

ITALY

WORKING PAPER

FMCT'S ENTRY INTO FORCE: POSSIBLE OPTIONS

1. According to Article 24 of the Vienna Convention on the Law of Treaties, "a treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all negotiating States". As a rule, multilateral treaties provide the entry into force after a certain number of deposits of ratifications to depositary States, the Secretariat of an International Organization, or of notifications of the ratifications to the other States party.

2. Therefore, a treaty does not enter into force as soon as it is adopted and signed. Provisions on the entry into force are necessary in order to establish the way in which States parties will be bound by the treaty itself. They usually establish the number of countries and/or the names of countries the ratification of which is necessary for the treaty to enter into force. A minimum list and/or number of ratifications for the entry into force is in many cases foreseen in order to ensure the comprehensive character of a multilateral treaty.

3. The conditions for the entry into force of an FMCT will have to be decided upon taking into account the possible options available and on the basis of past experience for other treaties on disarmament and non-proliferation. The available options for the entry into force of a treaty are:

- (i) To list specific names of countries the ratification of which is necessary for the entry into force.
- (ii) To establish a minimum number of countries the ratification of which is necessary for the treaty to enter into force, without specifying names.
- (iii) A mixed solution, i.e. to establish a limited list of specific countries plus a certain

number of countries the ratification of which is necessary for a treaty to enter into force.

4. The criteria adopted by previous disarmament treaties can be a useful term of reference. Among the WMD treaties:

- (i) The IAEA Statute entered into force after the deposit of instruments of ratification by 18 States (including at least three States among a list of 5, namely Canada, France, URSS, United Kingdom and United States: option c);
- (ii) The Non Proliferation Treaty entered into force two years after its conclusion, after the ratification by the depository States (USA, UK and Soviet Union) plus 40 other States (names of the latter were not specified; option c, mixed solution);
- (iii) The Biological Weapons Convention entered into force three years after its conclusion, after the deposit of instruments of ratification by 22 States, including the Depository Governments (USA, UK, USSR) (option c, mixed solution);
- (iv) The Chemical Weapons Convention entered into force after the deposit of the 65th instrument of ratification (option b);
- (v) The Comprehensive Test Ban Treaty (which has not entered into force 10 years after its conclusion) would enter into force after deposit of instrument of ratification by 44 States, identified by names (option a).

5. Also some treaties on Conventional weapons are relevant:

- (i) The Convention on Certain Conventional Weapons entered into force six months after the date of deposit of the 20th instrument of ratification (option b).
- (ii) The Ottawa Convention entered into force six months after the deposit of the 40th instrument of ratification (option b).

6. Scholars and NGOs have submitted for the FMCT the following options:

- (i) “the Treaty shall enter into force in two steps. Upon ratification by 35 States, except for Articles II para 9-11, (excess materials released from military use: declaration and verification), IV (undeclared production) and V (non explosive military use), the Treaty shall enter into force. Articles II para 9-11, IV and V shall enter into force when a minimum of five States, which possess material subject to the Treaty that is not subject to IAEA safeguards, deposit their instruments of ratification. Any State possessing such material may wave this provision and bring the remaining Articles into force before the minimum condition is met” (T. Shea, “The fissile material cut-off Treaty: a venue for future progress in arms control, non proliferation and prevention of nuclear terrorism”, 2003).
- (ii) “this Treaty shall enter into force thirty days after the date of the deposit of the 30th instrument of ratification” (Greenpeace, “Draft treaty: banning the production of fissile materials for nuclear weapons and other nuclear explosive devices”, 2004).

7. The first suggests a gradual entry into force, giving priority to the core provisions; the second provides for its entry into force as a whole after 30 ratifications.
8. The rationale for subordinating entry into force to ratification by a minimum number of countries (option b) is to allow entry into force after reaching a “critical mass” of parties, which would make the treaty credible. The rationale for establishing a list of significant countries the ratification of which is necessary for the entry into force is to make the treaty meaningful (option a). A mixed solution (option c) would combine credibility with meaningfulness and seems therefore preferable.
9. Two alternatives could be considered under option c. Entry into force would be subject to ratification by:
- (i) either the five Nuclear Weapons States according to the NPT plus the first 35 countries which will have deposited the instruments of ratification;
 - (ii) or the countries which possess either nuclear power or research reactors but are not subject to full-scope nuclear safeguards, plus the first 35 countries which will have deposited the instruments of ratification.
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