It is today widely recognized that an international arms control treaty can be successfully concluded only if and when the strong and powerful agree. By 1992, both the United States and the then Soviet Union had declared moratoria on nuclear testing, to be joined by the United Kingdom (which was in any case dependent on the United States for testing facilities). This set the stage for the negotiation of a Comprehensive Nuclear-Test-Ban Treaty (CTBT) in 1993. China and France did not announce moratoria until they had, in 1995–1996 (while negotiations on the CTBT were in progress), carried out series of tests to complete their testing programmes. As Rajesh Rajagopalan says: “[The nuclear non-proliferation regime] is the strongest international security regime in existence. It is strong not because it embodies the common interest of the international community but [that] of … the strongest of its members”. “Its survival and strength are a testament to the importance of power in the formation of international regimes.”¹

Thus, for the nuclear non-proliferation regime to remain strong, and for it to progress, the positions taken by the “NPT five”—the five nuclear-weapon powers according to the Non-Proliferation Treaty—are crucial. This paper argues that for as long as the CTBT is not in force the self-declared moratoria of these five states, plus those of the nuclear-capable states, stand as a valuable part of the non-proliferation regime, and equate to a de facto CTBT.

Negotiating the test ban

Two parallel negotiations took place to finally arrive at the 1996 Comprehensive Nuclear-Test-Ban Treaty—³—the formal negotiations in the Conference on Disarmament (CD) open to all interested states, and the negotiations among the nuclear-weapon five of the Non-Proliferation Treaty (NPT). These last negotiations were initially secret. The details of the agreements and compromises made between the NPT nuclear-weapon five were never known or made entirely public, but they were probably the most crucial, permitting final agreement among the five, if not among other members of the CD. India refused to be a party to the treaty, stating that the ultimate outcome was flawed, as the treaty was discriminatory and had no substantive link to disarmament, thus putting its security in jeopardy. In 1998, India conducted a series of weapon tests and declared itself a nuclear-weapon state. Shortly thereafter, India announced a voluntary moratorium on underground explosive tests.

Arundhati Ghose retired as Indian Ambassador to the Conference on Disarmament in 1997. She now writes and comments on arms control issues and is involved with a number of disarmament research institutes.
There is a body of opinion that believes that a voluntary moratorium on explosive nuclear testing cannot be equated with participation in the Comprehensive Nuclear-Test-Ban Treaty that was negotiated in the Conference on Disarmament. Yet, ten years after the treaty was agreed and opened for signature, it still has not entered into force—and, as ten states have yet to ratify the treaty for entry into force, it seems some way from doing so. Today, when one of the signatories conducts subcritical nuclear-weapon tests (as both the United States and the United Kingdom have done 22 times since 1997), it is not considered to be in violation of the treaty. Many who oppose the subcritical tests speak in anguished tones of violations of the “spirit of the CTBT”; but there is no recourse. The international community is helpless.

**From a disarmament treaty to a non-proliferation treaty**

The objective of a comprehensive ban on nuclear testing had originally been truly comprehensive. As early as 1954, Jawaharlal Nehru had proposed a “standstill” on testing—something between a multilaterally negotiated verifiable treaty and a unilateral moratorium—pending the elimination of nuclear weapons. Speaking to the Lok Sabha (India’s lower house in parliament), he said: “...Pending progress towards some solution, full or partial, in respect of the prohibition and elimination of these weapons of mass destruction, the Government would consider, some sort of what may be called ‘standstill agreement’ in respect, at least, of these actual explosions, even if agreements about the discontinuance of production and stockpiling must await more substantial agreements amongst those principally concerned.”

Clearly, all weapon testing was to be halted, as a step toward total nuclear disarmament. Non-nuclear-weapon states perceived the danger as coming from the existence of the weapons themselves, and the exhortations were addressed to those countries that possessed the weapons, “before which, our normal weapons were completely useless”. A ban or standstill on testing was seen as a possible step toward the elimination of the weapons and therefore the security of all countries.

However, over the years, the proposal of a test ban became interchangeable with that of a temporary moratorium, and the linkage with nuclear disarmament became more and more tenuous, as Jaap Ramaker’s painstakingly researched book, The Final Test—a History of the Comprehensive Nuclear-Test-Ban Treaty Negotiations, points out. “The year 1958 proved to be an important one in nuclear test ban history. At the end of March the USSR announced that it would hold a unilateral moratorium on nuclear tests as long as other nuclear weapon States agreed to stop testing.” The United States, on the basis of an expert report that held that a test ban could not be adequately monitored, proposed that an expert group be established to study the problem. “The USSR agreed to participate... This was an important step, as it would appear that this was the first time that proposals for limiting nuclear testing were not linked to (other) disarmament measures.”

Over more than three decades, and throughout the treaty negotiations themselves, the purpose of a ban on all forms of testing became progressively de-linked from the ultimate objective of the total elimination of nuclear weapons. In the final text, non-nuclear-weapon states were barely able to establish a relationship between the exhortations for disarmament in the preamble and the operative text. All tests were not banned, and India’s proposals of a commitment to negotiate for the elimination of nuclear weapons within an agreed time frame were ignored. The treaty as it now stands is not a disarmament treaty, as was originally intended; it is a non-proliferation treaty. It is there to control countries on the “learning curve” of nuclear weapon development.
The CTBT even permits non-explosive forms of testing, which, with advances in technology, may today be used to refine nuclear weapons and to design new ones. The CTBT appears to be a continuation of the Partial Test-Ban Treaty,6 signed in 1963, which is not really an arms control or disarmament measure at all. Of course, the CTBT is a more evolved treaty and, by banning all explosive testing, it places some constraints on the development of new nuclear weapons, but it is not a clear step toward nuclear disarmament. The constraints of the CTBT perpetuate the discrimination and imbalance that is so painfully apparent in the NPT, in that, because it allows non-explosive testing, and thanks to technological advances, countries with advanced nuclear technology have in a sense been exempted from the ban on weapon development.

**A moratorium on testing: more effective than the CTBT?**

A voluntary moratorium on explosive testing meets the requirements of the treaty, without the treaty’s inherent discrimination and with greater likelihood of compliance, since it is voluntarily adopted and not imposed. After its nuclear tests in 1998, the Prime Minister of India, in a statement to parliament, announced a moratorium on further explosive tests. In the paper laid on the Table of the House on 27 May 1998 regarding the issue of the evolution of India’s nuclear policy, it was stated: “Subsequent to the tests Government has already stated that India will now observe a voluntary moratorium and refrain from conducting underground nuclear test explosions. [India had already signed the Partial Test-Ban Treaty banning tests in the atmosphere, in space and underwater]…The basic obligation of the CTBT [is] thus met; to refrain from undertaking nuclear test explosions.”7

There are, of course, obvious differences between a multilaterally negotiated (albeit essentially just between the five NPT nuclear-weapon states), verifiable treaty and a voluntary moratorium announced by a state with nuclear weapons. On a more careful review and on deeper reflection, however, these obvious differences become, in the words of a former Algerian diplomat to the CD, “the suspenders in addition to the belt” (the belt presumably being the NPT). In other words, the differences are little more than embellishments: the essential objective of the CTBT as negotiated is “not to carry out any nuclear weapon test explosion or any other nuclear explosion” (Article I); a moratorium has an identical effect.

**Verification and compliance**

One frequent argument against a voluntary moratorium is that such a declaration cannot be verified, whereas the core of the CTBT is a punitive compliance and verification system. The dual purpose of a verification regime is to ensure compliance by preventing, or at least minimizing, violations of the obligations of the treaty, and to give all states parties a sense of security and confidence that the treaty is indeed being implemented without discrimination. It is clear that a voluntary moratorium cannot fulfil these purposes.

However, moratoria are still subject to international pressures. If a state felt it necessary to waive its self-declared moratorium, it would be entirely within its rights. But the state would have to take into account the impact of the waiver on its international interests. A moratorium that has been declared voluntarily by a country would be difficult to breach for political reasons, in the context of that country’s international relations. In many cases, states waiving a self-declared moratorium would do so publicly,
informing the international community of their activities. But even if a state were to breach its
own moratorium clandestinely, current levels of technology mean that any such activity is most likely
to be observed.

On the other hand, states party to the CTBT intending to violate the treaty would be obliged to
take action in a clandestine manner. In order for all member states to have confidence in the treaty,
the verification system must be able to observe all clandestine activity. The pressure on the verification
system is much higher: is it capable of identifying or preventing all clandestine tests?

As for the punitive aspect of the treaty, the reaction of the international community to a violation
of the CTBT today is likely to be similar to that following the breach of a moratorium: the UN Security
Council is likely to get involved. In other words, a moratorium is a severe constraint, particularly in
being self-imposed, on future explosive testing. If one of the five NPT nuclear-weapon states (three of
which are party to the treaty while two, the United States and China, are currently constrained only by
moratoria and domestic laws) decides to conduct an explosive test or a series of tests, the reaction of
the international community, whether through the United Nations Security Council or by other means,
is more than likely to be the same. For example, the United States, which has signed but not ratified
the treaty, has been trying to seek approval from its domestic legislative authorities to commence its
testing programme sooner rather than later. If it conducts an explosive test, would the Russian Federation,
a state party to the treaty, feel compelled to test in turn? Or if China waives its moratorium and
conducts a test, would India also feel free to do the same? What power does the CTBT hold as its
stands now, before entry into force, over its current states parties? And would the situation be very
different if the United States and China became members of the CTBT?

To avoid any misunderstanding, this is not an argument against a verification system. On the
contrary, a comprehensive verification system is absolutely necessary in order to give all states parties a
sense of security and thereby make compliance more likely. The point here is that the declaration of a
moratorium is better than not having any sense of security at all, as even without a verification regime,
the international community would be likely to discover any breach of a moratorium, be it clandestine
or not, and this would have considerable and possibly severe consequences. For as long as the
moratorium holds, a test ban is in effect, whereas current members of the CTBT are not under any
obligation to ban tests until entry into force.

A PERMANENT TEST BAN?

A moratorium, according to the dictionary, is a “temporary prohibition” of an activity; this is seen
as a major difference from a treaty, which is of indefinite duration. However, Article IX, paragraph 2 of
the CTBT states that “[e]ach State Party shall, in exercising its national sovereignty, have the right to
withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this
Treaty have jeopardized its supreme interests.” As noted by Ramaker, it took the better part of three
years to negotiate this article, so crucial was it to compliance and agreement on participation in the
treaty. During the treaty negotiations, there were concerns over and some sought to spell out what
would constitute extraordinary events jeopardizing supreme interests, for example a nuclear test by
another state party or non-state party. Ultimately, however, the extent much more general formulation
was accepted, with wide discretion available to the state party wishing to withdraw, as the “extraordinary
events” could include a threat or even simply the perception of a threat of an attack using weapons of
mass destruction, or changing international developments necessitating a change in nuclear doctrine.
Paragraph 2 of Article IX means that the CTBT could be seen as a “temporary prohibition”, just like a
Maintaining the moratorium—a de facto CTBT moratorium. And surely a moratorium would be governed by the same conditions? After all, a country is unlikely to abrogate a self-declared moratorium unless its “supreme interests” oblige it to do so.

Without an operative CTBT, we need moratoria

The above arguments have not been made to try to reduce the importance of the Comprehensive Nuclear-Test-Ban Treaty; after all, it is a multilaterally negotiated legal undertaking by states parties, which a moratorium is not. What is being argued here is that with voluntary moratoria announced by all nuclear-weapon or nuclear-weapon-capable states in place, a de facto test-ban treaty is in place, even if the CTBT itself has not entered into force. The need to maintain the moratoria should not be underestimated, particularly if the CTBT does not enter into force for another ten years. A moratorium fulfils the basic obligations of the test-ban treaty negotiated in the CD; even without a verification regime, a moratorium is a constraint on the actions and intentions of countries that may wish to test; finally, the “temporary” character of a moratorium is not very different from a treaty that gives states parties such wide leeway to withdraw from it in their “supreme interests”. The major flaw in moratoria is that they do not move us closer to a nuclear-weapon-free world, since there is no linkage to disarmament. But neither does the CTBT. The 1996 test-ban treaty is, at best, an arms control treaty; a voluntarily declared moratorium on nuclear-weapon testing serves a similar purpose, and promotes the same degree of stability in international relations, as the Comprehensive Nuclear-Test-Ban Treaty. An opportunity was lost in 1996; disarmament can only be put back on the testing agenda if a commitment to disarm, or at least to start negotiations to eliminate nuclear weapons, can be added as a protocol to the treaty. The likelihood of that happening in the near future appears slim.

Notes

4. Ibid.
8. This may change if and when the CTBT enters into force, as the list of measures prescribed for cases of violation does not involve the Security Council at all.