



## Implementing the African Nuclear-Weapon-Free Zone Treaty: Another Major Step Forward

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Issue 6 of 'Africa's Policy Imperatives' covered the extent to which the Chemical Weapons Convention (CWC) is adhered to in Africa, and argued that as the OPCW shifts its focus away from disarmament to concentrate on non-proliferation and international co-operation and assistance, adjustments to its mandate, programmes and approaches will need to be made. Previous editions provided brief overviews (and updates) of Africa's general participation in international efforts to strengthen disarmament and non-proliferation through a number of conventions, protocols and agreements. These conventions and agreements include the:

- Treaty on the Non-Proliferation of Nuclear Weapons (NPT);
- Comprehensive Nuclear Test Ban Treaty (CTBT);
- Biological and Toxin Weapons Convention (BTWC);
- Chemical Weapons Convention (CWC); and,
- United Nations Security Council Resolution 1540.

This edition (Issue 7) focuses on the Treaty of Pelindaba and recent developments in its implementation including the establishment of its compliance body, the African Commission on Nuclear Energy (AFCON) and progress made by both the US and the Russian Federation in ratifying the Protocols attached to the Treaty which are of relevance to them.

As with previous editions, this *Issue* has been compiled as a result of research undertaken since 2007 by the Norwegian-funded ISS' "Africa's Development and the Threat of Weapons of Mass Destruction Project". This project aims to identify and strengthen Africa's role in these international disarmament and non-proliferation efforts in the context of the continent's developmental imperatives.

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<sup>1</sup> The author's opinions expressed in this edition of 'Africa's Policy Imperatives' do not necessarily reflect those of the Institute for Security Studies, its Council, its Trustees or any funder or sponsor of the ISS.

## **First Ordinary Session of the African Commission on Nuclear Energy (AFCONE) – May 2011**

On the 4 May 2011, First Ordinary Session of the African Commission on Nuclear Energy took place in Addis Ababa, to discuss and agree on the structure, programme of activities and budget of AFCONE, as well as to establish its Bureau consisting of a Chairman, Vice-Chairman and an Executive Secretary.

According to Ambassador Ramtane Lamamra, the Commissioner for Peace and Security of the African Union, the meeting offered an opportunity for the Members of the newly established ACNE [sic] to discuss its operationalization, and therefore, the modalities of how to assist States Parties to ensure compliance with their undertakings under the Treaty.

Members of AFCONE exchanged views and discussed various issues essential to its effective operation, including AFCONE rules of procedure, programme of work, structure and scale of assessment for its budget. Members agreed to continue, with the support of the AU Commission, its deliberations in the coming weeks to finalize the relevant documents and ensure the prompt commencement of the activities of AFCONE, including advertising the position of Executive Secretary.<sup>i</sup>

The session also agreed to adopt the scale of assessment of the African Union for 2011-2013 adopted by the Seventeenth Ordinary Session of the Executive Council, held in Kampala, Uganda, on 25

July 2010 as well as to meet during July 2011 to discuss the next steps in order to ensure the speedy commencement of the activities of AFCONE.<sup>ii</sup>

## **Background to the Treaty of Pelindaba**

In July 1964, the then Organisation of African Unity (OAU) adopted the Declaration on the Denuclearization of Africa [AHG/Res.II(I)]. The final text of the African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba) was completed at a meeting of experts in South Africa in 1995, and was approved by African Heads of State on 23 June 1995. The Treaty was signed in 1996 in Cairo.

Twenty-eight ratifications and deposits were needed to bring the Treaty of Pelindaba into force, which occurred in July 2009. As of 1 May 2011, all 53 African states, as well as the territory known as the Sahrawi Arab Democratic Republic have signed the Treaty, and 31 countries have deposited their instruments of ratification with the African Union (the Treaty Depository) – the latest being Cameroon on 28 September 2010.

For a State that ratifies the Treaty after entry-into-force, the Treaty will enter into force for that State on the date of deposit of its instrument of ratification.

The Treaty declares Africa a zone free of nuclear weapons seeking to ensure that nuclear weapons are not developed, produced, tested, or otherwise acquired or stationed anywhere on the African continent or its associated islands. Importantly, it also facilitates the use of nuclear energy for peaceful purposes on the continent.

## Uniqueness of the Treaty

As a NWFZ, Africa has reinforced the commitments by both Non-Nuclear Weapon States (NNWS) and Nuclear Weapon States (NWS) to the nuclear disarmament and nuclear non-proliferation objectives of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

However, it is unique in that an important provision is for each States Party to establish reliable export control systems. In the view of Harald Muller, “this [Pelindaba] is by far the most sophisticated and comprehensive international legal instrument so far produced within the framework of the global non-proliferation regime”.

Under Article 3(c): Each Party undertakes not to take any action to assist or encourage the research on, development, manufacture, stockpiling or acquisition or possession of any nuclear explosive device.

“This far-reaching obligation extends clearly to transfers of goods and technology — especially of a nuclear or dual-use character — that would help the proscribed activity, as such transfers would fall under the term ‘any action to assist’. To make sure that this obligation is duly observed, parties will have to establish procedures to monitor and control such transfers, and would have to give to the appropriate authorities the means to deny such transfers, and if necessary to prevent them from occurring.”<sup>iii</sup>

In addition, Article 9 requires parties 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.

This requirement is the first and only legally binding obligation for nuclear exporters to require from their customers comprehensive or full-scope IAEA safeguards on all nuclear activities as a condition of nuclear supply.<sup>iv</sup>

## First Conference of Parties – November 2010

Under Articles 12 and 14, the African Union, as the Treaty Depository, is mandated to arrange a first Conference of Parties at which the composition, location and role and functions of African Commission on Nuclear Energy (AFCONE) should be finalised, and at which such matters as the Commission's budget and the scale of assessment to be paid by the State Parties should be agreed.

On 4 November 2010, this Conference took place and participants endorsed a decision taken in Cairo in 1996 to establish the headquarters of AFCONE in South Africa. The Treaty makes provision for 12 Commissioners to be elected as members of the AFCONE. At the conference the following countries were elected: Algeria, Burkina Faso, Cameroon, Ethiopia, Kenya, Libya, Mali, Mauritius, Senegal, South Africa, Togo and Tunisia. Between then and 4 May the names of each country representative was announced:

- Mr. Messaoud Baaliouamer – Algeria

- Mr. Badiori Outtara - Burkina Faso
- Augustin Simo - Cameroon
- Mr. Atnatiwos Zeleke Meshesha - Ethiopia
- Professor Shaukat Abdurazak - Kenya
- Dr. Bulgasem Hammouda Ali El-Fawaris - Libya
- Mr. Tezana Coulibaly - Mali
- Mr. Anund P. Neewor - Mauritius
- Mr. Christian Sina Diatta - Senegal
- Mr. Abdul Samad Minty - South Africa
- Lieutenant-Colonel Manzi Pidalatan - Togo
- Mr. Mourad Telmini – Tunisia



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AFCONE thus consists of high calibre professionals with vast experience in the areas of nuclear science and technology, diplomacy and security.<sup>v</sup>

At the First Ordinary Session of the African Commission on Nuclear Energy, Mr. Abdul Samad Minty was elected Chair and Mr. Mourad Telmini Vice-Chair. In light of this, South Africa’s 2011-2014 Strategic objective: Key Priority Area 1, “Enhanced African Agenda and Sustainable Development”, includes the need to “contribute to the strengthening of the African Nuclear Weapons Free Zone (NWFZ) and peaceful uses of nuclear energy”.

As such, “South Africa’s endorsement in 2010 by the First Conference of States Parties to the Pelindaba Treaty, as host of the Head Quarters of the African Commission on Nuclear Energy (AFCONE), will require of South Africa to play an active role in strengthening the African Nuclear Weapons Free Zone (NWFZ) following the entry into force in 2009 of the Pelindaba Treaty”.<sup>vi</sup>

#### Key activities of AFCONE will be:

- To ensure compliance by all Parties with all their obligations of the non-proliferation requirements;
- To ensure that Africa will be protected from nuclear testing and dumping of nuclear materials;
- To promote the peaceful application of nuclear science and technology;
- To develop outreach activities to states eligible to ratify the Treaty.

Thus AFCONE will undertake both peace and security, and socio-economic development activities and as such it will be important for States Parties to mobilise the necessary resources for the implementation of these activities.<sup>vii</sup>

#### Protocols to the Treaty

Like other Nuclear-Weapon-Free Zones (NWFZ) treaties, the Treaty of Pelindaba, includes protocols for the five NWS to sign and ratify and therefore to respect the status of the zone and to provide “negative security assurances” as well as for other relevant non-African and states not party—such as

Spain, which is de jure in control of territories within the zone to also sign and ratify.

Protocol I calls on NWSs not to use or threaten to use a nuclear weapon against any state party to the treaty or against any territory within the NWFZ. It has been signed by all the NWSs and ratified by China, France, Russia and the United Kingdom. As such, Protocol 1 entered into force for China, France, and the United Kingdom on 15 July 2009, when the Treaty entered into force.

Protocol II calls on the NWSs not to participate, assist or encourage the testing of a nuclear explosive device on the African continent. It has been signed by all the NWSs and ratified by China, France, Russia and the United Kingdom. Like Protocol 1, this Protocol entered into force for China, France, and the United Kingdom when the Treaty as a whole entered into force.

Protocol III calls upon parties which are de jure in control of territories within the NWFZ—namely France and Spain—to apply the principles of the treaty to the territories under their control. France has signed and ratified it. However, Spain, which is a non-nuclear-weapon state (NNWS), has yet to do so.

## Spain

According to Spain, three of its territories—the Canary Islands and two coastal cities in Morocco, Ceuta and Melilla—are an integral part of the European Union. Therefore, Spain has insisted that these three territories should not be included within the African NWFZ. Spain also cites its adherence to IAEA and European Atomic Energy Community

safeguards—which in its view contain provisions that go considerably beyond those contained in the Treaty of Pelindaba.<sup>viii</sup>

## The Russian Federation

In August 2010, Russian Federation President, Dmitry Medvedev submitted the two Protocols attached to the Treaty of Pelindaba to the lower house of the Federal Assembly of Russia (parliament or Duma) for ratification. The Duma ratified the relevant Protocols in March 2011. However, “in signing this treaty the reservation was made it does not apply to the U.S. base of Diego Garcia... this is an important reservation, which allows us to fully maintain our own security in hypothetical situations of the emergence [of] crises or conflicts in which the potential use of nuclear weapons is possible”.<sup>ix</sup>

## United States of America

In the past both the United Kingdom and the United States have argued that the British Indian Ocean Territory cannot be included in the geographical area of the Treaty of Pelindaba, as it is a UK territory used by the United States as a major military base.

"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".<sup>x</sup> The US thus believes that while this situation remains, neither

the Treaty nor Protocol III applies 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.

The AU, however, considers the islands to be part of Mauritius, and the map in Annex 1 of the treaty explicitly includes the Chagos Archipelago -- although with a note in reference to the long-standing diplomatic dispute between the United Kingdom and Mauritius.

In a statement to the May 2010 NPT Review Conference, US Secretary of State Hilary Clinton announced that the US Administration would submit these protocols to the US Senate "to ratify our participation in the nuclear-weapon-free zones that have been established in Africa and the South Pacific. Upon ratification, parties to those agreements will have a legally binding assurance that the United States will not use or threaten to use nuclear weapons against them, and will fully respect the nuclear-weapons-free status of the zones".<sup>xi</sup>

On 2 May 2011, the US President submitted the Protocols to the U.S. Senate for its advice and consent to ratification. According to a Press Release dated 2 May 2011, the US President is "convinced that it is in the best interest of the United States to ratify Protocols I and II to the Treaty. This step will strengthen our relations with our African friends and allies, enhance U.S. security by furthering our global nonproliferation and arms control objectives, demonstrate our commitment to the decisions taken at the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of

Nuclear Weapons, and contribute significantly to the realization of the African Nuclear-Weapon-Free Zone in all its aspects."<sup>xii</sup>

### Policy Recommendations

1. The donor community should offer resources in the form of legal expertise to assist African countries in drafting reports and appropriate domestic legislation to implement the provisions of the Treaty of Pelindaba either through appropriate NGOs or via government-to-government projects.
2. Those African states that have not yet ratified the Treaty of Pelindaba, as well as the territory known as the Sahrawi Arab Democratic Republic, should be encouraged to do so urgently.
3. The donor community should assist the African Union and South Africa in establishing the Treaty of Pelindaba's compliance body, the African Commission on Nuclear Energy (AFCONE).
4. Regional meetings should be organised in order to provide African states with the opportunity to engage issues of relevance to the Treaty of Pelindaba and to provide input into the immediate priorities and activities of AFCONE.
5. Greater political support is needed to help place the NPT, the Treaty of Pelindaba, UNSC Resolution 1540, the CWC and the BTWC into an African developmental context.
6. The capacity of African law enforcement officials to deal with the trafficking of nuclear and other radioactive material, including appropriate training on investigative procedures, border control and the upgrading of equipment and resources should be enhanced.

7. The US Senate should be lobbied to take the need to urgently ratify the two Protocols seriously and to thereby recognise Africa's important role in reducing the threats posed by nuclear weapons and proliferation. The Senate's

agreement would also strengthen US non-proliferation diplomacy on the continent and enhance more positive outcomes of President Obama's initiative to secure all nuclear material within four years.

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<sup>i</sup> African Union, The African Union Commission working towards the early operationalization of the African commission on nuclear energy (AFCONE): Press Release, Addis Ababa, 23 May 2011.

<sup>ii</sup> African Union, First Ordinary Session of the African Commission on Nuclear Energy (AFCONE): Conclusion, Addis Ababa, 4 May 2011.

<sup>iii</sup> Harald Muller, 'National and International Export Control Systems and Supplier States' Commitments under the NPT', PPNN Issue Review Electronic Version, September 1996.

<sup>iv</sup> Harald Muller, 'National and International Export Control Systems and Supplier States' Commitments under the NPT', PPNN Issue Review Electronic Version, September 1996.

<sup>v</sup> African Union, The African Union Commission working towards the early operationalization of the African commission on nuclear energy (AFCONE): Press Release, Addis Ababa, 23 May 2011.

<sup>vi</sup> South Africa: Strategic Plan, 2011-2014. This Strategic Plan document outlines the mandate of the Department of International Relations and Cooperation (DIRCO) and its obligations towards fulfilling its political mandate, as well as administrative, operational and corporate governance duties during the Medium Term Expenditure Framework (MTEF) cycle of 2011 - 2014.

<sup>vii</sup> Ramtane Lamamra, Commissioner for Peace and Security of the African Union, Keynote Address For the First Ordinary Session of the African Commission on Nuclear Energy, Addis Ababa, 4 May 2011.

<sup>viii</sup> Total Elimination of Nuclear Weapons, Tracing Small Arms among Issues Addressed as Disarmament Committee Adopts 10 Draft Texts, GA/DIS/3311, 28 October 2005.

<sup>ix</sup> Russia Ratifies African Nuke-Free Zone Pact, [http://www.globalsecuritynewswire.org/gsn/nw\\_20110314\\_6782.php](http://www.globalsecuritynewswire.org/gsn/nw_20110314_6782.php)

<sup>x</sup> Statement made by the United Kingdom and attached to its ratification instrument, 19 March 2001.

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<sup>xi</sup> Statement by US Secretary of State Hillary Clinton to the 2010 NPT Review Conference, New York, 3 May 2010.

<sup>xii</sup> The White House, Office of the Press Secretary, Statement on Nuclear Free Zones in Asia and Africa, 2 May 2011.