated by the United Nations in cooperation with the Organization of African Unity to meet during 1993 at Harare, in order to draw up a draft treaty or convention on the denuclearization of Africa, and to submit the report of the Group of Experts to the General Assembly at its forty-eighth session;

7. *Also requests* the Secretary-General to report to the General Assembly at its forty-eighth session on the progress made by the Director General of the International Atomic Energy Agency in ensuring the full implementation of the safeguards agreement with South Africa;

8. *Urges* all Member States to assist and cooperate with the Secretary-General and the Director General to this end.

88th plenary meeting
15 December 1992

Notes

1. *Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 105, document A/5975.*
2. See A/46/390, annex I.
3. See A/47/558, annex I.
4. United Nations, *Treaty Series*, Vol. 729, No. 10485.
5. A/47/533, annex I.
6. A/47/468, annex.
7. A/47/533, annex II.

APPENDIX 10

South Africa: De Klerk Admits Building of A-Bombs

President F. W. de Klerk March 24 revealed that South Africa had built six primitive atomic bombs during a secret 15-year program, and that the weapons had been destroyed in 1990. [See 1991 South Africa: A-Arms Program Reported Abandoned.]

His admission confirmed long-standing suspicions in the US and among other governments that the white minority regime, with the country's rich uranium resources and relatively sophisticated technology sector, had created a fission bomb.

De Klerk told a joint session of Parliament in Cape Town that the decision to construct nuclear weapons had been made in 1974, under then-Prime Minister John Vorster, at a time when South Africa felt isolated from the rest of the world and feared the encroachment of its then-communist neighbors to the north. He said the government had never seriously considered using the bombs. Instead, the strategy was that if South Africa was attacked, it would detonate a test device to illustrate its power, and then threaten to use the weapon unless the US intervened.

The bombs were crude, unwieldy devices with an explosive yield equivalent to 20,000 tons of TNT, giving them about the same power as the bombs dropped on Japan during World War II, according to an unidentified South African official quoted in a New York Times article datelined March 24. The official said that the weapons were designed to be dropped from bombers, and that although South Africa had contemplated building a nuclear-tipped missile, the devices were too bulky to fit in one.

Devices Were Dismantled

A total of seven weapons had been planned, de Klerk told lawmakers March 24, because that was the number deemed necessary for a "credible deterrent". At a total cost of 800 million rand (\$250 million), six were built

and the seventh was under construction when the program was canceled in 1989. The devices were taken apart in 1990, and their nuclear material was declassified so that it could no longer be used for weapons. By then, de Klerk said, the government felt less threatened because the Cold War was winding down and Cuba was pulling its troops out of nearby Angola.

Analysts speculated that another motivation for dismantling the bombs was to prevent a future black government from gaining possession of them. De Klerk had been under pressure from the US and other countries to close down the nuclear program before his government gave way to black-majority rule. Among other things, the states were nervous about the ties between the African National Congress, considered the most likely heir to the government, and Libya, which was thought to want its own atomic bomb.

De Klerk said that South Africa had neither tested an atomic bomb nor traded nuclear technology with any other country. The claim contradicted the belief of many experts that South Africa and Israel had clandestinely collaborated on an atomic device. In 1979, an American satellite had detected two flashes over the Indian Ocean that appeared to be the signature of an atomic test. Although the cause of the flashes was never settled, it was widely thought that South Africa and Israel had set off a small bomb.

The president said he decided to disclose the details of the weapons program to dispel worries that South Africa was withholding information from the United Nations International Atomic Energy Agency. Such concern, de Klerk said, could hurt the country's commercial sales of medical isotopes and nonmilitary nuclear technology. [See 1991 *South Africa: Pretoria to Sign 1968 A-Arms Ban.*]

UN Agency to Gain Full Access

The South African leader said that the IAEA would have access to all nuclear facilities and papers, including previously secret documents. It would also receive an inventory that accounted for "every gram" of nuclear ingredients. As a condition of the Nuclear Nonproliferation Treaty of 1968, which South Africa signed in 1991, the IAEA had already toured many of the country's nuclear sites. They included the Valindaba uranium-enrichment plant outside Pretoria, the capital, and two 500-foot (150-m)

concrete holes in the Kalahari Desert, which had been built for underground tests but never used.

"South Africa's hands are clean, and we are concealing nothing," de Klerk said. He called his admission "unprecedented," noting that South Africa was the only country ever to destroy its nuclear arsenal. He said he hoped the action would inspire other governments to do likewise. He also voiced support for establishing Africa as a nuclear-free zone.

The ANC March 24 said that it approved of the scrapping of the weapons but that it doubted whether all the enriched uranium had been destroyed.

De Klerk's promise of openness was expected to ease concern among US officials and international inspectors that South Africa was not being completely honest with the IAEA in accounting for its bomb-grade uranium. The US was considering buying up South Africa's fissile material, as it was doing with Russia, the *Washington Post* reported March 18. [See 1992 *Atomic Energy: US to Buy Plutonium from Russia.*]

US Lauds Admission

The US March 24 praised South Africa's candor in revealing its nuclear activities, noting that the Nuclear Nonproliferation Treaty did not require a country to disclose what it had done in the past. However, the US said it need to learn more about the nuclear program to be sure that all the bombs had been dismantled.

Rocket Program Abandoned

Although de Klerk did not mention it in his speech, South Africa March 24 also agreed to scrap plans for a long-range solid-fuel rocket, the *Times* reported. [See 1992 *South Africa: Space Program Started.*]

The move came under pressure from the US, which feared that the so-called Arniston missile system, although designed for launching satellites, could also be used for delivering warheads. The missile was based on the Israeli Jericho II rocket, which South Africa had helped test.

APPENDIX 11

UNITED NATIONS
General Assembly

A/RES/45/56
14 December 1990

Forty-fifth session
Agenda item 54

RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the First Committee (A/45/776)]

45/56. *Implementation of the declaration on the Denuclearization of Africa*

A

Implementation of the Declaration

The General Assembly,

Bearing in mind the Declaration on the Denuclearization of Africa¹ adopted by the Assembly of Heads of State and Government of the Organization of African Unity at its first ordinary session, held at Cairo from 17 to 21 July 1964, in which they solemnly declare their readiness to undertake, through an international agreement to be concluded under United Nations auspices, not to manufacture or acquire control of atomic weapons,

Recalling its resolution 1652 (XVI) of 24 November 1961, its earliest on the subject, as well as its resolutions 2033 (XX) of 3 December 1965, 31/69 of 10 December 1976, 32/81 of 12 December 1977, 33/63 of 14 December 1978, 34/76 A of 11 December 1979, 35/146 B of 12 December 1980, 36/86 B of 9 December 1981, 37/74 A of 9 December 1982, 38/181 A of 20 December 1983, 39/61 A of 12 December 1984, 40/89 A of 12 December 1985, 41/55 A of 3 December 1986, 42/34 A of 30

November 1987, 43/71 A of 7 December 1988 and 44/113 A of 15 December 1989, in which it called upon all States to consider and respect the continent of Africa and its surrounding areas as a nuclear-weapon-free zone,

Recalling also that in its resolution 33/63 it vigorously condemned any overt or covert attempt by South Africa to introduce nuclear weapons into the continent of Africa and demanded that South Africa refrain forthwith from conducting any nuclear explosion in the continent or elsewhere,

Bearing in mind also the provisions of resolution CM/Res.1101(XLVI)/Rev.1² on the denuclearization of Africa adopted by the Council of Ministers of the Organization of African Unity at its forty-sixth ordinary session, held at Addis Ababa from 20 to 25 July 1987,

Having taken note of the report of the United Nations Institute for Disarmament Research entitled "South Africa's nuclear capability"³, undertaken in cooperation with the Department for Disarmament Affairs of the Secretariat and in consultation with the Organization of African Unity, as well as of the report of the Disarmament Commission⁴,

Noting the actions taken by those Governments which have taken measures to restrict cooperation with South Africa in nuclear and other fields,

Noting with satisfaction that the Disarmament Commission at its 1990 substantive session concluded its deliberations and adopted by consensus the recommendations on the question of South Africa's nuclear capability⁵,

Recognizing the threat that South Africa's nuclear capability constitutes to international peace and security and, in particular, to the realization of the objective of the Declaration on the Denuclearization of Africa,

1. *Strongly renews its call* upon all States to consider and respect the continent of Africa and its surrounding areas as a nuclear-weapon-free zone;

2. *Reaffirms* that the implementation of the Declaration on the Denuclearization of Africa adopted by the Assembly of Heads of State and Government of the Organization of African Unity would be an important measure to prevent the proliferation of nuclear weapons and to promote international peace and security;

3. *Expresses once again its grave alarm* at South Africa's possession and continued development of nuclear-weapon capability;

4. *Condemns* South Africa's continued pursuit of a nuclear capability and all forms of nuclear collaboration by any State, corporation, institution or individual with the racist régime that enable it to frustrate the objective of the Declaration on the Denuclearization of Africa, which seeks to keep Africa free from nuclear weapons;

5. *Call upon* all States, corporations, institutions and individuals to desist from further collaboration with the racist regime that may enable it to frustrate the objective of the Declaration on the Denuclearization of Africa;

6. *Demands once again* that the racist régime of South Africa refrain from manufacturing, testing, deploying, transporting, storing, using or threatening to use nuclear weapons;

7. *Appeals* to all States and organizations that have the means to do so to monitor South Africa's research on and development and production of nuclear weapons and to publicize any information in that regard;

8. *Demands once again* that South Africa submit forthwith all its nuclear installations and facilities to inspection by the International Atomic Energy Agency;

9. *Requests* the Secretary-General to provide all necessary assistance that the Organization of African Unity may seek regarding the convening, at Addis Ababa during 1991, of a meeting of experts to examine the modalities and elements for the preparation and implementation of a convention or treaty on the denuclearization of Africa;

10. *Decides* to include in the provisional agenda of its forty-sixth session the item entitled "Implementation of the Declaration on the Denuclearization of Africa".

54th plenary meeting
4 December 1990

Notes

1. *Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 105, document A/5975.*
2. See A/42/699, annex I.

3. A/39/470.
4. *Officials Records of the General Assembly, Forty-fifth Session, Supplement No 42 (A/45/42).*
5. *Ibid.*, para. 31.
6. A/45/569.
7. A/45/571 and Corr.l.

APPENDIX 12

CM/Res.676 (XXXI)

RESOLUTION ON THE TERRITORIAL INTEGRITY OF AFRICA AND THE SURROUNDING ISLANDS

A) *Reservations:* Cape Verde, Chad, Central African Empire, Cameroon, Djibouti, Egypt, Ivory Coast, Liberia, Mauritania, Mauritius, Morocco, Senegal, Tunisia, Upper Volta, Zaire

B) *Non Participating:* Niger

The Council of Ministers of the Organization of African Unity, meeting in its Thirty-first Ordinary Session in Khartoum, Democratic Republic of Sudan, from 7 to 18 July 1978,

Recalling declamation 1514 (XV) of the UN General Assembly,

Drawing inspiration from Article I (2) of the Charter of the Organization of African Unity,

Recalling the decision of the 5th Summit of the OAU, Algiers, Algeria, 1968, affirming the African character of the Canary Island,

Considering that the Islands surrounding Africa are part and parcel of the African Continent and that any foreign occupation of these islands constitutes a permanent threat to its security and an obstacle to the development of its sea resources.

1. *Reaffirms* that the islands surrounding Africa, especially, the Glorious Islands, Juan de Nova, Europe, Bassas da India, Reunion and Canary Islands are part and parcel of the African continent;

2. *Denounces* colonial powers which not only insist on occupying the islands but also pass legislations on the territorial waters surrounding these very islands;

3. *Rejects the official texts adopted recently by Spain the France on territorial water and exclusive economic zone relating to Mozambique channel, the Island of Reunion, Canary Islands as illegal and contrary to the principles contained in Declaration 1514 (IV) of the UN General Assembly.*

APPENDIX 13

UNITED NATIONS
General Assembly

A/48/371
18 October 1993

Forty-eighth session
Agenda item 82

IMPLEMENTATION OF THE DECLARATION ON THE DENUCLEARIZATION OF AFRICA

Report of the Third Meeting of the Group of Experts to Draw up a Draft
Treaty or Convention on the Denuclearization of Africa

Appendix

United Nations/Organization of African Unity Group of Experts: Harare draft text of an African Nuclear-Weapon-Free Zone Treaty

Article 1. *Usage of terms*

For the purposes of this Treaty and its Protocols:

(a) "African Nuclear-Weapon-Free Zone" means the continent of Africa and the adjoining islands as described in annex 1, and as illustrated by the map attached to that annex;

(b) "Territory" means internal waters, territorial sea, and archipelagic waters, the seabed and sub-soil beneath, the land territory and the airspace above them;

(c) "Nuclear explosive device" means any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used. The term includes such a weapon or device in unassembled and partly assembled forms, but does not include

the means of transport or delivery of such a weapon or device if separable from and not an indivisible part of it;

(d) "Stationing" means implantation, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment;

(e) "Dumping" means disposing of, unloading, depositing (i.e. its normal usage);

(f) "Nuclear installations" include nuclear power and research reactors, fuel fabrication, uranium enrichment, isotopes separation and reprocessing facilities as well as any other installations with fresh or irradiated nuclear fuel and materials in any form and establishments storing significant quantities of radioactive materials.

Article 2. *Application of the Treaty*

Except where otherwise specified, this Treaty and its Protocols shall apply to the territory within the African Nuclear-Weapon-Free Zone.

Article 3. *Renunciation of nuclear explosive devices*

Each Party undertakes:

(a) Not to undertake research, develop, manufacture, stockpile or otherwise acquire, possess or have control over any nuclear explosive device by any means anywhere;

(b) Not to seek or receive any assistance in the research, development, manufacture, stockpiling or acquisition, or possession of any nuclear explosive device;

(c) Not to take any action to assist or encourage the research, development, manufacture, stockpiling or acquisition, or possession of any nuclear explosive device by any State;

(d) To prohibit, in its territory, the stationing of any nuclear explosive device.

Article 4. *Prohibition of testing of nuclear explosive devices*

Each Party undertakes:

(a) Not to test any nuclear explosive device;

(b) To prohibit in its territory the testing of nuclear explosive devices;

(c) Not to assist or encourage the testing of any nuclear explosive device by any State anywhere.

Article 5. Declaration, dismantling, destruction or conversion of nuclear explosive devices and the facilities for their manufacture

Each Party undertakes:

(a) To declare any capability for the manufacture of nuclear explosive devices;

(b) To dismantle and destroy any nuclear explosive device that it has manufactured prior to the coming into force of this Treaty;

(c) To destroy facilities for the manufacture of nuclear explosive devices, or, where possible, to convert to peaceful uses;

(d) To permit international inspectors to ascertain the processes of dismantling and destruction of the nuclear explosive devices, as well as the destruction or conversion of the facilities for their production.

Article 6. Prohibition of dumping of radioactive wastes

Each Party undertakes:

(a) To support effective implementation of and apply measures equivalent to those contained in the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa in so far as it is relevant to radioactive waste;

(b) Not to take any action to assist or encourage the dumping of radioactive wastes and other radioactive matter anywhere within the African Nuclear-Weapon-Free Zone.

Article 7. Peaceful nuclear activities

1. Nothing in this Treaty shall be interpreted to prevent the use of nuclear energy for peaceful purposes.

2. As part of their efforts to strengthen their security, stability and development, the Parties undertake to promote individually and jointly the use of nuclear energy for economic and social development (purposes). To this end they undertake to establish and strengthen mechanisms for cooperation at the bilateral, subregional and regional levels.

3. Parties undertake to make full use of the programme of assistance available in the IAEA and, in this connection, to strengthen AFRA.

Article 8. *Verification of peaceful uses*

Each Party undertakes:

- (a) That all activities for the peaceful use of nuclear energy shall be conducted under strict non-proliferation measures to provide assurance of exclusively peaceful uses;
- (b) To conclude a comprehensive safeguards agreement with the IAEA;
- (c) Not to provide sources or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material for peaceful purposes to:
 - (i) Any non-nuclear-weapon State unless subject to a comprehensive safeguards agreement concluded with the International Atomic Energy Agency;
 - (ii) Any nuclear-weapon State unless subject to applicable safeguards agreements concluded with the International Atomic Energy Agency.

Article 9. *Physical protection of nuclear materials and facilities*

Each Party undertakes:

- (a) To maintain the highest standards of security and effective physical protection of nuclear materials, facilities and equipment to prevent theft or unauthorized use and handling;
- (b) To apply measures of physical protection that provide protection equivalent to that provided for in the Convention on Physical Protection of Materials and International Transfer Guidelines on protection of materials developed by the International Atomic Energy Agency for that purpose.

Article 10. *Prohibition of armed attack on nuclear installations*

Each Party undertakes not to take, or assist, or encourage any action aimed at an armed attack by conventional or other means against nuclear installations in the African Nuclear-Weapon-Free Zone.

Article 11. Mechanism for compliance

1. For the purposes of ensuring compliance with their undertakings with respect to both the activities prohibited in the interest of non-proliferation and those permissible for the promotion of peaceful uses of nuclear energy, the Parties agree to establish the African Commission on Nuclear Energy (hereafter referred to as the Commission).
2. The Commission shall be responsible for:
 - (a) Collating the reports and the exchange of information as provided for in Article 12;
 - (b) Arranging consultations as provided for in Article 13;
 - (c) Reviewing the application to peaceful nuclear activities of safeguards by the IAEA as elaborated in annex 2;
 - (d) Bringing into effect the complaints procedure elaborated in annex 4;
 - (e) Encouraging regional programmes for cooperation in the peaceful uses of nuclear energy; and
 - (f) Promoting international cooperation with extra-zonal States for the peaceful uses of nuclear energy.
3. The Commission shall meet once a year, and may meet in extraordinary session as may be required by the complaints procedure in annex 4.

Article 12. Report and exchanges of information

1. Each Party shall submit an annual report to the Commission on all its nuclear activities.
2. Each Party shall promptly report to the Commission any significant event affecting the implementation of the Treaty.
3. The Commission shall receive an annual report from the Secretariat of the [African Regional Cooperation Agreement] on the activities of AFRA.

Article 13. Amendments

1. Any amendment to the Treaty proposed by a Party shall be submitted to the Commission, which shall circulate it to all Parties.

2. A conference of Parties shall be convened to consider such amendment.
3. Decision on the adoption of such an amendment shall be taken by a two-thirds majority of the Parties.
4. An amendment so adopted shall enter into force after receipt by the depositary of the twenty-seventh instrument of ratification.

Article 14. Reservations

This Treaty shall not be subject to reservations.

Article 15. Duration and withdrawal

1. This Treaty shall be of unlimited duration and shall remain in force indefinitely, provided that each 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 this Treaty, have jeopardized its supreme interests.
2. Withdrawal shall be effected by a Party giving notice, which includes a statement of the extraordinary events it regards as having jeopardized its supreme interests, twelve months in advance to the Depositary. The Depositary shall circulate such notice to all other Parties.

Article 16. Signature, ratification and entry into force

1. This Treaty shall be open for signature by any State in the African Nuclear-Weapon-Free Zone. The Treaty shall be subject to ratification.
2. This Treaty shall enter into force on the date of deposit of the twenty-seventh instrument of ratification.
3. For a signatory which ratifies this Treaty after the date of the deposit of the twenty-seventh instrument of ratification, the Treaty shall enter into force on the date of deposit of its instrument of ratification.
4. This Treaty and the instruments of ratification shall be deposited with the Secretary-General of the Organization of African Unity, who is hereby designated as depositary of the Treaty.

Article 17. Depositary functions

The depositary of this Treaty shall:

(a) Register this Treaty and its Protocols pursuant to Article 102 of the Charter of the United Nations;

(b) Transmit certified copies of the Treaty and its Protocols to all States in the African Nuclear-Weapon-Free Zone and to all States eligible to become a Party to the Protocols to the Treaty and shall notify them of signatures and ratifications of the Treaty and its Protocols.

Article 18. *Status of the annexes*

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

IN WITNESS WHEREOF the undersigned being duly authorized by their Governments have signed this Treaty.

DONE AT _____

Annex 1. *African Nuclear-Weapon-Free Zone*

(Description of geographical parameters)

[Attachment to annex 1 to the African Nuclear-Weapon-Free Zone Treaty - illustrated map].*

* The illustrated map, which would be an attachment to annex 1 to the African Nuclear-Weapon-Free Zone Treaty, is to be discussed at a subsequent meeting and is not available at this time.

Annex 2. IAEA safeguards

1. The safeguards referred to in Article 11 shall in respect of each Party be applied by the International Atomic Energy Agency as set forth in an agreement negotiated and concluded with the International Atomic Energy Agency on all source or special fissionable material in all nuclear activities within the territory of the Party, under its jurisdiction or carried out under its control anywhere.
2. The Agreement referred to in paragraph 1 shall be, or shall be equivalent in its scope and effect to, an agreement required in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. Each Party shall take all appropriate steps to ensure that the Agreement referred to in paragraph 1 is in force for it not later than eighteen months after the date of entry into force for that Party of this Treaty.
3. For the purpose of this Treaty, the safeguards referred to in paragraph 1 shall have as their purpose the verification of the non-diversion of nuclear material from nuclear activities to nuclear explosive devices or for purposes unknown.
4. Each Party shall transmit to the Commission, for its information, a copy of the overall conclusions of the most recent report by the IAEA on its inspection activities in the territory of the Party concerned, and advise the Commission promptly of any subsequent findings of the IAEA in relation to those conclusions. The information furnished by the contracting Parties shall not be, totally or partially, disclosed or transmitted to third parties, by the addressees of the reports, except when the contracting Parties give their express consent.

Annex 3. African Commission on Nuclear Energy

1. There is hereby established an African Commission on Nuclear Energy which shall meet from time to time pursuant to Articles 7, 8, 11 and 13 and annex 4.
2. The Commission shall be composed of twelve members elected by Parties to the Treaty, bearing in mind their expertise and interest in the subject-matter of the Treaty, equitable geographical distribution, as well as the need to include countries with advanced nuclear programmes.
3. Members of the Commission shall be elected for a three-year period. A quorum shall be constituted by representatives of two thirds of the members of the Commission. Decisions of the Commission shall be taken by a two-thirds majority of those present and voting. The Commission shall adopt such other rules of procedure as it sees fit.
4. (a) The costs of the Commission, including the costs of extraordinary inspections, pursuant to annex 4 to this Treaty, shall be borne by the Parties to the Treaty in accordance with the OAU scale of assessment.
(b) The Commission may also seek special funding should this be required.

Annex 4. Complaints procedure

1. A Party which considers that there are grounds for a complaint that another Party is in breach of its obligations under this Treaty shall bring the subjectmatter of the complaint to the attention of the Party complained of and shall allow the latter reasonable opportunity to provide it with an explanation and to resolve the matter. This may include technical visits agreed upon between the Parties.
2. If the matter is not so resolved, the complainant Party may bring the complaint to the Commission.
3. The Commission, taking account of efforts made under paragraph 1, shall afford the Party complained of a reasonable opportunity to provide it with an explanation of the matter.
4. If, after considering any explanation given to it by the representatives of the Party complained of, the Commission decides that there is sufficient substance in the complaint to warrant an extraordinary inspection in the territory of that Party or elsewhere, the Commission shall request the IAEA to conduct such inspection as soon as possible. The Commission may request that its representatives accompany the inspection team.
 - (a) The request shall indicate the tasks and objectives of such inspection, as well as any confidentiality requirements.
 - (b) If the Party complained of so requests, IAEA shall be accompanied by representatives of that Party provided that the inspectors shall not be thereby delayed or otherwise impeded in the exercise of their functions.
 - (c) Each Party shall give the IAEA and/or Regional inspectors full and free access to all information and places within each territory which may be deemed relevant by the inspectors to the implementation of the extraordinary inspection.
 - (d) The Party complained of shall take all appropriate steps to facilitate the work of IAEA and/or Regional inspectors, and shall accord to the inspectors the same privileges and immunities as those set forth in the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.

(e) The International Atomic Energy Agency and/or Regional inspectors shall report in writing as quickly as possible to the Commission, outlining their activities, setting out relevant facts and information as ascertained by it, with supporting evidence and documentation as appropriate, and stating their conclusions. The Commission shall report fully to all States Parties to the Treaty giving its decision as to whether the Party complained of is in breach of its obligations under this Treaty.

(f) If the Commission has decided that the Party complained of is in breach of its obligations under this Treaty, or that the above provisions have not been complied with, or at any time at the request of either the complainant or complained of Party, the Commission shall meet promptly to discuss the matter.

(g) The costs of such inspections shall be borne by the Commission.

5. Extraordinary inspections will not prejudice the rights and the power of the International Atomic Energy Agency to carry out special inspections in accordance with the agreements referred to in paragraph 1 of annex 2 to this Treaty.

Protocol 1

The Parties to this Protocol

NOTING the African Nuclear-Weapon-Free Zone Treaty (the Treaty)

HAVE AGREED as follows:

Article 1

Each Party undertakes not to use or threaten to use under any circumstances a nuclear explosive device against:

- (a) Parties to the Treaty; or
- (b) Any territory within the African Nuclear-Weapon-Free Zone as defined in annex 1 of the Treaty.

Article 2

Each Party undertakes not to contribute to any act of a Party to the Treaty which constitutes a violation of the Treaty, or any act of another Party to a Protocol which constitutes a violation of the Protocol.

Article 3

Each Party may, by written notification to the depositary, indicate its acceptance from the date of such notification of any alteration to its obligation under this Protocol brought about by the entry into force of an amendment to the Treaty pursuant to Article 13 of the Treaty.

Article 4

This Protocol shall be open for signature by [the French Republic, the People's Republic of China, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America].

Article 5

This Protocol shall be subject to ratification.

Article 6

This Protocol is of a permanent nature and shall remain in force indefinitely, provided that each Party shall, in exercising its national

sovereignty, have the right to withdraw from this Protocol if it decides that extraordinary events, related to the subject-matter of this Protocol, have jeopardized its supreme interests. It shall give notice of such withdrawal to the depositary twelve months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

Article 7

This Protocol shall enter into force for each State on the date of its deposit with the depositary of its instrument of ratification.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Protocol.

DONE at _____

Protocol 2

The Parties to this Protocol

NOTING the African Nuclear-Weapon-Free Zone Treaty (the Treaty)
HAVE AGREED as follows:

Article 1

Each Party undertakes not to test or assist or encourage the testing of any nuclear explosive device anywhere within the African Nuclear-Weapon-Free Zone.

Article 2

Each Party may, by written notification to the depositary, indicate its acceptance from the date of such notification of any alteration to its obligation under this Protocol brought about by entry into force of an amendment to the Treaty pursuant to Article 13 of the Treaty.

Article 3

The Protocol shall be open for signature by [the French Republic, the People's Republic of China, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America].

Article 4

This Protocol shall be subject to ratification.

Article 5

This Protocol is of a permanent nature and shall remain in force indefinitely, provided that each Party shall, in exercising its national sovereignty, have the right to withdraw from this Protocol if it decides that extraordinary events, related to the subject-matter of this Protocol, have jeopardized its supreme interests. It shall give notice of such withdrawal to the depositary twelve months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

Article 6

This Protocol shall enter into force for each State on the date of its deposit with the depositary of its instrument of ratification.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Protocol.

DONE at _____

Protocol 3

The Parties to this Protocol

NOTING the African Nuclear-Weapon-Free Zone Treaty (the Treaty)

HAVE AGREED as follows:

Article 1

Each Party undertakes to apply, in respect of the territories for which it is internationally responsible situated within the African Nuclear-Weapon-Free Zone, the prohibitions contained in Articles 3, 5, 6, 7, 8 and 9 of the Treaty, in so far as they relate to research, development, manufacture, stockpiling, stationing and testing of any nuclear explosive devices, as well as to the dumping of nuclear waste, ensuring physical protection and prohibition of armed attacks on nuclear installations within those territories, and the safeguards specified in Article 11 (2) (c) and annex 2 of the Treaty.

Article 2

Each Party may, by written notification to the depositary, indicate its acceptance from the date of such notification of any alteration to its obligation under this Protocol brought about by the entry into force of an amendment to the Treaty pursuant to Article 13 of the Treaty.

Article 3

This Protocol shall be open for signature by [].

Article 4

This Protocol shall be subject to ratification.

Article 5

This Protocol is of a permanent nature and shall remain in force indefinitely, provided that each Party shall, in exercising its national sovereignty, have the right to withdraw from this Protocol if it decides that extraordinary events, related to the subject-matter of this Protocol have jeopardized its supreme interests. It shall give notice of such withdrawal to the depositary twelve months in advance. Such notice shall include a

statement of the extraordinary events it regards as having jeopardized its supreme interests.

Article 6

This Protocol shall enter into force for each State on the date of its deposit with the depositary of its instrument of ratification.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Protocol.

DONE at _____

APPENDIX 14

UNITED NATIONS
General Assembly

A/49/436
27 September 1994

Forty-ninth session
Agenda item 72

FINAL TEXT OF A TREATY ON AN AFRICAN NUCLEAR-WEAPON-FREE ZONE

Report of the fourth and fifth meetings of the Group of Experts to Prepare
a Draft Treaty on an African Nuclear-Weapon-Free Zone

Appendix

Addis Ababa draft text of an African nuclear-weapon-free zone treaty

The Parties to this Treaty,

Guided by the Declaration on the Denuclearization of Africa, adopted by the Assembly of Heads of State and Government of the Organization of African Unity [hereinafter referred to as OAU] at its first ordinary session, held at Cairo from 17 to 21 July 1964 (AHG/Res.11(1)), in which they solemnly declared their readiness to undertake, through an international agreement to be concluded under United Nations auspices, not to manufacture or acquire control of nuclear weapons,

Guided also, by the resolutions of the fifty-fourth and fifty-sixth ordinary sessions of the Council of Ministers of OAU, held at Abuja from 27 May to 1 June 1991 and at Dakar from 22 to 28 June 1992 respectively, (CM/Res.1342(LIV) and CM/Res.1395(LVI)), which affirmed that the evolution of the international situation was conducive to the

implementation of the Cairo Declaration, as well as the relevant provisions of the 1986 OAU Declaration on Security, Disarmament and Development,

Recalling United Nations General Assembly resolution 3472 B (XXX) of 11 December 1975, in which it considered nuclear-weapon-free zones one of the most effective means for preventing the proliferation, both horizontal and vertical, of nuclear weapons,

Convinced of the need to take all steps in achieving the ultimate goal of a world entirely free of nuclear weapons, as well as of the obligations of all States to contribute to this end,

Convinced also that the African nuclear-weapon-free zone will constitute an important step towards strengthening the non-proliferation regime, promoting general and complete disarmament and enhancing regional and international peace and security,

Aware that regional disarmament measures contribute to global disarmament efforts,

Believing that the African nuclear-weapon-free zone will protect African States against possible nuclear attacks on their territories,

Reaffirming the importance of the Treaty on the Non-Proliferation of Nuclear Weapons [hereinafter referred to as the NPT] and the need for the implementation of all its provisions,

Desirous of taking advantage of article IV of the NPT, which recognizes the inalienable right of all States Parties to develop research on, production and use of nuclear energy for peaceful purposes without discrimination and to facilitate the fullest possible exchange of equipment, materials and scientific and technological information for such purposes,

Determined to promote regional cooperation for the development and practical application of nuclear energy for peaceful purposes in the interest of sustainable social and economic development of the African continent,

Determined to keep Africa free of environmental pollution by radioactive wastes and other radioactive matter,

Welcoming the cooperation of all States and governmental and non-governmental organizations for the attainment of these objectives,

Have agreed as follows:

Article 1
Usage of terms

For the purpose of this Treaty and its Protocols:

(a) "African nuclear-weapon-free zone" means the continent of Africa, island States members of OAU and other adjoining islands listed in annex I and illustrated on the map attached;

(b) "Territory" means internal waters, territorial sea and archipelagic waters and the seabed and subsoil beneath and the land territory and the airspace above them;

(c) "Nuclear explosive device" means any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used. The term includes such a weapon or device in unassembled and partly assembled forms, but does not include the means of transport or delivery of such a weapon or device if separable from and not an indivisible part of it;

(d) "Stationing" means implantation, emplacement, transport on land or inland waters, stockpiling, storage, installation and deployment;

(e) "Nuclear installation" means a nuclear-power reactor, a nuclear research reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant, a separate storage installation and any other installation or location in or at which fresh or irradiated nuclear material or significant quantities of radioactive materials are present.

Article 2
Application of the Treaty

1. Except where otherwise specified, this Treaty and its Protocols shall apply to the territory within the African nuclear-weapon-free zone.
2. Nothing in this Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to freedom of the seas.

Article 3
Renunciation of nuclear explosive devices

Each Party undertakes:

(a) Not to conduct research on, develop, manufacture, stockpile or otherwise acquire, possess or have control over any nuclear explosive device by any means anywhere;

(b) Not to seek or receive any assistance in the research on, development, manufacture, stockpiling or acquisition, or possession of any nuclear explosive device;

(c) Not to take any action to assist or encourage the research on, development, manufacture, stockpiling or acquisition, or possession of any nuclear explosive device by any State.

Article 4

Prevention of stationing of nuclear explosive devices

1. Each Party undertakes to prohibit, in its territory, the stationing of any nuclear explosive device.
2. Each Party in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lane passage or transit passage of straits.

Article 5

Prohibition of testing of nuclear explosive devices

Each Party undertakes:

(a) Not to test any nuclear explosive device;

(b) To prohibit in its territory the testing of any nuclear explosive device;

(c) Not to assist or encourage the testing of any nuclear explosive device by any State anywhere.

Article 6

Declaration, dismantling, destruction or conversion of nuclear explosive devices and the facilities for their manufacture

Each Party undertakes:

(a) To declare any capability for the manufacture of nuclear explosive devices;

(b) To dismantle and destroy any nuclear explosive device that it has manufactured prior to the coming into force of this Treaty;

(c) To destroy facilities for the manufacture of nuclear explosive devices or, where possible, to convert them to peaceful uses;

(d) To permit the International Atomic Energy Agency (hereinafter referred to as IAEA) and the Commission established in article 12 to verify the processes of dismantling and destruction of the nuclear explosive devices, as well as the destruction or conversion of the facilities for their production.

Article 7

Prohibition of dumping of radioactive wastes

Each Party undertakes:

(a) To effectively implement or to use as guidelines the measures contained in the Bamako Convention on the Ban of the Import into Africa and Control of Transboundary Movement and Management of Hazardous Wastes within Africa in so far as it is relevant to radioactive waste;

(b) Not to take any action to assist or encourage the dumping of radioactive wastes and other radioactive matter anywhere within the African nuclear-weapon-free zone.

Article 8

Peaceful nuclear activities

1. Nothing in this Treaty shall be interpreted as to prevent the use of nuclear science and technology for peaceful purposes.

2. As part of their efforts to strengthen their security, stability and development, the Parties undertake to promote individually and collectively the use of nuclear science and technology for economic and social development. To this end they undertake to establish and strengthen mechanisms for cooperation at the bilateral, subregional and regional levels.

3. Parties are encouraged to make use of the programme of assistance available in IAEA and, in this connection, to strengthen cooperation under

the African Regional Cooperation Agreement for Research, Training and Development Related to Nuclear Science and Technology (hereinafter referred to as AFRA).

Article 9
Verification of peaceful uses

Each Party undertakes:

(a) That all activities for the peaceful use of nuclear energy shall be conducted under strict non-proliferation measures to provide assurance of exclusively peaceful uses;

(b) To conclude a comprehensive safeguards agreement with IAEA for the purpose of verifying compliance with the undertakings in subparagraph (a) of this article;

(c) Not to provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material for peaceful purposes to any non-nuclear-weapon State unless subject to a comprehensive safeguards agreement concluded with IAEA.

Article 10
Physical protection of nuclear materials and facilities

Each Party undertakes to maintain the highest standards of security and effective physical protection of nuclear materials, facilities and equipment to prevent theft or unauthorized use and handling. To that end each Party, inter alia, undertakes to apply measures of physical protection equivalent to those provided for in the Convention on Physical Protection of Material and in recommendations and guidelines developed by IAEA for that purpose.

Article 11
Prohibition of armed attack on nuclear installations

Each Party undertakes not to take, or assist, or encourage any action aimed at an armed attack by conventional or other means against nuclear installations in the African nuclear-weapon-free zone.

Article 12
Mechanism for compliance

1. For the purposes of ensuring compliance with their undertakings with respect to both the activities prohibited in the interest of non-proliferation and those permissible for the promotion of peaceful uses of nuclear science and technology, the Parties agree to establish the African Commission on Nuclear Energy (hereafter referred to as the Commission) as set out in annex III.
2. The Commission shall be responsible for the review of the operation of the Treaty and, in particular, for:
 - (a) Collating the reports and the exchange of information as provided for in article 13;
 - (b) Arranging consultations as provided for in annex IV, as well as convening conferences of Parties on the concurrence of simple majority of State Parties on any matter arising from the implementation of the Treaty;
 - (c) Reviewing the application to peaceful nuclear activities of safeguards by IAEA as elaborated in annex II;
 - (d) Bringing into effect the complaints procedure elaborated in annex IV;
 - (e) Encouraging regional programmes for cooperation in the peaceful uses of nuclear science and technology;
 - (f) Promoting international cooperation with extra-zonal States for the peaceful uses of nuclear science and technology.
3. The Commission shall meet in ordinary session once a year, and may meet in extraordinary session as may be required by the complaints procedure in annex IV.

Article 13
Report and exchanges of information

1. Each Party shall submit an annual report to the Commission on its nuclear activities as well as other matters relating to the Treaty.
2. Each Party shall promptly report to the Commission any significant event affecting the implementation of the Treaty.

3. The Commission shall receive an annual report on the activities of AFRA.

Article 14
Meeting of Parties

1. A meeting of all Parties to the Treaty shall be convened by the Depositary as soon as possible after the entry into force of the Treaty to, inter alia, elect members of the Commission and determine its headquarters. Further meetings of State Parties shall be held as necessary and at least every three years, and convened in accordance with paragraph 2 (b) of article 12.
2. The meeting of State Parties shall adopt the Commission's budget and a scale of assessment to be paid by the State Parties.

Article 15
Settlement of disputes

Any dispute arising out of the interpretation of the Treaty shall be settled by negotiation or another procedure agreed to by the Parties, which may include recourse to an arbitral panel or to the International Court of Justice.

Article 16
Reservations

This Treaty shall not be subject to reservations.

Article 17
Duration

This Treaty shall be of unlimited duration and shall remain in force indefinitely.

Article 18
Withdrawal

1. Each 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 this Treaty, have jeopardized its supreme interests.
2. Withdrawal shall be effected by a Party giving notice, which includes a statement of the extraordinary events it regards as having jeopardized its

supreme interest, twelve months in advance to the Depositary. The Depositary shall circulate such notice to all other parties.

Article 19

Signature, ratification and entry into force

1. This Treaty shall be open for signature by any State in the African nuclear-weapon-free zone. It shall be subject to ratification.
2. It shall enter into force on the date of deposit of the [twentyeighth] [thirty-fifth] instrument of ratification.
3. For a signatory who ratifies this Treaty after the date of the deposit of the [twenty-eighth] [thirty-fifth] instrument of ratification, it shall enter into force for that signatory on the date of deposit of its instrument of ratification.

Article 20

Amendments

1. Any amendment to the Treaty proposed by a Party shall be submitted to the Commission, which shall circulate it to all Parties.
2. Decision on the adoption of such an amendment shall be taken by a twothirds majority of the Parties either through written communication to the Commission or through a conference of Parties convened upon the concurrence of a simple majority.
3. An amendment so adopted shall enter into force for all parties after receipt by the Depositary of the [twenty-eighth] [thirty-fifth] instrument of ratification.

Article 21

Depositary functions

1. This Treaty, of which the Arabic, English, French and Portuguese texts are equally authentic, shall be deposited with the Secretary-General of OAU, who is hereby designated as Depositary of the Treaty.
2. The Depositary shall:
 - (a) Receive instruments of ratification;
 - (b) Register this Treaty and its Protocols pursuant to Article 102 of the Charter of the United Nations;

(c) Transmit certified copies of the Treaty and its Protocols to all States in the African nuclear-weapon-free zone and to all States eligible to become party to the Protocols to the Treaty, and shall notify them of signatures and ratification of the Treaty and its Protocols.

Article 22
Status of the annexes

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

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Treaty.

DONE at _____

Annex I***African nuclear-weapon-free zone***

This will encompass the continent of Africa, island States Members of the Organization of African Unity, and all islands considered by the Organization of African Unity in its resolutions to be part of Africa, as well as other islands between those islands and continental Africa. This is illustrated in the attached map [not attached to the draft].

Annex II

Safeguards of the International Atomic Energy Agency

1. The safeguards referred to in subparagraph (b) of article 9 shall in respect of each Party be applied by the International Atomic Energy Agency as set forth in an agreement negotiated and concluded with the Agency on all sources of special fissionable material in all nuclear activities within the territory of the Party, under its jurisdiction or carried out under its control anywhere.
2. The Agreement referred to in paragraph 1 above shall be, or shall be equivalent in its scope and effect to, the agreement required in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/153 corrected). Each Party shall take all appropriate steps to ensure that the Agreement referred to in paragraph 1 is in force for it not later than eighteen months after the date of entry into force for that Party of this Treaty.
3. For the purpose of this Treaty, the safeguards referred to in paragraph 1 above shall have as their purpose the verification of the non-diversion of nuclear material from peaceful nuclear activities to nuclear explosive devices or for purposes unknown.
4. Each Party shall transmit to the Commission, for its information and review, a copy of the overall conclusions of the most recent report by the International Atomic Energy Agency on its inspection activities in the territory of the Party concerned, and advise the Commission promptly of any subsequent findings of the Agency in relation to those conclusions. The information furnished by a Party shall not be, totally or partially, disclosed or transmitted to third parties, by the addressees of the reports, except when that Party gives its express consent.

Annex III

African Commission on Nuclear Energy

1. The Commission established in article 12 shall be composed of twelve Members elected by Parties to the Treaty for a three-year period, bearing in mind the need for rotation as well as to include Members with advanced nuclear programmes. Each Member shall have one representative nominated with particular regard for his/her expertise in the subject of the Treaty.
2. The Commission shall have a Bureau consisting of the Chairman, the Vice-Chairman and the Executive Secretary. It shall elect its Chairman and Vice-Chairman. The Secretary-General of the Organization of African Unity, at the request of Parties to the Treaty and in consultation with the Chairman, shall designate the Executive Secretary of the Commission. For the first meeting a quorum shall be constituted by representatives of two thirds of the Members of the Commission. For that meeting decisions of the Commission shall be taken as far as possible by consensus or otherwise by a two-thirds majority of the Members of the Commission. The Commission shall adopt its rules of procedure at that meeting.
3. The Commission shall develop a format for reporting by States as required under articles 12 and 13.
4.
 - (a) The costs of the Commission, including the costs of special inspections pursuant to annex IV to this Treaty, shall be borne by the Parties to the Treaty in accordance with a scale of assessment to be determined by the Parties;
 - (b) The Commission may also accept additional funds from other sources provided such donations are consistent with the purposes and objectives of the Treaty;
 - (c) The budget of the Commission shall be adopted in accordance with paragraph 2 of article 14.

Annex IV

Complaints procedure

1. A Party which considers that there are grounds for a complaint that another Party or a Party to Protocol III is in breach of its obligations under this Treaty shall bring the subject-matter of the complaint to the attention of the Party complained of and shall allow the latter reasonable opportunity to provide it with an explanation and to resolve the matter. This may include technical visits agreed upon between the Parties.
2. If the matter is not so resolved, the complainant Party may bring this complaint to the Commission.
3. The Commission, taking account of efforts made under paragraph 1 above, shall afford the Party complained of a reasonable opportunity to provide it with an explanation of the matter.
4. If, after considering any explanation given to it by the representatives of the Party complained of, the Commission considers that there is sufficient substance in the complaint to warrant a special inspection in the territory of that Party or territory of a party to Protocol III, the Commission may request the International Atomic Energy Agency to conduct such inspection as soon as possible. The Commission may also designate its representatives to accompany the Agency's inspection team.
 - (a) The request shall indicate the tasks and objectives of such inspection, as well as any confidentiality requirements;
 - (b) If the Party complained of so requests, the inspection team shall be accompanied by representatives of that Party provided that the inspectors shall not be thereby delayed or otherwise impeded in the exercise of their functions;
 - (c) Each Party shall give the inspection team full and free access to all information and places within each territory that may be deemed relevant by the inspectors to the implementation of the special inspection;
 - (d) The Party complained of shall take all appropriate steps to facilitate the work of the inspection team, and shall accord them the same privileges and immunities as those set forth in the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency;

(e) The International Atomic Energy Agency shall report its findings in writing as quickly as possible to the Commission, outlining its activities, setting out relevant facts and information as ascertained by it, with supporting evidence and documentation as appropriate, and stating its conclusions. The Commission shall report fully to all States Parties to the Treaty giving its decision as to whether the Party complained of is in breach of its obligations under this Treaty;

(f) If the Commission considers that the Party complained of is in breach of its obligations under this Treaty, or that the above provisions have not been complied with, States Parties to the Treaty shall meet in extraordinary session to discuss the matter;

(g) The States Parties convened in extraordinary session under paragraph 6 below may, as necessary, make recommendations to the Party held to be in breach of its obligations and to the Organization of African Unity. The Organization of African Unity may, if necessary, refer the matter to the United Nations Security Council;

(h) The costs involved in the procedure outlined above shall be borne by the Commission. In the case of abuse, the Commission shall decide whether the requesting State Party should bear any of the financial implications.

5. The Commission may also establish its own inspection mechanisms.
6. Special inspections will not prejudice the rights and the power of the International Atomic Energy Agency to carry out special inspections in accordance with the agreements referred to in paragraph 1 of annex II to this Treaty.

Protocol I

The Parties to this Protocol,

Convinced of the need to take all steps in achieving the ultimate goal of a world entirely free of nuclear weapons as well as the obligations of all States to contribute to this end,

Convinced also that the African Nuclear-Weapon-Free Zone Treaty, negotiated and signed in accordance with the Declaration on the Denuclearization of Africa (AHG/Res.11(1)) of 1964, resolutions CM/Res.1342(LIV) of 1991 and

CM/Res.1395(LVI) Rev.1 of 1992 of the Council of Ministers of the Organization of African Unity and United Nations General Assembly Resolution 48/86 of 16 December 1993, constitutes an important measure towards ensuring the non-proliferation of nuclear weapons, promoting general and complete disarmament, and enhancing regional and international peace and security,

Desirous of contributing in all appropriate manners to the effectiveness of the Treaty,

Have agreed as follows:

Article 1

Each Protocol Party undertakes not to use or threaten to use a nuclear explosive device against:

(a) Parties to the Treaty; or

(b) Any territory within the African nuclear-weapon-free zone for which a State that has become a Party to Protocol III is internationally responsible as defined in annex I.

Article 2

Each Protocol Party undertakes not to contribute to any act that constitutes a violation of the Treaty or of this Protocol.

Article 3

Each Protocol Party undertakes, by written notification to the Depositary, to indicate its acceptance or otherwise of any alteration to its

obligation under this Protocol that may be brought about by the entry into force of an amendment to the Treaty pursuant to article 20 of the Treaty.

Article 4

This Protocol shall be open for signature by China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Article 5

This Protocol shall be subject to ratification.

Article 6

This Protocol is of a permanent nature and shall remain in force indefinitely, provided that each Party shall, in exercising its national sovereignty, have the right to withdraw from this Protocol if it decides that extraordinary events, related to the subject-matter of this Protocol, have jeopardized its supreme interests. It shall give notice of such withdrawal to the Depositary twelve months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

Article 7

This Protocol shall enter into force for each State on the date of its deposit with the Depositary of its instrument of ratification or the date of entry into force of the Treaty, whichever is later.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Protocol.

DONE at _____

Protocol II

The Parties to this Protocol,

Convinced of the need to take all steps in achieving the ultimate goal of a world entirely free of nuclear weapons as well as the obligations of all States to contribute to this end,

Convinced also that the African Nuclear-Weapon-Free Zone Treaty, negotiated and signed in accordance with the Declaration on the Denuclearization of Africa (AHG/Res.11(1)) of 1964, resolutions CM/Res.1342(LIV) of 1991 and

CM/Res.1395(LVI)/Rev.1 of 1992 of the Council of Ministers of the Organization of African Unity and United Nations General Assembly resolution 48/86 of 16 December 1993, constitutes an important measure towards ensuring the non-proliferation of nuclear weapons, promoting general and complete disarmament, and enhancing regional and international peace and security,

Desirous of contributing in all appropriate manners to the effectiveness of the Treaty,

Bearing in mind the objective of concluding a treaty banning all nuclear tests,

Have agreed as follows:

Article 1

Each Protocol Party undertakes not to test or assist or encourage the testing of any nuclear explosive device anywhere within the African nuclearweapon-free zone.

Article 2

Each Protocol Party undertakes not to contribute to any act that constitutes a violation of the Treaty or of this Protocol.

Article 3

Each Protocol Party undertakes, by written notification to the Depositary, to indicate its acceptance or otherwise of any alteration to its

obligation under this Protocol that may be brought about by the entry into force of an amendment to the Treaty pursuant to article 20 of the Treaty.

Article 4

This Protocol shall be open for signature by China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Article 5

This Protocol shall be subject to ratification.

Article 6

This Protocol is of a permanent nature and shall remain in force indefinitely, provided that each Party shall, in exercising its national sovereignty, have the right to withdraw from this Protocol if it decides that extraordinary events, related to the subject-matter of this Protocol, have jeopardized its supreme interests. It shall give notice of such withdrawal to the Depository twelve months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

Article 7

This Protocol shall enter into force for each State on the date of its deposit with the Depository of its instrument of ratification or the date of entry into force of the Treaty, whichever is later.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Protocol.

DONE at _____

Protocol III

The Parties to this Protocol,

Convinced of the need to take all steps in achieving the ultimate goal of a world entirely free of nuclear weapons as well as the obligations of all States to contribute to this end,

Convinced also that the African Nuclear-Weapon-Free Zone Treaty, negotiated and signed in accordance with the Declaration on the Denuclearization of Africa (AHG/Res.11(1)) of 1964, resolutions CM/Res.1342(LIV) of 1991 and CM/Res.1395(LVI)/Rev.1 of 1992 of the Council of Ministers of the Organization of African Unity and United Nations General Assembly resolution 48/86 of 16 December 1993, constitutes an important measure towards ensuring the non-proliferation of nuclear weapons, promoting general and complete disarmament, and enhancing regional and international peace and security,

Desirous of contributing in all appropriate manners to the effectiveness of the Treaty,

Have agreed as follows:

Article 1

Each Protocol Party undertakes to apply, in respect of the territories for which it is internationally responsible situated within the African nuclear-weapon-free zone, the provisions contained in articles 3, 4, 5, 6, 7, 8, 9 and 10 of the Treaty and to ensure the application of safeguards specified in annex II of the Treaty.

Article 2

Each Protocol Party undertakes not to contribute to any act that constitutes a violation of the Treaty or of this Protocol.

Article 3

Each Protocol Party undertakes, by written notification to the Depositary, to indicate its acceptance or otherwise of any alteration to its obligation under this Protocol that may be brought about by the entry into force of an amendment to the Treaty pursuant to article 20 of the Treaty.

Article 4

This Protocol shall be open for signature by France, Spain and Portugal.

Article 5

This Protocol shall be subject to ratification.

Article 6

This Protocol is of a permanent nature and shall remain in force indefinitely, provided that each Party shall, in exercising its national sovereignty, have the right to withdraw from this Protocol if it decides that extraordinary events, related to the subject-matter of this Protocol, have jeopardized its supreme interests. It shall give notice of such withdrawal to the Depositary twelve months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

Article 7

This Protocol shall enter into force for each State on the date of its deposit with the Depositary of its instrument of ratification or the date of entry into force of the Treaty, whichever is later.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Protocol.

DONE at _____

APPENDIX 15 (A)

Letter of Transmittal

22 August 1994

The Secretary-General
United Nations
New York

Sir,

I have the honour to submit herewith the report of the fourth and fifth meetings of the Group of Experts to Prepare a Draft Treaty on an African Nuclear-Weapon-Free Zone. The Group was appointed by you in pursuance of General Assembly resolution 48/86 of 16 December 1993.

The fourth and fifth meetings of the Group of Experts, which were organized by the United Nations in cooperation with the Organization of African Unity (OAU), were held at Windhoek from 16 to 25 March 1994 and at Addis Ababa from 11 to 14 May 1994, respectively.

At the fourth meeting, at Windhoek, the following experts designated by the United Nations, in cooperation with OAU, took part in the meeting: Ambassador Oluyemi Adeniji, former Director-General, Nigerian Ministry of Foreign Affairs; Ambassador Fathi Marei, Adviser on Disarmament Issues to the Egyptian Minister for Foreign Affairs; Mrs. Liberata Mulamula, Counsellor, International Cooperation and Legal Affairs Department, Ministry of Foreign Affairs, United Republic of Tanzania; Mr. Gift Punungwe, Minister Counsellor, High Commission of Zimbabwe, Lagos; Ambassador Cheickh Sylla, Director, International Organizations Department, Ministry of Foreign Affairs, Senegal; Mr. Joyker Nayeck, Africa Desk, Ministry of External Affairs, Port Louis; Ambassador Ibrahima Sy, Executive Secretary, Office of OAU, New York; and Colonel Gustave Zoula, Chief of Section, External Policy Coordination, Peace and Strategic

Questions, OAU. At the fifth meeting, at Addis Ababa, the same experts, with the exception of Mr. Gift Punungwe, took part in the meeting. In addition, the Honourable Darga, Minister of Housing, Lands, Towns and Country Planning, Port Louis; Mr. P. Goosen, Deputy Director, Disarmament Affairs, Department of Foreign Affairs, Pretoria; and Maj. Andre Hashiyana, Deputy Principal Staff Officer, Ministry of Defence, Namibia, also took part.

Mr. Mohamed Elbaradei, Assistant Director-General for External Relations, International Atomic Energy Agency (IAEA), participated as an expert; and Ms. Bronte Moules, Alternative Representative on the Australian delegation to the Conference on Disarmament, participated as an expert observer from a party to the South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga) in both meetings.

Ambassador Jeremy B. Shearer, Deputy Director-General, Multilateral Branch, Department of Foreign Affairs, Pretoria; Mr. Peter Goosen, Deputy Director, Disarmament Affairs, Multilateral Branch, Department of Foreign Affairs, The Secretary-General United Nations New York Pretoria; Mr. Patrick V. Manana, Assistant Chief Representative, African National Congress (ANC), Windhoek; and Dr. Solly Skosana, Secretary for Environmental Affairs, Pan Africanist Congress of Azania (PAC), Johannesburg, attended the Windhoek meeting as expert observers.

The members of the Group of Experts wish to express their appreciation for the assistance that they received from the staff members of the Secretariat of the United Nations. They wish, in particular, to convey their special thanks to the Secretary of the Group of Experts, Mr. Sola Ogunbanwo, Senior Coordinator of the United Nations Disarmament Fellowship, Training and Advisory Services Programme, who also participated as Chief Expert Adviser.

I have been requested by the Group of Experts, as its Chairman, to submit to you, on its behalf, the attached report, which was endorsed unanimously.

(Signed) Ambassador Oluyemi ADENIJI
Chairman of the Group of Experts
to Prepare a Draft Treaty on an
African Nuclear-Weapon-Free Zone

APPENDIX 15 (B)

Olu Adeniji
Chairman
Group of Experts on the African
Nuclear-Weapon-Free Zone Treaty

May 14, 1994

H.E. Salim A. Salim
Secretary-General
OAU

Your Excellency,

In accordance with UN General Assembly resolution 48/86 of 16 December 1993 adopted at the initiative of the African Group in New York, the Group of Experts designated by the United Nations with the cooperation of the OAU held its fifth and final meeting in Addis Ababa on May 11-14, 1994. At that meeting the Group completed its work on a draft treaty on the African Nuclear-Weapon-Free Zone.

I have the honour to forward to your Excellency the report of the Group of Experts on its fourth and fifth meetings, to which is attached the "Addis Ababa Draft Text of an African Nuclear-Weapon-Free Zone Treaty".

I believe it will be your wish to submit the draft text to the OAU Council of Ministers at its 60th session for appropriate consideration.

Please accept, Mr. Secretary-General, the assurances of my highest consideration.

Olu Adeniji
Ambassador
Chairman of the Group of Experts

APPENDIX 16

CM/Res.1529 (LX)

RESOLUTION ON THE IMPLEMENTATION OF AN AFRICAN NUCLEAR-FREE ZONE TREATY

The Council of Ministers of the Organization of African Unity, meeting in its Sixtieth Ordinary Session in Tunis, Tunisia, from 6-11 June 1994,

Recalling resolution AHG/Res.11 (1) on the Denuclearization of Africa adopted by the OAU Assembly of Heads of State and Government in Cairo in 1964,

Reaffirming its previous resolutions CM/Res.3 (1), CM/Res.28 (11), CM/Res.718 (XXXIII), CM/Res.1101 (XLVI) Rev.1, CM/Res.1342 (LIV) and CM/Res.1395 (LVI) on general disarmament and denuclearization of Africa,

Bearing in mind the relevant resolutions of the United Nations on the issue particularly resolution 48/86 of 16 December 1993 on the Establishment of a Nuclear-Weapon-Free Zone in Africa,

Convinced that the development in the regional and international situation is conducive to the implementation of the 1964 Declaration on the Denuclearization of Africa as soon as possible,

Taking into account the fact that a draft text of an African Nuclear-Weapon-Free Zone Treaty has been submitted to the Secretary-General by the UN Group of Experts,

Bearing in mind the relevant parts on the issue of the Denuclearization of Africa in the Introduction of the Report of the Secretary-General (CM/1825 (LX) Part I, paragraphs 121-125):

1. TAKES NOTE of the relevant paragraphs in the introductory note of the Secretary-General on the question of the denuclearization of Africa;
2. DECIDES to refer the draft text of an African NWFZ Treaty, along with a relevant map of the proposed zone, to Member States by the end of

November 1994 for comments and observations which should be submitted;

3. DECIDES through an appropriate resolution at the 49th Session of the UN General Assembly to request the Secretary-General of the UN to defer the submission of the text of a Treaty establishing an African Nuclear-Weapons-Free Zone to the 50th Session of the General Assembly;

4. EXPRESSES APPRECIATION to the United Nations for the technical support and financial assistance rendered in organizing the five meetings of the Group of Experts set up jointly by the OAU and the UN; and APPEALS to the United Nations to provide assistance for the organization of the joint meeting mentioned in paragraph 4 below;

5. REQUESTS the Secretary-General to convene in December 1994 in the first instance a meeting of the OAU Inter-Governmental Group of Experts established by resolution CM/Res.1342 (LIV) and in consultation with the UN Secretary-General a joint meeting of the OAU/UN Groups of Experts. The two Groups are requested to study the draft text of an African NWFZ Treaty together with the comments and observations of OAU Member States, with a view to submitting a final text of the 62nd Ordinary Session of the Council.

APPENDIX 17

UNITED NATIONS
General Assembly

A/49/550
19 October 1994

Forty-ninth session
Agenda item 72

FINAL TEXT OF A TREATY ON AN AFRICAN NUCLEAR-WEAPON-FREE ZONE

*Progress made by the International Atomic Energy Agency in ensuring the full
implementation of the safeguards agreement with South Africa*

Report of the Secretary-General

I. INTRODUCTION

1. At its forty-eighth session, the General Assembly adopted resolution 48/86 of 16 December 1993, on the establishment of a nuclear-weapon-free zone in Africa, in which the Assembly, inter alia, requested that the Secretary-General report to the General Assembly at its forty-ninth session on the progress made by the Director General of the International Atomic Energy Agency in ensuring the full implementation of the safeguards agreement with South Africa.
2. The present report is submitted by the Secretary-General pursuant to that request.

II. INFORMATION SUBMITTED BY THE INTERNATIONAL ATOMIC ENERGY AGENCY

3. In pursuance of the request of the General Assembly, the Secretariat contacted the International Atomic Energy Agency in order to obtain relevant information which would assist in the preparation of the report.

4. The International Atomic Energy Agency transmitted the following information to the Secretariat:

South Africa acceded to the Treaty on the Non-proliferation of Nuclear Weapons (NPT) on 10 July 1991. Since October 1991, when South Africa submitted to IAEA its initial report on the inventory of nuclear material in the State, the Agency has been engaged in activities to verify the completeness and assess the correctness of that initial report. Through sustained efforts and a high degree of cooperation and transparency on the part of the South African authorities, IAEA was able to resolve apparent discrepancies in the calculations of the high enriched uranium-235 balances associated with South Africa's pilot enrichment plant. The examination of the apparent discrepancy in the uranium-235 balance associated with the semi-commercial enrichment plant which is designed to produce low enriched uranium is still continuing.

Following the announcement of the President of South Africa, in March 1993, that his country had previously developed a limited nuclear deterrent capability which had been dismantled and destroyed before South Africa acceded to the NPT, Agency experts visited the facilities involved in the abandoned nuclear weapons programme at the invitation of the South African authorities. They reviewed associated historical data with the purpose of assessing the status of the nuclear weapons programme and verifying that all the nuclear material used in the programme had been fully accounted for and placed under Agency safeguards. By September 1993, on the basis of detailed examination of the production capacity of the pilot enrichment plant, of operating records and of supporting technical data, IAEA found it reasonable to conclude that the amounts of HEU which could have been produced by the pilot enrichment plant are consistent with the amounts declared in the initial report.

5. Furthermore, the International Atomic Energy Agency forwarded the following documents to the Secretariat:

The Report of the Director General on an African nuclear-weapon-free zone, as contained in document GOV/2571-GC (XXXVIII)/13 of 22 August 1994,

Resolution GC (XXXVIII)/RES/17 on an African nuclear-weapon-free zone, adopted on 23 September 1994 by the General Conference of the International Atomic Energy Agency,

Resolution GC (XXXVIII)/RES/18 on the participation of South Africa in the activities of the International Atomic Energy Agency, adopted on 23 September 1994 by the General Conference of the International Atomic Energy Agency,

These documents are contained in annexes I, II and III to the present report.

Annex I

Report of the Director General of the International Atomic Energy Agency on an African nuclear-weapon-free zone

1. In resolution GC(XXXVII)/RES/625, the General Conference last year requested the Director General to report on the progress made in implementing that resolution to the Board of Governors and to the General Conference at its thirty-eighth regular session under an agenda item entitled "An African nuclear-weapon-free zone".
2. The Conference welcomed the progress made at the third meeting of the UN/OAU (United Nations/Organization of African Unity) Group of Experts to draft a treaty on an African nuclear-weapon-free zone (which had been held in Harare from 5 to 8 April 1993), took note of the report by the Director General contained in document GC(XXXVII)/1075, commended "the African States in their efforts directed towards the establishment of an African nuclear-weapon-free zone" and requested the Director General "to continue to assist them [the African States] in these efforts".
3. In resolution 48/86 of 16 December 1993, the United Nations General Assembly, *inter alia*, requested the Secretary-General of the United Nations, in consultation with the Organization of African Unity, "to take appropriate action to enable the Group of Experts designated by the United Nations in cooperation with the Organization of African Unity to meet during 1994 at Windhoek and Addis Ababa, in order to finalize the drafting of a treaty on a nuclear-weapon-free zone in Africa".
4. In 1993, the United Nations requested the Agency to assist the Group of Experts by preparing draft treaty provisions relevant to verification requirements in a future nuclear-weapon-free zone in Africa. Subsequently, at the invitation of the United Nations, the Agency's Assistant Director General for External Relations also participated in the meetings of the Group held in Windhoek from 16 to 25 March 1994 and in Addis Ababa from 11 to 14 May 1994.
5. During these meetings, the Group of Experts reached agreement on the draft text of a treaty which would, *inter alia*, entrust to the Agency the task of verifying compliance with the peaceful use undertakings of the States parties. The Group requested its Chairman to transmit its report and the

draft treaty text to the Secretary General of OAU for submission to the OAU Council of Ministers for consideration at its sixtieth ordinary session, held in Tunis in June 1994. The Group agreed that its report and the draft treaty text should be submitted to the United Nations General Assembly at its forty-ninth session in accordance with its resolution 48/86 of 16 December 1993.

Annex II***Resolution GC (XXXVIII)/RES/17 on an African nuclear-weapon-free zone adopted on 23 September 1994 by the General Conference of the International Atomic Energy Agency****The General Conference*

(a) *Recalling* resolution GC (XXXVII)/RES/625 of 1993 and all other relevant resolutions and decisions of the General Conference and the Board of Governors,

(b) *Welcoming* the progress made towards the conclusion of a treaty on an African nuclear-weapon-free zone, on the basis of the Declaration on the Denuclearization of Africa, adopted by the Summit of the Organization of African Unity (OAU) at its first ordinary session, held in Cairo from 17 to 21 July 1964, and of resolution A/RES/48/86 adopted on 16 December 1993 by the General Assembly of the United Nations,

1. *Takes note* of the report of the Director General on the establishment of an African nuclear-weapon-free zone, contained in document GC (XXXVIII)/13;

2. *Commends* the African States for their efforts towards the establishment of an African nuclear-weapon-free zone and requests the Director General to continue to assist them in this regard;

3. *Requests* the Director General to report on the implementation of this resolution to the General Conference at its thirty-ninth regular session under an agenda item entitled "An African nuclear-weapon-free zone".

Annex III***Resolution GC (XXXVIII)/RES/18 on the participation of South Africa
in the activities of the International Atomic Energy
Agency adopted 23 September 1994 by the
General Conference of the International Atomic Energy Agency***

The General Conference,

(a) *Bearing in mind* the provisions of the Statute of the International Atomic Energy Agency,

(b) *Recalling* resolutions GC (XX)/RES/336 of 1976, GC (XXVII)/RES/408 of 1983, GC (XXIX)/RES/442 of 1985 and GC (XXX)/RES/468 of 1986 regarding South Africa's participation in the activities of the Agency,

(c) *Taking into account* recent resolutions and decisions of the United Nations and its specialized agencies, including resolution 919 (1994) adopted by the Security Council and resolution A/RES/48/258 A of 23 June 1994 adopted by the General Assembly of the United Nations, and welcoming South Africa back into the United Nations family,

(d) *Noting* that South Africa, as a result of her dismantling her nuclear weapons programme, has contributed to the evolution of an African nuclear-weapon-free zone, thus enhancing the promotion of peaceful uses of nuclear energy in Africa,

(e) *Welcoming* with deep satisfaction the new Government of National Unity in South Africa as representative of all the peoples of that country, 1. Invites South Africa to resume participation in all activities of the Agency;

2. *Requests* the Board of Governors to review the designation of South Africa to the Board in the light of the preceding new developments;

3. *Further requests* the Board of Governors to submit a report to the General Conference at its thirty-ninth regular session on this matter.

APPENDIX 18

AFRICAN NUCLEAR-WEAPON-FREE ZONE TREATY

The views of the United States of America on the proposed African Nuclear-Weapon-Free Zone:

The United States of America welcomes this opportunity to convey its comments to the UN/OAU Group of Experts and the OAU Intergovernmental Group of Experts on the draft of the proposed African Nuclear-Weapon-Free Zone (NWFZ) produced at the Experts Group Fourth Meeting in Windhoek, Namibia.

The United States has long supported in principle the concept of the denuclearization of Africa, and has repeatedly voted in favor of the UNGA resolutions supporting this concept.

However, the US could not at this time make, or be understood to make, any endorsement of or commitment to the proposed African treaty until after the language of the treaty has reached its final form.

The government of the United States has reviewed the current draft of the proposed African NWFZ, and has two paramount concerns.

As currently drafted, article 1 of protocol I obligates protocol parties not to use or threaten to use nuclear explosive devices against the territory of treaty or protocol parties quote under any circumstances endquote.

As stated before the Group of Experts in Windhoek, the US is strongly opposed to the inclusion of the phrase quote under any circumstances endquote in this protocol.

The USG notes that the phrase quote under any circumstances endquote is not a part of the previous NWFZ Treaties of Tlatelolco and Rarotonga, and as such is a new formulation that could establish new legal precedents.

The United States of America, as other NWS, must look beyond the specific context of the proposed African Nuclear-Weapon-Free Zone Treaty

when considering the impact of obligations that may be assumed under protocols to that treaty.

The US has many political and security commitments around the globe. The precedent that would be set by this protocol obligation with this additional phrase intact could call into question many if not most of those same security commitments to a host of other nations.

The US cannot endorse any provision of a treaty that would present any actual or potential impediments to the fulfillment of its security obligations.

The addition of this phrase could conflict with the longstanding negative security assurances issued by the US, as well as those of the UK, France, and Russia.

Moreover, the addition of this phrase would cause the protocol to be in conflict with our longstanding criteria for supporting nuclear-weapon-free zones; specifically, the criteria that the proposed zone's provisions do not conflict with existing security arrangements.

Therefore, the US would have extreme difficulty signing protocol I so long as the phrase quote under any circumstances endquote remains in article 1 of this protocol.

The United States also strongly urges the Group to include in the treaty language equivalent to that in article 5(2) of the Treaty of Rarotonga acknowledging the rights of treaty parties under international law to allow visits by foreign ships and aircraft to its forts and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lane passage or transit passage of straits.

The US understands that the UN/OAU Group of Experts in its deliberations at no point intended, or intends, to restrict the sovereign rights of African States that become treaty members to allow such visits, transit, and navigation.

However, the US also recognizes that any multilateral treaty that deals with sensitive issues of international security must take pains to be explicit regarding the obligations it expects its treaty or protocol parties to assume.

Such a treaty should reduce to the absolute minimum any possibility of subsequent misinterpretation or challenge. Such possibilities leave all

parties to the treaty or protocols vulnerable to subsequent challenges and misinterpretations regarding their commitments and obligations, and thereby inhibit potential treaty and protocol parties from signing and/or ratifying the treaty or protocol.

The US has a number of other concerns that it wishes to make known to the Group of Experts.

Regarding the protocols, the US notes the change in the text of the first preambular paragraph to protocols I, II, and III.

However, the US believes that protocol parties should not be held to a preambular formulation substantially different from that to which the treaty parties themselves will be held.

The US urges the Group of Experts to replace the first preambular paragraph in all three protocols with the appropriate preambular paragraph to the treaty, which reads as follows: quote convinced that all countries have an obligation to contribute to the goal of eliminating nuclear weapons endquote.

The US considers the second and third preambular paragraphs to protocol I, II, and III to be acceptable in their present form.

Regarding article 2 of protocol I, the US firmly believes that the obligations of each protocol should be legally independent of each other.

As the current text does not attempt to link the obligations of one protocol party to those of another, the US has no objection to this article or the identical articles in protocols II and III in their present form.

The US considered the previous construction of this article to be unacceptable due to the inherent linkage of obligations pertaining to protocol III, to which the US is ineligible to sign by virtue of not having any territories in the zone for which the US is internationally responsible. Under the old construction, the US could be interpreted to be bound to the obligations of protocol III parties; in other words, bound to obligations it has not explicitly assumed.

Such linkage is unacceptable to the US and potentially incompatible with US signature and ratification of any protocol with this linkage.

With regard to article 3 of protocol I, the US recommended in Windhoek that the procedure established in article 3 by which a protocol

party indicates its acceptance of changes of its obligations resulting from the treaty's amendment process should be clarified.

Specifically, a protocol party should only be bound to any change to its protocol obligations arrived at through the treaty's amendment processes if and only if the protocol party officially confers its acceptance of the change in writing to the treaty's depositary state.

The US believes that the addition of language to make this point clear would strengthen the legal structure of the treaty, and avoid any confusion now or in the future between treaty and protocol parties.

The US recommends that article 2 be altered to read as follows: each protocol party's acceptance of any alteration to its obligations under this protocol, that may be brought about by entry into force of an amendment pursuant to article 18 of the treaty, shall be accomplished by written notification to the depositary. Such altered obligations will be in force from the date indicated by the protocol party in its written notification.

The US recommends this change be made in the corresponding articles in protocols II and III.

In the main treaty text, the US renews its recommendation made before the Group of Experts in Windhoek that the definition of nuclear installations be narrowed to apply only to such sites that were wholly devoted to peaceful, civil uses, so as to exclude the possibility of a state creating a sanctuary of a military site (such as an airfield) to conduct offensive operations against another by basing some radioactive material on the site.

The US also reiterates its recommendation that the protection against attack in article 11 on the prohibition of armed attack on nuclear installations should be offered only to treaty parties. As presently drafted, non-parties would be entitled to the same protection as treaty parties.

The US believes that the present construction of article 11, together with the overly broad definition of nuclear facilities in article 1, conjoin to create a potentially dangerous loophole in the treaty that aggressive non-parties could exploit in the future.

The US reiterates its recommendation offered at Windhoek that the relationship between the two different standards in article 10 for the physical protection of nuclear materials and facilities be reconciled. The US understands that the group of experts intends the standards in subsection

(a) to be goal, with the standards of subsection (b) to be the minimum measures the treaty parties are to implement. The US recommends that if this understanding is correct that the article's language be made explicit on this relationship of the two subsections.

Finally, the United States suggests that the draft treaty include a provision requiring treaty members to forego the production of highly-enriched uranium (HEU) and separated plutonium.

The US has a longstanding policy of discouraging the global stockpiling and use of highly enriched uranium and separated PU to reduce the availability of weapons usable material worldwide as well as the means of its production.

The US therefore believes that the inclusion of such a provision would significantly strengthen the treaty.

A HEU/PU production ban would recognize the unique status of Africa as a continent free from HEU enrichment and from reprocessing. It would also established a legal obligation applicable to all the treaty members to engage only in activities that can be easily demonstrated as intended for solely peaceful purposes and easily verified.

A production ban would also increase the parties' confidence in each others' peaceful intentions in pursuing civil nuclear activities. By undertaking a solemn legal commitment not to produce highly-enriched uranium and separated plutonium, parties to the treaty would have greater confidence that other parties will not engage in activities that could support the development of nuclear explosive devices.

Finally, and perhaps most importantly, a continent-wide ban on the production of these materials would set a new standard for global nuclear non-proliferation behavior among States, one that would reflect favorably on all treaty parties.

The United States recognizes that the treaty should strike a balance between restrictive and permissive elements. The US also recognizes that, in keeping with long-standing US criteria for nuclear-weapon-free zones, all States whose participation is deemed important should participate in the zone.

Such a ban, if properly formulated, would not restrict any practical or economically useful application of nuclear energy, nor would it obstruct the

import of technology to treaty members—technology that we understand is crucial to economic and scientific development.

To this end, the US suggests that the group consider a provision equivalent or similar to the following draft text, either as a separate article or to be incorporated in the existing structure of the draft treaty.

Article: Production of Nuclear Material for Peaceful Purposes

A) Each party undertakes not to produce and to minimize as far as possible the possession and use of uranium enriched to 20 percent or greater in the fissile isotope u-235, or to produce or acquire separated plutonium.

B) Each party shall retain the right to produce uranium enriched to less than 20 percent in the fissile isotope u-235 as part of a peaceful, safeguarded, non-explosive nuclear energy program or for export to the peaceful non-explosive nuclear energy programs of other states subject to IAEA safeguards.

C) Each party shall retain the right to develop or acquire technologies for commercial utilization, to the extent that such development or acquisition does not conflict with each party's undertakings under (A) or (B).

D) The parties shall periodically review this article with regard to the goals and objectives of this treaty to promote both the non-proliferation of nuclear weapons and the peaceful uses of nuclear energy.

- the US believes that the suggested text directly addresses and accommodates previous concerns about such a provision.

- section (A) endorses the global trend away from the civil use of highly-enriched uranium by requiring parties to minimize their possession and use of highly-enriched uranium, which in the correct enrichment level could be used for weapons purposes or, at lower levels, be enriched to weapons level in low-level civil enrichment facilities.

- section (B) and (C) of the suggested article explicitly recognize the rights of all African States to engage in peaceful nuclear and commercial activities, balancing what some may perceive as a negative obligation in subsection (A) with two positive statements of rights.

- furthermore, section (D) ensures that this article will not necessarily close off indefinitely future developments with regard to enrichment or reprocessing activities.

- for example, if in the future a treaty party wishes to engage in an activity proscribed by section (A), the treaty party can argue the merits of that activity before the other treaty parties. Should the parties decide that the benefits of engaging in this activity outweigh the security and non-proliferation benefits of the present construction of this article, the parties could through the treaty's amendment process alter the article's obligations.

- any state that wishes to engage in such an action that could affect the security of the other treaty parties would therefore be required to obtain the consent of at least two-thirds of the other treaty members to amend this article.

- the US thanks the UN/OAU Group of Experts and the OAU Intergovernmental Group of Experts for this opportunity to convey our concerns with the draft treaty.

APPENDIX 19

UNITED NATIONS
General Assembly

A/RES/49/138
11 January 1995

Forty-ninth session
Agenda item 72

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the First Committee (A/49/709)]

49/138. Establishment of an African nuclear-weapon-free zone

The General Assembly,

Bearing in mind the Declaration on the Denuclearization of Africa¹ adopted by the Assembly of Heads of State and Government of the Organization of African Unity at its first ordinary session, held at Cairo from 17 to 21 July 1964, in which they solemnly declare their readiness to undertake, through an international agreement to be concluded under United Nations auspices, not to manufacture or acquire control of atomic weapons,

Recalling its resolutions 1652 (XVI) of 24 November 1961 and 48/86 of 16 December 1993, its earliest and latest on the subject, as well as all its previous resolutions on the implementation of the Declaration on the Denuclearization of Africa,

Desirous of ensuring the implementation of the provisions of paragraphs 60 to 63 of the Final Document of the Tenth Special Session of the General Assembly,²

Calling upon all States to consider and respect the continent of Africa and its surrounding areas as a nuclear-weapon-free zone,

Bearing in mind the provisions of resolutions CM/Res.1342 (LIV)³ and CM/Res.1395 (LVI) Rev.1⁴ on the implementation of the Declaration on the Denuclearization of Africa adopted by the Council of Ministers of the Organization of African Unity at its fifty-fourth and fifty-sixth ordinary sessions, held at Abuja from 27 May to 1 June 1991 and at Dakar from 22 to 28 June 1992, respectively,

Taking note of resolution CM/Res.1529 (LX) on the implementation of an African nuclear-weapon-free-zone treaty adopted by the Council of Ministers of the Organization of African Unity at its sixtieth ordinary session, held at Tunis from 6 to 11 June 1994,⁵

Recalling resolution GC (XXXVIII)/RES/17 on an African nuclear-weaponfree zone, adopted on 23 September 1994 by the General Conference of the International Atomic Energy Agency,⁶

Welcoming the progress made at the fourth and fifth meetings of the Group of Experts to Prepare a Draft Treaty on an African Nuclear-Weapon-Free Zone set up jointly by the Organization of African Unity and the United Nations, held at Windhoek from 16 to 25 March 1994 and at Addis Ababa from 11 to 14 May 1994, respectively,

1. *Takes note* of the report of the fourth and fifth meetings of the Group of Experts to Prepare a Draft Treaty on an African Nuclear-Weapon-Free Zone;⁷

2. *Notes* the South African Government's offer of South Africa as the seat of the African commission on nuclear energy once it is established;

3. *Reaffirms* that the implementation of the Declaration on the Denuclearization of Africa adopted by the Assembly of Heads of State and Government of the Organization of African Unity would be an important measure to prevent the proliferation of nuclear weapons and to promote international peace and security;

4. *Welcomes with satisfaction* the announcement by Algeria of its decision to deposit its instruments of accession to the Treaty on the Non-Proliferation of Nuclear Weapons;⁸

5. *Strongly renews its call* upon all States to consider and respect the continent of Africa and its surrounding areas as a nuclear-weapon-free zone;

6. *Takes note* of the report of the Director General of the International Atomic Energy Agency on the Agency's verification activities in South Africa;⁹

7. *Commends* the Secretary-General for the diligence with which he has rendered effective assistance to the Organization of African Unity in organizing the meetings of the above-mentioned Group of Experts;

8. *Encourages* the African States to continue their commendable efforts towards the finalization of the drafting of an African nuclear-weapon-free-zone treaty;

9. *Requests* the Secretary-General, in consultation with the Organization of African Unity, to take appropriate action to enable the Group of Experts designated by the United Nations in cooperation with the Organization of African Unity to meet jointly with the Intergovernmental Group of Experts of the Organization of African Unity early in 1995 at Pretoria in order to finalize the drafting of a treaty on a nuclear-weapon-free zone in Africa, and to submit the text of the treaty to the General Assembly at its fiftieth session under the item entitled "Final text of a treaty on an African nuclear-weapon-free zone".

92nd plenary meeting
19 December 1994

Notes

1. *Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 105, document A/5975.*
2. Resolution S-10/2.
3. See A/46/390, annex I.
4. See A/47/558, annex I.
5. See A/49/313, annex I.
6. A/49/550, annex II.
7. A/49/436, annex.
8. United Nations, Treaty Series, vol. 729, No. 10485.
9. See A/49/550.

APPENDIX 20

Compilation of comments by OAU members on the Addis Ababa draft of an African Nuclear-Weapon-Free Zone Treaty

No. 18570/164

22 September 1994

The Ministry of External Affairs of the Republic of Mauritius presents its compliments to the General Secretariat of the Organization of African Unity and has the honour to refer to the General Secretariat's Note Verbale Ref. No. POL/IACPH/23(III) 17.94 dated 23 June 1994 regarding the Draft African Nuclear-Weapon-Free Zone Treaty.

The Ministry is agreeable to the proposed text of the above Treaty. However, the Government of the Republic of Mauritius has a problem regarding the definition of the zone of application of the proposed Treaty as submitted in Annex 1 thereto and especially in respect of the Chagos Archipelago.

The Ministry notes that the map mentioned at Article 1 part (i) and Annex 1 was not attached to the Draft ANWFZ Treaty and therefore the Government of the Republic of Mauritius is not in a position to submit its comments on the issue.

In the circumstances, the Ministry would highly appreciate it if the relevant map could be made available *at the earliest possible* so as to enable the Government of the Republic of Mauritius to take a decision as well as to submit its comments.

The Ministry of External Affairs of the Republic of Mauritius avails itself of this opportunity to renew to the General Secretariat of the Organization of African Unity the assurances of its highest consideration.

General Secretariat of the Organization of African Unity
Addis Ababa
Ethiopia

Note No. 641/94

The Embassy of the Federal Republic of Nigeria presents its compliments to the General Secretariat of the OAU and with reference to CM/Res.1529(LX) has the honour to request for the map of the proposed Africa Nuclear-Weapon-Free Zone to facilitate action on the resolution.

The Embassy of the Federal Republic of Nigeria avails itself of this opportunity to renew to the General Secretariat of the OAU, the assurances of its highest consideration.

Addis Ababa
25 October 1994

OAU General Secretariat
Addis Ababa

Embassy of the Republic of Sudan
Addis Ababa
P.O. Box 1110
Tel. 516477

Ref. SEA/1/5/1
Date Feb. 9, 1995

The Embassy of the Republic of the Sudan presents its compliments to the General Secretariat of the Organization of African Unity and with reference to the latter's reminder POL/IACPH/23(III)27 dated 31 January 1995 regarding the Treaty on the Establishment of an African Nuclear-Weapon-Free Zone has the honour to inform the esteemed Secretariat that the representatives of Sudan are:

- H.E. Ambassador Osman Elsayed
- Mr. Abdelmahmoud Abdelhalim
- Col.(Psc) Musa Shareef, Military Attache, Sudan Embassy, Addis Ababa

The Embassy of the Republic of the Sudan avails itself of this opportunity to renew to the General Secretariat of the Organization of Africa Unity the assurances of its highest consideration.

To: The General Secretariat of the Organization of African Unity
Addis Ababa

No. 00115 MPS/OAU/95

La Mission permanente du Sénégal présente ses compliments au Secrétaire Général de l'Organisation de l'Unité Africaine et a l'honneur de se référer à sa note verbale No. POL/IACPH/23(III) 27.95 du 31 janvier 1995 relative à la prochaine réunion du Groupe d'experts OAU/ONU chargé d'élaborer un projet de Traité créant, en Afrique, une zone exempte d'armes nucléaires.

La Mission voudrait informer le Secrétaire qu'à cet effet, le Sénégal y sera représenté par l'Ambassadeur Cheikh SYLLA, Directeur des organisations internationales au Ministère des affaires étrangères et des Sénégalais de l'extérieur, Boîte postale 4044, Dakar. Téléphone (221) 236 271, Fax (221) 238 488/235 342.

La Mission permanente du Sénégal saisit cette occasion pour renouveler au Secrétaire général de l'Organisation de l'Unité africaine les assurances de sa haute considération.

Secrétariat général de l'Organisation de l'Unité africaine (OAU)
Addis Ababa

No. 1434/MAEC/SG/DOI/SOP/TZEANA

Le Ministère des affaires étrangères et de la coopération de la République du Bénin présente ses compliments au Secrétariat général de l'Organisation de l'Unité africaine et se référant à sa note No. POL/IACPH/23(III) 17.94 du 23 juin 1994 portant transmission du texte de la résolution CM/Res.1529(LX) ainsi que du projet de traité sur une zone exempte d'armes nucléaires en Afrique, a l'honneur de porter à sa connaissance ce qui suit :

La République du Bénin a participé à l'adoption en 1964 de la Déclaration sur la dénucléarisation de l'Afrique. Elle accorde un grand intérêt à l'adoption d'un traité visant à faire de l'Afrique une zone exempte d'armes nucléaires. Elle considère un tel traité comme un instrument capital dans le système régional de sécurité nucléaire.

Le gouvernement du Bénin souhaite que le projet de Traité tel que élaboré par le groupe d'experts ONU/OUA soit aussitôt que possible adopté par les plénipotentiaires des États membres de l'OUA et ouvert à la signature et à la ratification en vue de sa rapide entrée en vigueur.

Le Ministère des affaires étrangères et de la coopération de la République du Bénin remercie le Secretariat général de l'Organisation de l'Unité africaine et saisit cette occasion pour lui renouveler les assurances de sa haute considération.

Cotonou, le 14 octobre 1994

Secrétariat général de l'Organisation de l'Unité africaine
Addis Ababa

Transitional Government of Ethiopia
Ministry of Foreign Affairs

The Ministry of Foreign Affairs of the Transitional Government of Ethiopia presents its compliment to the Organization of African Unity and has the honour to refer to the latter's note Ref. POL/IACPH/23(III) 17.94 dated 23 June 1994 regarding the Draft Treaty on Nuclear-Weapon-Free Zone in Africa.

Ethiopia's comments and observations on Article 4 (p. 8) of the Draft Treaty are enclosed herewith for consideration by the Intergovernmental Group of Experts.

The Ministry of Foreign Affairs of the Transitional Government of Ethiopia avails itself of this opportunity to renew to the Organization of African Unity the assurances of its highest consideration.

To: The General Secretariat of the OAU
Addis Ababa

***Comment on Article 4. P.8. of the Draft Treaty on an
African Nuclear-Weapon-Free Zone***

Part (i) of Article 4 prohibits any State Party to the Treaty from Stationing of any nuclear explosive device, where the term “stationing” is defined to include transport on land or inland waters of that State.

Part (ii) of this Article reaffirms the state’s sovereign rights by providing for the retention of its discretionary rights “to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation of its territorial sea or archipelagic waters”.

It is obvious that the discretionary rights in Part (ii) are relevant only in the context of ships and aircraft laden with nuclear explosive devices. Ideally, the Treaty should prohibit any visits by such carriers. The fact that no reasonable time limit is set on the duration of visits by such carriers can mean that discretionary rights can be abused to violate the said prohibition on stationing, which is so crucial to the whole Treaty.

The violation of the Treaty on the pretext of full discretionary rights denies threatened neighboring states the grounds for filing complaints to the African Nuclear Energy Commission, and for this Commission and the IAEA for legitimately investigating the bases of the complaints. It is our opinion that the exercise of discretionary rights of States Party to the Treaty and its Protocols is reasonable only if transits by such carriers are to be confined to the shortest routes and transit times feasible.

APPENDIX 21

Tentative List of Islands Surrounding Africa and Territories under the Jurisdiction of Non African Powers

1. On the basis of articles 1 (2) of the OAU Charter and various resolutions adopted by the organization the following island and territories could be listed under Annex I of the Treaty.

France:

- La Réunion
- Mayotte
- Les Glorieuses
- Juan de Nova
- Bassas de India
- Europa

Spain:

- Canary Islands
- Vexex Islets
- Jaofarines Islands
- Towns of Seblia, Meuuma and Aihuceima

United Kingdom:

- Diego Garcia

2. France, Portugal, Spain, United Kingdom have been invited to communicate to the OAU a list of the territories and islands under their jurisdiction in Africa.

3. Some of the relevant resolutions:

- La Réunion CM/Res.640
- Mayotte CM/Res.421

APPENDIX 22

African Nuclear-Weapon-Free Zone: UK/French Proposal

- Article 1(i) should read:
“African Nuclear-Weapon-Free Zone means the territory and islands indicated on the map at Annex 1 and any territorial waters appertaining thereto”.
- Deletion of current Annex 1 to be replaced by the map,
- Map to be entitled “Africa Nuclear-Weapon-Free Zone”.
- Map has no names on it,
- BIOT is shown on the map in a box with a note on the map (either next to or inside the box) stating that the area inside the box is not included in the zone.

APPENDIX 23

Ministry of External Affairs
Mauritius

No. 18570/164

H.E. Dr. Salim Ahmed Salim
Secretary-General
Organization of the African Unity
Addis Ababa
Ethiopia

My Dear Secretary-General,

I wish to refer to your kind attention to the Note Verbale issued by my Ministry on 22 September 1994 concerning the Draft Treaty on the African Nuclear-Weapon-Free Zone. A copy thereof is attached herewith for ease of reference.

It is observed that to-date the map illustrating the Zone mentioned at Article 1(i) and again in Annex I of the Draft Treaty has not yet been forwarded to Member States.

I wish to emphasize that it is the position of my country that all territories of the OAU Member States as mentioned in Article 1(i) and 1(ii) of the Draft Treaty be included in the Zone.

We are conscious of the fact that the United Kingdom and the United States of America are not in favour of the inclusion in the Zone of the Chagos Archipelago, including Diego Garcia, which forms an integral part

of the State of Mauritius, as defined under Section III off Chapter XI of the Constitution of Mauritius. The relevant extract from the Constitution is attached herewith at Annex I.

As you are aware, the sovereignty of Mauritius over the Chagos Archipelago, including Diego Garcia, is fully supported by the Organization of the African Unity as per Resolution AHG/Res. 99(XVII) adopted at the 17th Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Freetown, Sierra Leone, from 1 to 4 July 1980. A copy thereof is at Annex II.

On the issue of sovereignty over the Chagos Archipelago, Mauritius is prepared to accept the inclusion of a clause explaining the positions of both the United Kingdom and Mauritius. This has already been communicated to the Government of the United Kingdom alongwith a proposed form of words.

In view of the foregoing, it is absolutely essential for the OAU to insist that the Chagos Archipelago be included in the Zone. As a matter of fact, as we have had the opportunity to impress upon both the United Kingdom and the United States, this is an occasion for them to show their good faith and commitment to their oft repeated averment for a world free of nuclear weapons.

I am also enclosing at Annex III a copy of my letter dated 4 October 1994, addressed to the Secretary-General of the United Nations Organisation relating to his report on this issue.

While awaiting a communication from you on this issue, please accept, my Dear Secretary-General, the assurance of my highest consideration.

Dr. Ahmud Swalay Kasenally
Minister

Annex I

“Mauritius” includes:

- (a) the Islands of Mauritius, Rodrigues, Agalega, Tromelin, Cargados Carajos and the Chagos Archipelago, including Diego Garcia and any other island comprised in the State of Mauritius;
- (b) the territorial sea and the air space above the territorial sea and the islands specified in paragraph (a);
- (c) the continental shelf; and
- (d) such places or areas as may be designated by regulations made by the Prime Minister, rights over which are or may become exercisable by Mauritius;

Extract from Chapter XI, Miscellaneous, Section III, Interpretation, The Constitution of the Republic of Mauritius

Annex II

AIG/Res.99(XVII)

Resolution on the Diego Garcia

The Assembly of Heads of State and Government of the Organization of African Unity meeting at its 17th Ordinary Session in Freetown, Sierra Leone, from 1 to 4 July 1980,

Pursuant to article 1, para. 2, of the Charter of the Organization of African Unity, which stipulates "The Organization shall include the continental African States, Madagascar and other islands surrounding Africa",

Considering that one of the fundamental principles of the Organization is the "respect for the sovereignty and territorial integrity of each state",

Aware of the fact that Diego Garcia has always been an integral part of Mauritius, a Member State of the OAU,

Recognizing that Diego Garcia was not ceded to Britain for military purposes,

Realizing that the militarization of Diego Garcia is a threat to Africa and to the Indian Ocean as a zone of peace,

Demands that Diego Garcia be unconditionally returned to Mauritius and that its peaceful character be maintained.

APPENDIX 24 (A)

Ambassador Olu. Adeniji
P.O. Box 52580
Falomo, Ikoyi
Lagos
Nigeria

6th June 1995

Your Excellency,

In accordance with resolution CM/Res.1529 (LX) of June 1994 and UNGA resolution 49/138 of December 1994, the OAU/UN Group of Experts and the OAU Inter-Governmental Group of Experts met in Johannesburg, South Africa, from May 29th to 2nd June 1995 in order to finalise the drafting of a treaty on a nuclear-weapon-free zone in Africa. You would recall that the main outstanding issue for finalising the Treaty was the area of its application.

Among the working documents before the experts were the comments by OAU Member States on the Addis Ababa draft text of an African Nuclear-Weapon-Free Zone Treaty.

I have the honour to forward to Your Excellency the report of the Group to which is attached the Pelindaba draft text of the African Nuclear-Weapon-Free Zone Treaty. The Experts were able to recommend a map on the area of application of the Treaty.

I believe that Your Excellency will wish to submit the draft Treaty to the Council of Ministers at its 62nd session in accordance with CM/Res.1529 (LX), with the expectation of its adoption. Permit me to inform you that at the Review and Extension Conference on the Non-Proliferation Treaty held in New York in April/May 1995, the International Community expressed

great interest in the efforts of our continent to make such an important regional contribution to the international non-proliferation regime as a Nuclear-Weapon-Free Zone Treaty. Adoption of the Treaty will contribute also to strengthening regional cooperation in the peaceful uses of nuclear energy, a significant addition by Africa to the concept of Nuclear-Weapon-Free Zone.

Please accept, Your Excellency, the assurances of my highest consideration.

Olu. Adeniji
(Ambassador)
Chairman of the Group of Experts
(Johannesburg)

H.E. Salim A. Salim
Secretary General of the OAU
Addis Ababa
Ethiopia

APPENDIX 24 (B)

UNITED NATIONS
General Assembly

A/50/426
13 September 1995

Fiftieth session
Item 78 of the provisional agenda

**FINAL TEXT OF A TREATY ON AN
AFRICAN NUCLEAR-WEAPON-FREE ZONE**

Note by the Secretary-General

The Secretary-General has received a letter dated 2 August 1995 from Ambassador Oluyemi Adeniji, Chairman of the Group of Experts to Prepare a Draft Treaty on an African Nuclear-Weapon-Free Zone, informing him of the successful outcome of the Group's work.

Pursuant to the request contained in resolution 49/138, adopted by the General Assembly on 19 December 1994, the Secretary-General hereby submits to the Assembly the "Final Text of the African Nuclear-Weapon-Free Zone Treaty".

Letter of transmittal

2 August 1995

Sir,

I have the honor to refer to General Assembly resolution 49/136 of 19 December 1994 on the establishment of an African Nuclear-Weapon-Free Zone. In paragraph 9 of that resolution, the Assembly requests the Secretary-General, in consultation with the Organization of African Unity, to take appropriate action to enable the Group of Experts designated by the United Nations in cooperation with the Organization of African Unity to meet jointly with the Intergovernmental Group of Experts of the Organization of African Unity early in 1995 at Pretoria in order to finalize the drafting of a treaty on a nuclear-weapon-free zone in Africa, and to submit the text of the treaty to the General Assembly at its fiftieth session under the item entitled "Final Text of a Treaty on an African Nuclear-Weapon-Free Zone".

Following this resolution, the United Nations, in cooperation with the Organization of African Unity (OAU), organized the Joint Meeting of OAU/United Nations Group of Experts and the Intergovernmental Group of Experts to finalize the drafting of a treaty on a nuclear-weapon-free zone in Africa. The Joint Meeting was held at Johannesburg from 29 May to 2 June 1995.

I am pleased to inform your Excellency that the Joint Meeting adopted the Pelindaba text of the African Nuclear-Weapon-Free Zone Treaty. In my capacity as Chairman of the Meeting, I submitted the Pelindaba text to the Secretary-General of OAU, who in turn submitted it to the OAU Council of Ministers at its Sixty-second Ordinary Session held at Addis Ababa from 21 to 23 June 1995. After considering the Pelindaba text, the OAU Council of Ministers made some amendments and thereafter adopted resolution OAU CM/Res.1592 (LXII)/Rev.I. Subsequently, the Pelindaba text, as amended, was approved by the thirty-first Ordinary Session of the OAU Assembly of Heads of State and Government. Therefore, the text which I am submitting to your Excellency is the Pelindaba text as amended by the OAU Council of Ministers and subsequently approved by the OAU Assembly of Heads of State and Government.

At the opening session of the Joint Meeting, Mr. L. H. Evans, Director-General of the Department of Foreign Affairs of South Africa, delivered the keynote address. Statements were also made by Ambassador Oluyemi Adeniji, Chairman of the Group of Experts, Ambassador Ibrahima Sy, Representative of the Organization of African Unity to the United Nations, and by Mr. Sola Ogunbanwo, Chief Expert Adviser on the African Nuclear-Weapon-Free Zone. The closing session in Pelindaba was addressed by Dr. J. W. L. de Villiers, Chairman of the Atomic Energy Corporation of South Africa, Dr. W. E. Stumpf, Chief Executive of the Atomic Energy Corporation of South Africa, Ambassador Oluyemi Adeniji, Ambassador Ibrahima Sy, and by Mr. Sola Ogunbanwo.

The following experts took part in the Joint Meeting: Ambassador Oluyemi Adeniji, Chairman of the Group of Experts, Lagos; Ambassador Dr. Fathi Marei, Advisor on Arms Control to the Minister of Foreign Affairs, Cairo; Ambassador Abdelmahmoud Abdelhalim, Embassy of Sudan, Addis Ababa; Mr. Komi Menshah Afeto, Premier Conseiller, Permanent Mission of Togo to the United Nations, New York; Monsieur Sabri Boukadoum, Director, International Policy, Ministry of Foreign Affairs, Algeria; Mr. P. Goosen, Minister (Disarmament), Permanent Mission of South Africa to the United Nations, Geneva, Switzerland; Mr. Essombe Edimo Joseph, First Secretary, Embassy of Cameroon, Addis Ababa; Mr. Kabouji Lukabu, Chargé d'affaires, Permanent Mission of Zaire to the United Nations, New York; Mrs. Liberata Mulamula, Counselor, International Cooperation and Legal Affairs Department, Dar-es-Salaam; Mr. J. Nayeck, Second Secretary, Permanent Mission of Mauritius to the United Nations, New York; Mr. Arthur Pickering, Under-Secretary, Ministry of Foreign Affairs, Windhoek; Mr. Gift Punungwe, Chargé d'affaires, High Commission of Zimbabwe, Lagos; Ambassador Cheickh Sylla, Director, International Organizations Department, Ministry of Foreign Affairs, Dakar; Dr. Tilahun W. Selassie, General Manager of National Radiation Protection Authority, Science and Technology Commission, Addis Ababa; Ambassador Ibrahima Sy, Executive Secretary, Office of OAU, New York; and Colonel Gustave Zoula, Senior Military Officer, Military Unit, Conflict Division, Organization of African Unity, Addis Ababa.

Mr. Mohamed Elbaradei, Assistant Director-General for External Relations, International Atomic Energy Agency (IAEA), participated as an expert; and Ms Bronte Moules, Alternative Representative on the Australian delegation to the Conference on Disarmament, participated as an expert

observer from a party to the South Pacific Nuclear-Free Zone Treaty (Treaty of Rarotonga).

The following representatives of the host Government attended the Meeting as observers: Mr. Johann Kellerman, Assistant-Director, Directorate, Disarmament and Nuclear Matters, Department of Foreign Affairs, South Africa and Mr. Neville Whiting, Atomic Energy Corporation of South Africa.

At the request of the Group of Experts, the representatives of France, Portugal, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America addressed the Meeting, on 1 June. The representative of the Russian Federation addressed the Meeting on 2 June. The representative of China addressed a letter to the Group.

The Members of the Group of Experts wish to express their appreciation for the assistance that they received from the staff members of the Secretariat of the United Nations. They wish, in particular, to convey their special thanks to the Secretary of the Group of Experts, Mr. Sola Ogunbanwo, Senior Coordinator of the United Nations Disarmament Fellowship, Training and Advisory Service Programme, who also participated as Chief Expert Adviser.

(signed) Oluyemi Adeniji
Ambassador
Chairman of the Group of Experts
to Prepare a Draft Treaty on an
African Nuclear-Weapon-Free Zone

APPENDIX 25

Appendix

CM/Res.1592 (LXII)/Rev.1

RESOLUTION ON THE IMPLEMENTATION OF THE TREATY DECLARING AFRICA A NUCLEAR-WEAPON-FREE ZONE

The Council of Ministers of the Organization of African Unity, meeting in its Sixty-second Ordinary Session in Addis Ababa, Ethiopia, from 21 to 23 June 1995,

Recalling resolution AHG/Res.11 (I) on the Denuclearization of Africa adopted by the Assembly of Heads of State and Government in Cairo, in 1964,

Reaffirming its previous resolutions on global disarmament and the denuclearization of Africa, namely: resolutions CM/Res.3 (I), CM/Res.28 (II), CM/Res.718 (XXXIII), CM/Res.1101 (LVI)/Rev.1, CM/Res.1342 (LIV) and CM/Res.1395 (LVI),

Further recalling its resolution CM/Res.1592 (LX) requesting the Secretary-General to convene a joint meeting of the OAU Intergovernmental Experts' Group and the OAU/UN Experts' Group to study the draft Treaty and submit to it a final report thereon,

Bearing in mind relevant United Nations resolutions on this issue,

Recognizing that the establishment of nuclear-weapon-free zones contribute to strengthening the international non-proliferation regime,

Aware of the offer of the Government of the Arab Republic of Egypt to host the signing ceremony, and that of the Republic of South Africa to host the Headquarters of the African Nuclear Energy Commission,

Considering the fact that the joint meeting of the two Experts' Groups has taken place in Johannesburg (South Africa) from 29 May-2 June 1995,

and that the final text of the draft Pelindaba Treaty Declaring Africa a Nuclear-Free Zone was tabled at the session,

Having considered and amended the report of the Experts as well as the Draft Pelindaba Treaty as contained in document CM/318 (LXII),

Taking into account that the text under consideration had taken into account the comments and observations of OAU Member States;

1. *Takes note and endorses* the report of the joint meeting of the OAU Intergovernmental Experts' Group and the OAU/UN Experts Group as contained in document CM/318 (LXII) and as amended subsequently,

2. *Agrees* that the application of the African Nuclear-Weapon-Free Zone should be without prejudice to the territorial integrity and sovereignty of OAU Member States;

3. *Expresses* its profound gratitude and appreciation to the Government and people of South Africa for having hosted the said meeting;

4. *Expresses gratitude* to the United Nations for its technical support and financial assistance towards the organization of the joint experts' meeting,

5. *Considers* that the establishment of nuclear-weapon-free zones, especially in the Middle East, would enhance the security of Africa and viability of the African Nuclear-Weapon-Free Zone,

6. *Endorses* the offer of the Egyptian Government to host the signing ceremony, and that of the South African Government to host the Headquarters of the African Nuclear Energy Commission, and *expresses gratitude* to both Governments,

7. *Decides* to submit the draft Pelindaba Treaty, as formulated by the OAU/UN Group of Experts Declaring Africa a Nuclear-Weapon-Free Zone and as amended to the 31st Ordinary Session of the Assembly of Heads of State and Government for adoption,

8. *Launches an appeal* to the international community and, in particular, the nuclear-weapon States to bring the necessary support to the amended Pelindaba Treaty, especially by their accession to the Protocols that concern them,

9. *Requests* the Secretary-General to report to the 63rd Ordinary Session of the Council of Ministers on the implementation of this resolution.

APPENDIX 26

THE CAIRO DECLARATION

Adopted on the Occasion of the Signature of the
African Nuclear-Weapon-Free Zone Treaty (The Treaty of Pelindaba)

The African States signatories of the African Nuclear-Weapon-Free Zone Treaty (The Treaty of Pelindaba), meeting in Cairo, Egypt, on 11 April 1996,

Recalling the Declaration on the Denuclearization of Africa adopted by the Assembly of Heads of State and Government of the Organization of African Unity at its first ordinary session held in Cairo in 1964,

Recalling also the adoption by the Assembly of Heads of State and Government of the Organization of African Unity at its thirty-first ordinary session, held at Addis Ababa from 26 to 28 June 1995, of the final text of the Treaty,

Recalling further United Nations General Assembly Resolution 50/78 of 12 December 1995, by which Assembly welcomed the Adoption by the African leaders of the final text of the Treaty,

Recognizing the valuable contribution that the establishment of nuclear-weapon-free zones in Latin America and the Caribbean, South Pacific and South East Asia have made to the process of nuclear non-proliferation,

Stressing the importance of promoting regional and international cooperation for the development of Nuclear Energy for peaceful purposes in the interest of sustainable social and economic development of the African Continent,

Solemnly declare that the signing of the Treaty further consolidates global efforts towards the non-proliferation of nuclear weapons including the objectives of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and is a highly significant contribution to the enhancement of international peace and security;

Invite the African States to ratify the Treaty as soon as possible so that it can enter into force without delay;

Call upon the Nuclear-Weapon States as well as the States contemplated in Protocol III to sign and ratify the relevant Protocols to the Treaty as soon as possible;

Emphasize that the establishment of nuclear-weapon-free zones, especially in regions of tension, such as the Middle East, on the basis of arrangements freely arrived at among the States of the regions concerned, enhances global and regional peace and security;

Call upon all those States who have not yet done so to adhere to the NPT;

Call upon the Nuclear-Weapon States to actively pursue the goal of a nuclear-weapon-free world as embodied in Article VI of the NPT, through the urgent negotiation of agreements with effective measures of verification towards the complete elimination of nuclear weapons at the earliest possible time;

Decide that the first session of the Conference of the States Parties to the Treaty shall be held not later than one year after its entry into force, and endorse the establishment of the headquarters of the African Commission on Nuclear Energy in South Africa;

Request the Secretary-General of the United Nations, in accordance with resolution 50/78, adopted by the United Nations General Assembly on 12 December 1995, to provide the necessary assistance in 1996 in order to achieve the aims of the present declaration.

Cairo, 11 April 1996

APPENDIX 27

British Embassy
Cairo

11 April 1996

His Excellency
Mr Salim Ahmed Salim
Secretary-General
Organization of African Unity

Your Excellency,

I have the honour, on proceeding this day to sign Protocols I and II to the African Nuclear-Weapon-Free Zone Treaty, to make the following statement on instructions from Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs:

a) Generally

The Government of the United Kingdom believe that universal adherence to and compliance with international agreements seeking to prevent the proliferation of weapons of mass destruction are vital to the maintenance of world security.

The Government of the United Kingdom have no doubt as to their sovereignty over the British Indian Ocean Territory and do not accept the inclusion of that Territory within the African nuclear-weapon-free zone without their consent. The Government of the United Kingdom do not accept any legal obligations in respect of that Territory by their adherence to Protocols I and II.

b) Re: Protocols I and II, first preambular paragraph

The Government of the United Kingdom understand the obligations referred to in the context of the provisions of Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968.

c) Re: Protocol I, Article 1

The Government of the United Kingdom will not be bound by their undertaking under Article 1 of Protocol I:

- i) in the case of an invasion or any other attack on the United Kingdom, its dependent territories, its armed forces or other troops, its allies or a State towards which it has a security commitment, carried out or sustained by a party to the Treaty in association or alliance with a Nuclear-Weapon State;
- or,
- ii) if any party to the Treaty is in material breach of its own non-proliferation obligations under the Treaty.

d) Re: Protocols I and II, Article 2

The Government of the United Kingdom accept this obligation on the understanding that it means that each party undertakes not to contribute to any act of a party to the Treaty which constitutes a violation of the Treaty, or to any act of another party to a Protocol which constitutes a violation of that Protocol.

e) Re: Protocols I and II, Article 6

The Government of the United Kingdom reserve the right to withdraw from these Protocols under the conditions specified on giving notice of withdrawal to the Depositary three months in advance.

I avail myself of the opportunity to renew to Your Excellency the assurance of my highest consideration

D.E.S. Blatherwick
HM Ambassador

APPENDIX 28

US ADHERENCE TO AFRICA NUCLEAR-WEAPON-FREE ZONE PROTOCOLS

Text of Declarations and Understandings

(A) The United States Government understands the term "dumping" as used in the ANWFZ Treaty to be identical to that term as defined in the 1982 United Nations Convention on the Law of the Sea;

(B) The United States Government understands the term "inland waters" as used in the ANWFZ Treaty to exclude waters used in connection with maritime navigation,

(C) The United States Government understands that nothing in the ANWFZ Treaty affects rights under international law of a state adhering to the protocols regarding the exercise of the freedom of the seas or regarding passage through or over waters subject to the sovereignty of a state, as reflected in the 1982 law of the sea convention;

(D) With respect to protocol II, the United States Government declares that it would consider that an invasion or any other attack on the United States, its territories, its armed forces or other troops, its allies or on a state toward which it has a security commitment, carried out or sustained by a treaty party in association or alliance with a nuclear-weapon state, would be incompatible with the Treaty Party's corresponding obligations under the Treaty;

(E) The United States Government declares that its policies and practices are already consistent with the ANWFZ Treaty and protocols, and that its decision to sign and seek advice and consent to ratification of the ANWFZ protocols in no way affects the United States position with regard to other nuclear-weapon-free zone treaties; and,

(F) The United States notes that Diego Garcia, part of the chain of archipelagic islands in the Indian Ocean known as the British Indian Ocean territories and under the sovereign authority of the United Kingdom of Great Britain and Northern Ireland, appears on the map of the zone of the Treaty, as set forth in Annex I, “without prejudice to the question of sovereignty.” The United States notes further that the United Kingdom of Great Britain and Northern Ireland is not eligible to become a party either to the Treaty or to Protocol III. Thus, neither the Treaty nor Protocol III apply to the activities of the United Kingdom, the United States, or any other state not party to the Treaty on the Island of Diego Garcia or elsewhere in the British Indian Ocean territories. Accordingly, no change is required in United States armed forces operations in Diego Garcia and elsewhere in the British Indian Ocean territories.

APPENDIX 29

Organization of African Unity • Organisation de l'Unité africaine

List of Countries which Have Signed, Ratified/Acceded to the
African Nuclear-Weapons-Free Zone Treaty
(The treaty of Pelindaba)
(as at 3 December 2001)



Liste des pays qui ont signé, ratifié/adhéré au
Traité sur la zone exempte d'armes nucléaires en Afrique
(Traité de Pelindaba)
(date : décembre 2001)

Ref.: CAB/LEG/24.11

No.	Country/Pays	Date of/ de signature	Date of/de ratification/ accession	Date deposited/ Date de dépôt
1	Algeria	11/04/96	23/12/97	11/02/98
2	Angola	11/04/96		
3	Benin	11/04/96		
4	Botswana	09/06/98	04/02/99	16/06/99
5	Burkina Faso	11/04/96	12/05/98	27/08/98
6	Burundi	11/04/96		
7	Cameroon	11/04/96		
8	Cape Verde	11/04/96		
9	Central African Rep.	11/04/96		
10	Chad	11/04/96		
11	Comoros	11/04/96		

12	Congo	27/01/97		
13	Côte d'Ivoire	11/04/96	20/05/99	28/07/99
14	Democratic Rep. of Congo	11/04/96		
15	Djibouti	11/04/96		
16	Egypt	11/04/96		
17	Equatorial Guinea			
18	Eritrea	11/04/96		
19	Ethiopia	11/04/96		
20	Gabon	11/04/96		
21	Gambia	11/04/96	03/09/96	16/10/96
22	Ghana	11/04/96		
23	Guinea	11/04/96	26/05/99	21/01/00
24	Guinea-Bissau	11/04/96		
25	Kenya	11/04/96	15/11/00	09/01/01
26	Leaorho	11/04/96		
27	Libeira	09/07/96		
28	Libya	11/04/96		
29	Madagascar			
30	Malawi	11/04/96		
31	Mali	11/04/96	27/05/99	
32	Mauritania	11/04/96	10/01/98	24/02/98
33	Mauritius	11/04/96	19/04/96	24/04/96
34	Morocco	11/04/96		
35	Mozambique	11/04/96		
36	Namibia	11/04/96		
37	Niger	11/04/96		
38	Nigeira	11/04/96	20/04/00	18/06/01
39	Rwanda	11/04/96		
40	Sahrawi Arab Democratic Republic			
41	Sao Tome & Principe	09/07/96		

42	Senegal	11/04/96		
43	Seychelles	09/07/96		
44	Sierra Leone	11/04/96		
45	Somalia			
46	South Africa	11/04/96	13/03/98	27/03/98
47	Sudan	11/04/96		
48	Swaziland	11/04/96	13/11/96	17/07/00
49	Tanzania	11/04/96	27/05/98	19/06/98
50	Togo	11/04/96	26/06/00	18/07/00
51	Tunisia	11/04/96		
52	Uganda	11/04/96		
53	Zambia	11/04/96		
54	Zimbabwe	11/04/96	09/02/98	06/04/98

Adopted by the 62nd Ordinary Session of the OAU Council of Ministers and endorsed by the 31st session of the Assembly of Heads of State and Government on 28 June 1995.

Opened for signature in Cairo, Egypt, on 11 April 1996.

“This Treaty shall be open for signature by any State in the African Nuclear-Weapon-Free Zone.

It shall be subject to ratification.

It shall enter into force on the date of deposit of the twenty-eighth instrument of ratification”.

The African Nuclear-Weapon-Free Zone Treaty
Traité sur la zone exempte d'armes nucléaires en Afrique

Protocol/Protocole I

No.	Country/Pays	Date of/ de signature	Date of/de ratification/ accession	Date deposited/ Date de dépôt
1	China	11/04/96	31/07/97	10/10/97
2	France	11/04/96	06/09/96	20/09/96
3	Russian Federation	05/11/96		
4	United Kingdom of Great Britain and North- ern Ireland	11/04/96	27/02/01	19/03/01
5	United States of America	11/04/96		

Protocol/Protocole II

No.	Country/Pays	Date of/ de signature	Date of/de ratification/ accession	Date deposited/ Date de dépôt
1	China	11/04/96	31/07/97	10/10/97
2	France	11/04/96	06/09/96	20/09/96
3	Russian Federation	05/11/96		
4	United Kingdom of Great Britain and North- ern Ireland	11/04/96	27/02/01	19/03/01
5	United States of America	11/04/96		

Protocol/Protocole III

No.	Country/Pays	Date of/ de signature	Date of/de ratification/ accession	Date deposited/ Date de dépôt
1	France	11/04/96	06/09/96	20/09/96
2	Spain			

APPENDIX 30

COMMENTAIRES DE LA FRANCE SUR LE PROJET DE TRAITÉ SUR LA DÉNUCLÉARISATION DE L'AFRIQUE

1. De façon générale, la France ne pourra pas se prononcer sur l'ensemble du projet tant que celui-ci ne délimitera pas précisément la zone concernée par le Traité. A cet égard, la France regrette l'absence de la carte annoncée en annexe I et destinée à préciser le champ d'application du futur Traité.

2. **Préambule**

- La France suggère de regrouper les sixième et huitième considérants en un considérant unique qui pourrait se lire comme suit : “Convinced that all countries should take measures against the proliferation of nuclear weapons, and that regional disarmament measures could contribute to global disarmament efforts”.

- L'objet du neuvième considérant n'apparaissant pas clairement, il pourrait être modifié pour mettre en relief la contribution d'une zone dénucléarisée en Afrique au renforcement global de la sécurité des États africains.

Article 1 a)

La remarque faite précédemment au sujet de l'absence de carte délimitant le champ d'application du Traité prend ici toute sa valeur. La France souhaiterait connaître les parties de la mer méditerranée et de l'océan indien (canal du Mozambique) qui seraient entre autres couvertes par le Traité.

Article 1 b)

Le projet de traité s'appuie sur la notion de “territoire” dont la définition est donnée à l'article I B). Celle-ci comprend les composantes habituellement retenues en droit international : territoire terrestre, mer territoriale, espace aérien surjacent. En revanche, la définition proposée inclut également le plateau continental, qui avec la zone dite “contiguë” ou la zone économique exclusive, appartient à ces espaces où l'état ne fait

qu'exercer des droits souverains ou une juridiction fonctionnelle. Ceci signifie qu'il n'est possible de réglementer ces espaces que dans les limites de la compétence que le droit international reconnaît aux états. En outre, il convient d'avoir à l'esprit que la convention du 11 février 1971 interdit la nucléarisation des fonds marins pour les états qui y sont parties.

Article 1 d)

Nous comprenons que la définition proposée du terme "stationing" implique une installation de longue durée, et n'affecte en rien la possibilité de faire des escales ou de transiter par la zone.

Article 4

Conformément à la remarque ci-dessus, la France ne saurait accepter la disposition prévue à cet article par laquelle les États Parties s'engageraient à interdire, sur leur territoire, le stationnement d'un système nucléaire explosif. La France est attachée au respect du droit international public établi en matière d'escales et de liberté de transit.

Article 2

Cette disposition pouvant se révéler incompatible avec d'autres engagements internationaux, nous suggérons d'ajouter une disposition semblable à celle figurant dans le Traité de Tlatelolco, qui précise expressément qu'"aucune disposition du présent Traité ne peut être interprétée comme portant atteinte aux droits et obligations des parties découlant de la Charte des Nations Unies".

Protocole III

Notre analyse, et le cas échéant, notre acceptation, du protocole No 3 seront fonction des réponses apportées aux questions faites précédemment. A ce stade, nous n'excluons pas l'hypothèse où nous serions amenés à demander l'exclusion de nos territoires du champ d'application du Traité,

Sans amendements dans le sens souhaité des protocoles I et II, la France sera en tout état de cause amenée à faire une déclaration interprétative dans le cas où elle signerait ces protocoles.

Projet de Traité sur une zone exempte d'armes nucléaires en Afrique

Mémoire sur les engagements souscrits par la France au titre du Protocole III

1. Application de la procédure de plaintes aux États Parties au Protocole III:

De manière générale dans toute l'Annexe IV, la confusion dans l'utilisation du terme "Partie (Partie au Traité/Partie au Protocole III) nuit à la bonne compréhension du texte.

Le premier paragraphe de la rédaction actuelle de l'Annexe IV du projet de Traité semble indiquer que les Parties au Protocole III, internationalement responsables pour des territoires situés dans la zone d'application du Traité, pourraient faire l'objet, pour ces mêmes territoires, d'une procédure de plainte et d'inspection engagée à l'initiative d'un État Partie au Traité. La Commission africaine peut alors demander à l'AIEA de conduire des inspections spéciales dans les territoires visés par le Protocole III, en présence de représentants de ladite Commission.

Cette procédure soulève principalement deux problèmes :

a) Un problème d'ordre *politique* :

Cette procédure originale, qui n'est pas prévue par les traités de dénucléarisation existants (Traité de Tlatelolco et de Rarotonga), établit une dissymétrie et une inégalité de droits entre les Parties au Protocole III et les Parties au Traité.

Alors que les territoires visés par le Protocole III peuvent faire l'objet de la procédure de plainte et d'inspection prévue à l'Annexe IV, à l'initiative des Parties au Traité, les Gouvernements signataires du Protocole III qui représentent ces territoires sur le plan international ne peuvent:

- ni engager la même procédure à l'encontre d'un État Partie au Traité, même voisin de leurs territoires dans la zone d'application du Traité ;

- ni participer au sein de la Commission africaine, à égalité avec les États Parties au Traité, à la mise en œuvre de la procédure prévue à l'Annexe IV.

b) un problème d'ordre *juridique* :

Dans la version actuelle du projet de Traité (AGNU A/49/436 du 27 septembre 1994), les Parties au Protocole III ne prennent aucun engagement valant acceptation de la procédure prévue à l'Annexe IV du Traité.

En effet, le Protocole III ne fait référence ni à l'Annexe établissant la procédure de plainte, ni même à l'article 12 du Traité consacré au contrôle du respect des engagements du Traité.

Nous suggérons aux rédacteurs du projet de Traité de s'inspirer sur ce point davantage du droit commun des zones dénucléarisées, et de ne pas établir une procédure qui serait à la fois discriminatoire dans son fondement et source de nombreux conflits de compétence, notamment avec l'AIEA, dans son application.

2. Application des dispositions de l'article 6 du Traité aux États Parties au Protocole III :

Le texte actuel du Protocole III prévoit en son article premier :

“Chaque Partie au Protocole s'engage à appliquer, à l'égard des territoires dont elle est internationalement responsable et qui sont situés à l'intérieur de la zone exempte d'armes nucléaires de l'Afrique, les interdictions contenues dans les articles 3, 4, 5, 6, 7, 8, 9 et 10 du Traité et les garanties spécifiées à l'Annexe II du Traité”.

Or, l'article 6 du Traité vise la “Déclaration, le démontage, la destruction ou la conversion des dispositifs explosifs nucléaires et des installations permettant leur fabrication” et confère à l'AIEA un droit particulier de vérification de ces opérations.

La France ne dispose d'aucun dispositif explosif, ni d'aucune installation permettant sa fabrication, sur les territoires dont elle est internationalement responsable en Afrique. Aussi, les engagements

contenus à l'article 6 ne la concernent manifestement pas et sont davantage destinés à s'appliquer au cas de l'Afrique du Sud, dont l'ancien programme nucléaire militaire est en cours de démantèlement.

Les raisons de fond qui expliquent les réserves de notre part à l'égard de l'application des dispositions de l'article 6 aux territoires français en Afrique sont toutefois d'un autre ordre.

En effet, l'AIEA bénéficie dans le texte actuel de l'article 6 du Traité d'un droit particulier de vérification du bon respect des engagements prévus à cet article, distinct de celui dont elle dispose déjà en vertu des accords de garanties à conclure en application de l'article 9.

En cas d'application de ces dispositions aux territoires français dans la zone du Traité, l'AIEA ne manquerait pas, à l'occasion des négociations de l'accord de garanties couvrant ces territoires, d'exiger la reconnaissance de ces deux types de pouvoirs d'inspection reconnus à l'AIEA.

Ceci pourrait conduire l'AIEA – et plus encore la Commission EURATOM qui sera également Partie à l'accord de garanties – à des demandes exorbitantes dont nous redouterions la valeur de précédent sur l'application future des garanties et des contrôles en métropole et la répartition des compétences entre l'AIEA et EURATOM.

Étant donné la difficulté inhérente aux négociations de ce type d'accord tripartite, nous pourrions ainsi redouter des blocages pour des raisons tout-à-fait étrangères à l'objectif du présent Traité et de nature à retarder inutilement la mise en œuvre du Protocole III.

Pour ces raisons d'ordre essentiellement pratiques, alors que les Parties au Protocole III ne sont manifestement pas concernées par ces dispositions, nous suggérons de supprimer la référence à l'article 6 dans le texte du Protocole III.

Projet de création d'une zone dénucléarisée en Afrique

Quelques remarques de pure forme visant à améliorer la lecture de ce projet de traité sont suggérées ci-après :

Article premier

1. La définition donnée (alinéa c) "au dispositif explosif nucléaire" est très extensive puisqu'elle vise

L'introduction du dernier membre de phrase vise, ce qui est louable, à inclure les explosions nucléaires dites à "fin pacifique". Néanmoins en ne reprenant à juste raison qu'une partie de la terminologie adoptée dans le Traité de Tlatelolco, qui prévoyait "dispositif explosif capable de produire de l'énergie nucléaire *de manière incontrôlée*", et qui possèdent un ensemble de caractéristiques propres à l'emploi à des fins belliqueuses, les rédacteurs donnent une définition qui pourraient, à l'avenir, obérer les travaux de recherche des pays d'Afrique sur la fusion contrôlée (article 3). Cette définition est par ailleurs en contradiction avec l'article 6 sur les activités pacifiques.

En effet, deux voies sont envisagées pour le développement à long terme de l'énergie de fusion contrôlée, il s'agit de la fusion par confinement inertiel et de la fusion par confinement magnétique étudiées au laboratoire ou dans des réacteurs expérimentaux (Tokamak, JET – Joint European Tokamak, PLT – Princeton Large Tokamak, etc.). Le principe de la fusion contrôlée est d'amener un mélange de deutérium-tritium dans un état confiné à très haute température de manière à engendrer une micro-explosion "nucléaire" libérant une énergie plus grande que celle nécessaire pour la mise en œuvre des conditions de l'expérience. Ce genre de procédé n'utilise pas de matières fissiles et ne génère pas de réactions de fission.

Pour cette raison la rédaction suivante est proposée : "toute arme nucléaire ou tout dispositif nucléaire explosif capable de libérer de l'énergie nucléaire d'origine *fissile*, quelle que soit la fin à laquelle celle-ci pourrait être utilisée".

2. La définition du terme "installations nucléaires" décrites à l'alinéa e) s'applique également de manière extensive aux "installations où sont stockées d'importantes quantités de matières radioactives".

Nous comprenons le souhait des concepteurs du projet de traiter du problème important posé par le stockage des matières radioactives. Il paraît néanmoins préférable que ce type d'installation soit défini dans un alinéa séparé où serait précisée la signification du terme "importante quantité".

Article 12

- alinéa 1 ligne 3, lire "permises" au lieu d'"acceptables".

Article 21

- l'Espagne étant appelée à signer le protocole 3, il paraît souhaitable que le Traité soit également traduit en espagnol.

Protocole III, article premier

- Ligne 3, lire "dispositions" au lieu de "interdictions".

Ambassade de France en Namibie

No 03/OUA

Windhoek, le 23 mars 1994

Monsieur le Conseiller,

Conformément à la réponse que j'avais eu l'occasion d'apporter le 22 mars à la demande de précision relative à la question des possessions françaises dans l'Océan indien, j'ai l'honneur de vous communiquer ci-après la liste des Iles Eparses, ainsi qu'une carte sommaire mentionnant l'emplacement des ces îles.

Les Iles Eparses sont au nombre de cinq : Tromelin, les Glorieuses, Juan de Nova, Bassas da India et Europa.

L'intérêt des ces îlots, en général inhabités ou accueillant de petites bases militaires, des stations météorologique ou des phares, est triple :

- pour la zone économique exclusive de la France ;
- pour le réseau français de stations météorologiques ;
- pour la protection de certaines espèce animales endémique à ces îlots.

Vous souhaitant bonne réception de ce courrier, je vous prie de croire, Monsieur le Conseiller, en l'assurance de ma considération distinguée.

Christian Bader
Deuxième Conseiller

APPENDIX 31

Annex 1

Law of Mongolia on its nuclear-weapon-free status, adopted on 3 February 2000, City of Ulaanbaatar

Chapter One General provisions

Article 1. Purpose of the Law

The purpose of the present Law is to regulate relations pertaining to the preservation of the territory of Mongolia in its entirety, including its air space, land, waters and the sub-soil free from nuclear weapons, which constitutes an important factor for ensuring Mongolia's security.

Article 2. Legislation on Mongolia's nuclear-weapon-free status

- 2.1 The legislation on Mongolia's nuclear-weapon-free status shall consist of the Constitution of Mongolia, the present Law and other legislative acts adopted in conformity with them.
- 2.2 In case an international treaty to which Mongolia is a party contains provisions different from those provided for in the present Law, the provisions of the international treaty shall prevail.

Article 3. Definitions

- 3.1 The definitions contained in the present Law shall have the following meaning:
 - 3.1.1 "nuclear weapon" means any explosive device that is capable of releasing nuclear energy in an uncontrollable manner and that can be used for hostile purposes;
 - 3.1.2 "nuclear-weapon-free status" means a legal status of being free from nuclear weapons.

Article 4. Prohibitions resulting from the nuclear-weapon-free status

- 4.1 An individual, legal person or any foreign State shall be prohibited on the territory of Mongolia from committing, initiating or participating in the following acts or activities relating to nuclear weapons:
 - 4.1.1 develop, manufacture or otherwise acquire, possess or have control over nuclear weapons;
 - 4.1.2 station or transport nuclear weapons by any means;
 - 4.1.3 test or use nuclear weapons;
 - 4.1.4 dump or dispose nuclear weapons grade radioactive material or nuclear waste.
- 4.2 Transportation through the territory of Mongolia of nuclear weapons, parts or components thereof, as well as of nuclear waste or any other nuclear material designed or produced for weapons purposes shall be prohibited.

Article 5. Uses of nuclear energy and technology

- 5.1 The use of nuclear energy and technology shall be permitted only by the State administrative authority in charge of nuclear energy and solely for peaceful purposes such as health care, mining, energy production and scientific research in accordance with the provisions of the international treaties to which Mongolia is a party as well as in conformity with the norms and principles of international law.
- 5.2 For the purpose of implementing Article 5.1 of the present Law and banning the dumping or storage in the vicinity of the borders of Mongolia of nuclear material or waste that might directly or in the long run indirectly adversely affect the safety of the population and the environment, Mongolia shall cooperate with the International Atomic Energy Agency (IAEA), other appropriate international organizations and the States that have nuclear programs.

Chapter Two Verification

Article 6. National verification of the implementation of the legislation on the nuclear-weapon-free status

- 6.1 On the basis of the proposals of the central administrative authority in charge of foreign relations and of other organizations, the National Security Council of Mongolia shall, within its functions and competence, coordinate the following activities:
 - 6.1.1 implementing of a single State policy concerning the prohibited and permitted activities pertaining to the nuclear-weapon-free status in Mongolia;
 - 6.1.2 institutionalizing internationally Mongolia's nuclear-weapon-free status;
 - 6.1.3 taking an active part in the activities of the appropriate international organizations, exchanging information on the prohibited and permitted activities in Mongolia and providing information to national organizations.
- 6.2 The competent authority of Mongolia shall have the right to gather information, stop, detain and search any suspected aircraft, train, vehicle, individual or group of persons.
- 6.3 The central administrative authority in charge of foreign relations shall be entrusted with monitoring the compliance with the present Law and the international commitments assumed by Mongolia in connection with the nuclear-weapon-free status.
- 6.4 Non-governmental organizations or individuals may, within the mandate provided for by the legislation, exercise public oversight of the implementation of the legislation on the nuclear-weapon-free status and submit proposals thereon to the relevant State authority.

Article 7. International verification on the implementation of the legislation on the nuclear-weapon-free status

- 7.1 Mongolia shall conduct international verification over the implementation of the present Law in cooperation with the relevant international organizations or by concluding special international agreements thereon.

Chapter Three Liability

Article 8. Liability for violation of the legislation on the nuclear-weapon-free status

- 8.1 An individual or legal person that violates Article 4 of the present Law shall be held liable in accordance with the Criminal Code.
- 8.2 The facility, equipment, material, raw material or means of transportation used for the activities prohibited by Article 4.1 of the present Law shall be expropriated by the State.
- 8.3 An individual or legal person that violates the present Law shall pay compensation for the damage caused to the interests of Mongolia as well as the population, the environment and the properties in accordance with the relevant legislation of Mongolia or in conformity with the appropriate international treaty, the principles and norms of international law.
- 8.4 In case of violation or suspected violation of the present Law by a foreign State, Mongolia shall, within its international treaty obligations or norms and principles of international law, officially notify the State concerned of the violation or suspected violation, request explanation and peacefully resolve any question that may arise therefrom. If deemed necessary, the International Atomic Energy Agency (IAEA) and other relevant bodies could be asked for assistance. In case of a dispute of a legal nature, measures could be taken up to referring the matter to the relevant international court or arbitration.

Article 9. Amendment and termination of the Law

- 9.1 If the vital interests of Mongolia are affected, the present Law may be amended or terminated.

R. Gonchigdorj
Chairman of the State
Great Hural of Mongolia

APPENDIX 32

Boutros Boutros-Ghali

**Message to the signing ceremony of the
African Nuclear-Weapon-Free Zone Treaty**

My greetings to the leaders from this great continent who have gathered here to participate in the signing ceremony of the African Nuclear-Weapon-Free Zone Treaty. It is particularly appropriate that you meet in Cairo, the city where the OAU Heads of State adopted the pioneering 1964 Declaration on the Denuclearization of Africa.

At that time, African leaders also undertook to conclude an international treaty, under United Nations auspices, not to manufacture or control atomic weapons. But, for a quarter of a century the preparation of this important document was stalled.

During the last five years, a number of significant developments have made it possible to pursue the objective for Africa's denuclearization in a treaty format. Political confidence has been built in the nuclear disarmament field by South Africa's accession to the Nuclear Non-Proliferation Treaty as a non-nuclear weapon State Party. Africa has made new and urgent efforts to resolve long-standing conflicts that have affected its people. Apartheid has been banished from the continent. New and vibrant democracies have taken root.

The establishment of an African nuclear-weapon-free zone will advance global disarmament norms and contribute to efforts to prevent the proliferation of nuclear weapons and strengthen the international non-proliferation regime. It will accelerate the stride towards a world free from nuclear weapons. It is a promising example to others wishing to contribute to broadening the areas of the world from which nuclear weapons will be forever proscribed.

Disarmament should be understood as a global enterprise, involving the United Nations, regional organizations, Member States and the international community as a whole. The African Nuclear-Weapon-Free Zone Treaty has been prepared under United Nations auspices in cooperation with the Organization of African Unity. It has shown the crucial role that the United Nations can play in encouraging and eventually attaining the desired goal of non-proliferation. It is a role central to the very ethos of the United Nations as it endeavours to fulfil the wish of the international community to turn the logic of non-proliferation into concerted action, to ensure—in President Nelson Mandel's phrase—"the convergence of word and deed".

Just as the architects of this important document drew on the experience of other regions, this Treaty will add to the general understanding of nuclear-weapon-free zones and can provide lessons in confidence-building and non-proliferation for other regions. Equally important, it can provide a successful example of how the reduction of the threat of destruction, and preventing diversion of resources to fuel that threat, can be propitious for social development and human advancement.

I would like to express my deep appreciation of the gesture made by the Egyptian Government in hosting the Signing Ceremony of this Treaty. This is yet another proof of Egypt's strong interest in the cause of disarmament in general and regional disarmament endeavours in particular. On this historic occasion, I wish to pay tribute to His Excellency, President Hosni Mubarak, for his pioneering role in the effort towards the denuclearization of Africa.

As we pay tribute to the vision and statesmanship of Africa, let us not forget that the most safe, sure and swift way to deal with the threat of nuclear arms is to do away with them in every regard by having a nuclear-weapon-free world. This should be our vision of the future. No more production. No more testing. No more sales or transfers. Reduction, destruction and the eventual elimination of all nuclear weapons and the means of their manufacture should be humanity's great common cause.

APPENDIX 33

TREATY ON THE NUCLEAR-WEAPON-FREE ZONE IN AFRICA (Pelindaba Treaty)

The Parties to this Treaty,

Guided by the declaration on the Denuclearization of Africa, adopted by the Assembly of Heads of State and Government of the Organization of African Unity (hereinafter referred to as OAU) at its first ordinary session, held at Cairo from 17 to 21 July 1964 (AHG/Res. 11(1)), in which they solemnly declared their readiness to undertake, through an international agreement to be concluded under United Nations auspices, not to manufacture or acquire control of nuclear weapons,

Guided also, by the resolutions of the fifty-fourth and fifty-sixth ordinary sessions of the Council of Ministers of OAU, held at Abuja from 27 May to 1 June 1991 and at Dakar from 22 to 28 June 1992 respectively, (CM/Res. 1342 LIV) and CM/Res. 195 (LVI)), which affirmed that the evolution of the international situation was conducive to the implementation of the Cairo Declaration, as well as the relevant provisions of the 1986 OAU Declaration on Security, Disarmament and Development,

Recalling United Nations General Assembly resolution 3472 B (XXX) of 11 December 1975, in which it considered nuclear-weapon-free zones one of the most effective means for preventing the proliferation, both horizontal and vertical, of nuclear weapons,

Convinced of the need to take all steps in achieving the ultimate goal of a world entirely free of nuclear weapons, as well as of the obligations of all States to contribute to this end,

Convinced also that the African nuclear-weapon-free zone will constitute an important step towards strengthening the non-proliferation regime, promoting cooperation in the peaceful uses of nuclear energy, promoting general and complete disarmament and enhancing regional and international peace and security.

Aware that regional disarmament measures contribute to global disarmament efforts,

Believing that the African nuclear-weapon-free zone will protect African States against possible nuclear attacks on their territories,

Noting with satisfaction existing NWFZs and recognizing that the establishment of other NWFZs, especially in the Middle East, would enhance the security of States Parties to the African NWFZ,

Reaffirming the importance of the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as the NPT) and the need for the implementation of all its provisions,

Desirous of taking advantage of article IV of the NPT, which recognizes the inalienable right of all States Parties to develop research on, production and use of nuclear energy for peaceful purposes without discrimination and to facilitate the fullest possible exchange of equipment, materials and scientific and technological information for such purposes,

Determined to promote regional cooperation for the development and practical application of nuclear energy for peaceful purposes in the interest of sustainable social and economic development of the Africa continent,

Determined to keep Africa free of environmental pollution by radioactive wastes and other radioactive matter,

Welcoming the cooperation of all States and governmental and non-governmental organizations for the attainment of these objectives,

Have decided by this Treaty to establish the African NWFZ and hereby agree as follows:

Article 1 ***Definition/Usage of terms***

For the purpose of this Treaty and its Protocols:

(a) "African nuclear-weapon-free zone" means the territory of the continent of Africa, islands States members of OAU and all islands considered by the Organization of African Unity in its resolutions to be part of Africa;

(b) "Territory" means the land territory, internal waters, territorial seas and archipelagic waters and the airspace above them as well as the sea bed and subsoil beneath;

(c) "Nuclear explosive device" means any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used. The term includes such a weapon or device in unassembled and partly assembled forms, but does not include the means of transport or delivery of such a weapon or device if separable from and not an indivisible part of it;

(d) "Stationing" means implantation, emplacement, transport on land or inland waters, stockpiling, storage, installation and deployment;

(e) "Nuclear installation" means a nuclear-power reactor, a nuclear research reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant, a separate storage installation and any other installation or location in or at which fresh or irradiated nuclear material or significant quantities of radioactive materials are present.

(f) "Nuclear material" means any source material or special fissionable material as defined in Article XX of the Statute of the International Atomic Energy Agency (IAEA) and as amended from time to time by the IAEA.

Article 2

Application of the Treaty

1. Except where otherwise specified, this Treaty and its Protocols shall apply to the territory within the African nuclear-weapon-free zone, as illustrated in the map in annex I.
2. Nothing in this Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any state under international law with regards to freedom of the seas.

Article 3

Renunciation of nuclear explosive devices

Each Party undertakes:

(a) Not to conduct research on, develop, manufacture, stockpile or otherwise acquire, possess or have control over any nuclear explosive device by any means anywhere;

(b) Not to seek or receive any assistance in the research on, development, manufacture, stockpiling or acquisition, or possession of any nuclear explosive device;

(c) Not to take any action to assist or encourage the research on, development, manufacture, stockpiling or acquisition, or possession of any nuclear explosive device.

Article 4

Prevention of stationing of nuclear explosive devices

1. Each Party undertakes to prohibit, in its territory, the stationing of any nuclear explosive device.
2. Without prejudice to the purposes and objectives of the treaty, each party in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lane passage or transit passage of straits.

Article 5

Prohibition of testing of nuclear explosive devices

Each Party undertakes:

(a) Not to test any nuclear explosive device;

(b) To prohibit in its territory the testing of any nuclear explosive device;

(c) Not to assist or encourage the testing of any nuclear explosive device by any State anywhere.

Article 6

Declaration, dismantling, destruction or conversion of nuclear explosive devices and the facilities for their manufacture

Each Party undertakes:

- (a) To declare any capability for the manufacture of nuclear explosive devices;
- (b) To dismantle and destroy any nuclear device that it has manufactured prior to the coming into force of this Treaty;
- (c) To destroy facilities for the manufacture of nuclear explosive devices or, where possible, to convert them to peaceful uses;
- (d) To permit the International Atomic Energy Agency (hereinafter referred to as IAEA) and the Commission established in article 12 to verify the processes of dismantling and destruction of the nuclear explosive devices, as well as the destruction or conversion of the facilities for their production.

Article 7

Prohibition of dumping of radioactive wastes

Each Party undertakes:

- (a) To effectively implement or to use as guidelines the measures contained in the Bamako Convention on the Ban of the Import into Africa and Control of Transboundary Movement and Management of Hazardous Wastes within Africa in so far as it is relevant to radioactive waste;
- (b) Not to take any action to assist or encourage the dumping of radioactive wastes and other radioactive matter anywhere within the African nuclear-weapon-free zone.

Article 8

Peaceful nuclear activities

1. Nothing in this Treaty shall be interpreted as to prevent the use of nuclear sciences and technology for peaceful purposes.
2. As part of their efforts to strengthen their security, stability and development, the Parties undertake to promote individually and collectively the use of nuclear science and technology for economic and social development. To this end they undertake to establish and strengthen mechanisms for cooperation at the bilateral, subregional and regional levels.

3. Parties are encouraged to make use of the programme of assistance available in IAEA and, in this connection, to strengthen cooperation under the African Regional Cooperation Agreement for Research, Training and Development Related to Nuclear Science and Technology (hereinafter referred to as AFRA).

Article 9

Verification of Peaceful Uses

Each Party undertakes:

- (a) To conduct all activities for the peaceful use of nuclear energy under strict non-proliferation measures to provide assurance of exclusively peaceful uses;
- (b) To conclude a comprehensive safeguards agreement with IAEA for the purpose of verifying compliance with the undertakings in subparagraph (a) of this article;
- (c) Not to provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material for peaceful purposes to any non-nuclear-weapon State unless subject to a comprehensive safeguards agreement concluded with IAEA.

Article 10

Physical protection of nuclear materials and facilities

Each Party undertakes to maintain the highest standards of security and effective physical protection of nuclear materials, facilities and equipment to prevent theft or unauthorized use and handling. To that end each Party, *inter alia*, undertakes to apply measures of physical protection equivalent to those provided for in the Convention on Physical Protection of Nuclear Material and in recommendations and guidelines developed by IAEA for that purpose.

Article 11

Prohibition of armed attack on nuclear installations

Each Party undertakes not to take, or assist, or encourage any action aimed at an armed attack by conventional or other means against nuclear installations in the African nuclear- weapon-free zone.

Article 12
Mechanism for compliance

1. For the purpose of ensuring compliance with their undertakings under this Treaty, the Parties agree to establish the African Commission on Nuclear Energy (hereinafter referred to as the Commission) as set out in annex III.
2. The Commission shall be responsible *inter alia* for:
 - (a) Collating the reports and the exchange of information as provided for in article 13;
 - (b) arranging consultations as provided for in annex IV, as well as convening conferences of Parties on the concurrence of simple majority of State Parties on any matter arising from the implementation of the Treaty;
 - (c) Reviewing the application to peaceful nuclear activities of safeguards by IAEA as elaborated in annex II;
 - (d) Bringing into effect the complaints procedure elaborated in annex IV;
 - (e) Encouraging regional and sub-regional programmes for cooperation in the peaceful uses of nuclear science and technology;
 - (f) Promoting international cooperation with extra-zonal States for the peaceful uses of nuclear science and technology.
3. The Commission shall meet in ordinary session once a year, and may meet in extraordinary session as may be required by the complaints and settlement of disputes procedure in annex IV.

Article 13
Report and exchanges of information

1. Each Party shall submit an annual report to the Commission on its nuclear activities as well as other matters relating to the Treaty, in accordance with the format for reporting to be developed by the Commission.
2. Each Party shall promptly report to the Commission any significant event affecting the implementation of the Treaty.

3. The Commission shall request the IAEA to provide it with an annual report on the activities of AFRA.

Article 14

Conference of Parties

1. A Conference of all Parties to the Treaty shall be convened by the Depositary as soon as possible after the entry into force of the Treaty to, *inter alia*, elect members of the Commission and determine its headquarters. Further conferences of State Parties shall be held as necessary and at least every two years, and convened in accordance with paragraph 2 (b) of article 12.
2. The Conference of all Parties to the Treaty shall adopt the Commission's budget and a scale of assessment to be paid by the State Parties.

Article 15

Interpretation of the Treaty

Any dispute arising out of the interpretation of the Treaty shall be settled by negotiation, by recourse to the Commission or another procedure agreed to by the Parties, which may include recourse to an arbitral panel or to the International Court of Justice.

Article 16

Reservations

This Treaty shall not be subject to reservations.

Article 17

Duration

This Treaty shall be of unlimited duration and shall remain in force indefinitely.

Article 18

Signature, ratification and entry into force

1. This Treaty shall be open for signature by any State in the African nuclear-weapon-free zone. It shall be subject to ratification.

2. It shall enter into force on the date of deposit of the twenty-eighth instrument of ratification.
3. For a signatory that ratifies this Treaty after the date of the deposit of the twenty-eighth instrument of ratification, it shall enter into force for that signatory on the date of deposit of its instrument of ratification.

Article 19
Amendments

1. Any amendments to the Treaty proposed by a Party shall be submitted to the Commission, which shall circulate it to all Parties.
2. Decision on the adoption of such an amendment shall be taken by a two-thirds majority of the Parties either through written communication to the Commission or through a conference of Parties convened upon the concurrence of a simple majority.
3. An amendment so adopted shall enter into force for all parties after receipt by the Depository of the instrument of ratification by the majority of Parties.

Article 20
Withdrawal

1. Each 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 this Treaty, have jeopardized its supreme interests.
2. Withdrawal shall be effected by a Party giving notice, which includes a statement of the extraordinary events it regards as having jeopardized its supreme interest, twelve months in advance to the Depository. The Depository shall circulate such notice to all other parties.

Article 21
Depository functions

1. This Treaty, of which the Arabic, English, French and Portuguese texts are equally authentic, shall be deposited with the Secretary-General of OAU, who is hereby designated as Depository of the Treaty.
2. The Depository shall:
 - (a) Receive instruments of ratification;

(b) Register this Treaty and its Protocols pursuant to Article 102 of the Charter of the United Nations;

(c) Transmit certified copies of the Treaty and its Protocols to all States in the African nuclear-weapon-free zone and to all States eligible to become party to the Protocols to the Treaty, and shall notify them of signatures and ratification of the Treaty and its Protocols.

Article 22
Status of the annexes

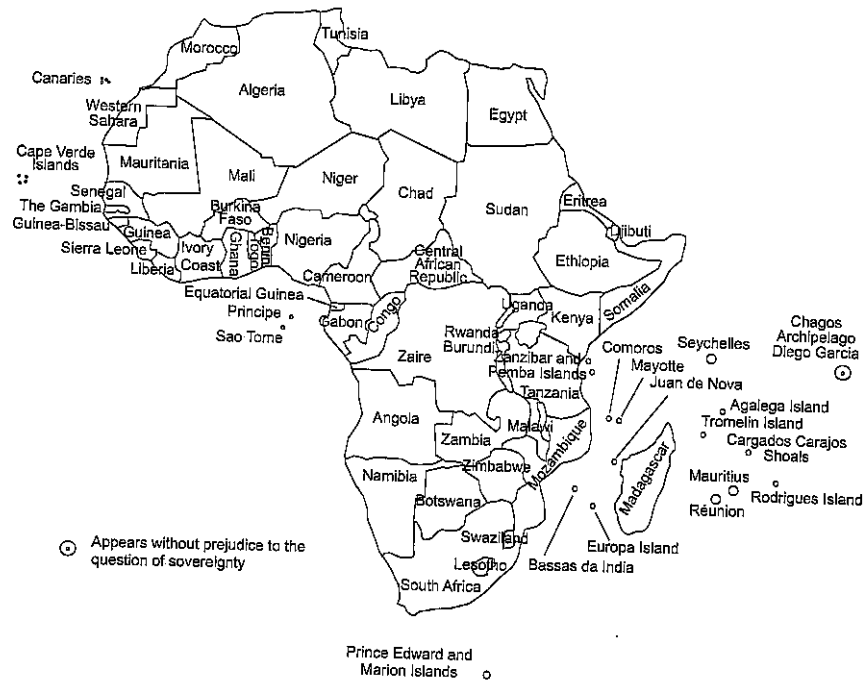
The annexes form an integral part of the Treaty. Any reference to this Treaty includes the annexes.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Treaty.

DONE at _____

Annex I

Map of an African Nuclear-Weapon-Free Zone



Annex II

Safeguards of the International Atomic Energy Agency

1. The safeguards referred to in subparagraph (b) of the article 9 shall in respect of each Party be applied by the International Atomic Energy Agency as set forth in an agreement negotiated and concluded with the Agency on all source or special fissionable material in all nuclear activities within the territory of the Party, under its jurisdiction or carried out under its control anywhere.
2. The Agreement referred to in paragraph 1 above shall be, or shall be equivalent in its scope and effect to, the agreement required in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/153 corrected). A party that has already entered into a safeguards agreement with the IAEA is deemed to have already complied with the requirement. Each Party shall take all appropriate steps to ensure that the Agreement referred to in paragraph 1 is in force for it not later than eighteen months after the date of entry into force for that Party of this Treaty.
3. For the purpose of this Treaty, the safeguards referred to in paragraph 1 above shall have as their purpose the verification of the non-diversion of nuclear material from peaceful nuclear activities to nuclear explosive devices or for purposes unknown.
4. Each Party shall include in its annual report to the Commission, in conformity with art. 13, for its information and review, a copy of the overall conclusions of the most recent report by the International Atomic Energy Agency on its inspection activities in the territory of the Party concerned, and advise the Commission promptly of any change in those conclusions. The information furnished by a Party shall not be, totally or partially, disclosed or transmitted to third parties, by the addressees of the reports, except when that Party gives its express consent.

Annex III

African Commission on Nuclear Energy

1. The Commission established in article 12 shall be composed of twelve Members elected by Parties to the Treaty for a three-year period, bearing in mind the need for equitable geographical distribution as well as to include Members with advanced nuclear programmes. Each Member shall have one representative nominated with particular regard for his/her expertise in the subject of the Treaty.
2. The Commission shall have a Bureau consisting of the Chairman, the Vice-Chairman and the Executive Secretary. It shall elect its Chairman and Vice-Chairman. The Secretary- General of the Organization of African Unity, at the request of Parties to the Treaty and in consultation with the Chairman, shall designate the Executive Secretary of the Commission. For the first meeting a quorum shall be constituted by representatives of two thirds of the Members of the Commission. For that meeting decisions of the Commission shall be taken as far as possible by consensus or otherwise by a two-thirds majority of the Members of the Commission. The Commission shall adopt its rules of procedure at that meeting.
3. The Commission shall develop a format for reporting by States as required under articles 12 and 13.
4. (a) The budget of the Commission, including the costs of inspections pursuant to annex IV to this Treaty, shall be borne by the Parties to the Treaty in accordance with a scale of assessment to be determined by the Parties;
(b) The Commission may also accept additional funds from other sources provided such donations are consistent with the purposes and objectives of the Treaty.

Annex IV

Complaints procedure and settlement of disputes

1. A Party which considers that there are grounds for a complaint that another Party or a Party to Protocol II is in breach of its obligations under this Treaty shall bring the subject matter of the complaint to the attention of the Party complained of and shall allow the latter thirty days to provide it with an explanation and to resolve the matter. This may include technical visits agreed upon between the Parties.
2. If the matter is not so resolved, the complaint Party may bring this complaint to the Commission.
3. The Commission, taking account of efforts made under paragraph 1 above, shall afford the Party complained of forty-five days to provide it with an explanation of the matter.
4. If, after considering any explanation given to it by the representatives of the Party complained of the Commission considers that there is sufficient substance in the complaint to warrant an inspection in the territory of that Party or territory of a party to Protocol III, the Commission may request the International Atomic Energy Agency to conduct such inspection as soon as possible. The Commission may also designate its representatives to accompany the Agency's inspectorate team.
 - (a) The request shall indicate the tasks and objectives of such inspection, as well as any confidentiality requirements;
 - (b) If the Party complained of so requests, the inspection team shall be accompanied by representatives of that party provided that the inspectors shall not be thereby delayed or otherwise impeded in the exercise of their functions;
 - (c) Each Party shall give the inspection team full and free access to all information and places within each territory that may be deemed relevant by the inspectors to the implementation of the inspection;
 - (d) The Party complained of shall take all appropriate steps to facilitate the work of the inspection team, and shall accord them the same privileges and immunities as those set forth in the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.

(e) The International Atomic Energy Agency shall report its findings in writing as quickly as possible to the Commission, outlining its activities, setting out relevant facts and information as ascertained by it, with supporting evidence and documentation as appropriate, and stating its conclusions. The Commission shall report fully to all States Parties to the Treaty giving its decision as to whether the Party complained of is in breach of its obligations under this Treaty;

(f) If the Commission considers that the Party complained of is in breach of its obligations under this Treaty, or that the above provisions have not been complied with, States Parties to the Treaty shall meet in extraordinary session to discuss the matter;

(g) The States Parties convened in extraordinary session may as necessary, make recommendations to the Party held to be in breach of its obligations and to the Organization of African Unity. The Organization of African Unity may, if necessary, refer the matter to the United Nations Security Council;

(h) The costs involved in the procedure outlined above shall be borne by the Commission. In the case of abuse, the Commission shall decide whether the requesting State Party should bear any of the financial implications.

5. The Commission may also establish its own inspection mechanism.

Protocol I

The Parties to this Protocol,

Convinced of the need to take all steps in achieving the ultimate goal of a world entirely free of nuclear weapons as well as the obligations of all States to contribute to this end,

Convinced also that the African Nuclear-Weapon-Free Zone Treaty, negotiated and signed in accordance with the Declaration on the Denuclearization of Africa (AHG/Res. II(1) of 1964, resolutions CM/Res. 1342(LIV) of 1991 and CM/Res. 1395(LVI) Rev. 1 of 1992 of the Council of Ministers of the Organization of African Unity and United Nations General Assembly Resolution 48/86 of 16 December 1993, constitutes an important measure towards ensuring the non-proliferation of nuclear weapons, promoting cooperation in the peaceful uses of nuclear energy, promoting general and complete disarmament, and enhancing regional and international peace and security,

Desirous of contributing in all appropriate manners to the effectiveness of the Treaty,

Have agreed as follows:

Article 1

Each Protocol Party undertakes not to use or threaten to use a nuclear explosive device against:

- (a) Any Party to the Treaty; or
- (b) Any territory within the African nuclear-weapon-free zone for which a State that has become a Party to Protocol III is internationally responsible as defined in annex I.

Article 2

Each Protocol Party undertakes not to contribute to any act that constitutes a violation of the Treaty or of this Protocol.

Article 3

Each Protocol Party undertakes, by written notification to the Depositary, to indicate its acceptance or otherwise of any alteration to its

obligation under this Protocol that may be brought about by the entry into force of an amendment to the Treaty pursuant to article 19 of the Treaty.

Article 4

This Protocol shall be open for signature by China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Article 5

This Protocol shall be subject to ratification.

Article 6

This Protocol is of a permanent nature and shall remain in force indefinitely, provided that each Party shall, in exercising its national sovereignty, have the right to withdraw from this Protocol if it decides that extraordinary events related to the subject-matter of this Protocol, have jeopardized its supreme interests. It shall give notice of such withdrawal to the Depositary twelve months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

Article 7

This Protocol shall enter into force for each State on the date of its deposit with the Depositary of its instrument of ratification or the date of entry into force of the Treaty, whichever is later.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Protocol.

DONE at _____

Protocol II

The Parties to this Protocol

Convinced of the need to take all steps in achieving the ultimate goal of a world entirely free of nuclear weapons as well as the obligations of all States to contribute to this end,

Convinced also that the African Nuclear-Weapon-Free Zone Treaty, negotiated and signed in accordance with the Declaration on the Denuclearization of Africa (AHG/Res. 11(1) of 1964, resolutions CM/Res. 1342(LIV) of 1991 and CM/Res. 1395(LVI)/Rev. 1 of 1992 of the Council of Ministers of the Organization of African Unity and United Nations General Assembly resolution 48/86 of 16 December 1993, constitutes an important measure towards ensuring the non-proliferation of nuclear weapons, promoting cooperation in the peaceful uses of nuclear energy, promoting general and complete disarmament, and enhancing regional and international peace and security,

Desirous of contributing in all appropriate manners to the effectiveness of the Treaty,

Bearing in mind the objective of concluding a treaty banning all nuclear test,

Have agreed as follows:

Article 1

Each Protocol Party undertakes not to test or assist or encourage the testing of any nuclear explosive device anywhere within the African nuclear-weapon-free zone.

Article 2

Each Protocol Party undertakes not to contribute to any act that constitutes a violation of the Treaty or of this Protocol.

Article 3

Each Protocol Party undertakes, by written notification to the Depositary, to indicate its acceptance or otherwise of any alteration to its obligation under this Protocol that may be brought about by the entry into force of an amendment to the Treaty pursuant to article 20 of the Treaty.

Article 4

This Protocol shall be open for signature by China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Article 5

This Protocol shall be subject to ratification.

Article 6

This Protocol is of a permanent nature and shall remain in force indefinitely, provided that each Party shall, in exercising its national sovereignty, have the right to withdraw from this Protocol if it decides that extraordinary events, related to the subject-matter of this Protocol have jeopardized its supreme interests. It shall give notice of such withdrawal to the Depositary twelve months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

Article 7

This Protocol shall enter into force for each State on the date of its deposit with the Depositary of its instrument of ratification or the date of entry into force of the Treaty, whichever is later.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Protocol.

DONE at _____

Protocol III

The Parties to this Protocol

Convinced of the need to take all steps in achieving the ultimate goal of a world entirely free of nuclear weapons as well as the obligations of all States to contribute to this end,

Convinced also that the African Nuclear-Weapon-Free Zone Treaty, negotiated and signed in accordance with the Declaration on the Denuclearization of Africa (AHG/Res. 11(1)) of 1964, resolutions CM/Res. 1342(LIV) of 1991 and CM/Res. 1395(LVI)/Rev.1 of 1992 of the Council of Ministers of the Organization of African Unity and United Nations General Assembly resolution 48/86 of 16 December 1993, constitutes an important measure towards ensuring the non-proliferation of nuclear weapons, promoting cooperation in the peaceful uses of nuclear energy, promoting general and complete disarmament, and enhancing regional and international peace and security,

Desirous of contributing in all appropriate manners to the effectiveness of the Treaty,

Have agreed as follows:

Article 1

Each Protocol Party undertakes to apply, in respect of the territories for which it is de jure or de facto internationally responsible situated within the African nuclear-weapon-free zone, the provisions contained in articles 3, 4, 5, 6, 7, 8, 9 and 10 of the Treaty and to ensure the application of safeguards specified in annex II of the Treaty.

Article 2

Each Protocol Party undertakes not contribute to any act that constitutes a violation of the Treaty or of this Protocol.

Article 3

Each Protocol Party undertakes, by written notification to the Depositary, to indicate its acceptance or otherwise of any alterations to its obligation under this Protocol that may be brought about by the entry into force of an amendment to the Treaty pursuant to article 20 of the Treaty.

Article 4

This Protocol shall be open for signature by France and Spain.

Article 5

This Protocol shall be subject to ratification.

Article 6

This Protocol is of a permanent nature and shall remain in force indefinitely provided that each Party shall, in exercising its national sovereignty have the right to withdraw from this Protocol if it decides that extraordinary events, related to the subject-matter of this Protocol, have jeopardized its supreme interests. It shall give notice of such withdrawal to the Depositary twelve months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

Article 7

This Protocol shall enter into force for each State on the date of its deposit with the Depositary of its instrument of ratification or the date of entry into force of the treaty, whichever is later.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments have signed this Protocol.

DONE at _____