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Background Paper

FIVE YEARS AFTER ENTRY-INTO-FORCE OF THE TREATY OF PELINDABA ON THE AFRICAN NUCLEAR-WEAPON-FREE ZONE: PROGRESS, CHALLENGES, AND NEXT STEPS

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Five Years after Entry-Into-Force of the Treaty of Pelindaba on the African Nuclear-Weapon-Free Zone: Progress, Challenges, and Next Steps

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On 15 July 2009, the Treaty of Pelindaba on the African Nuclear-Weapon-Free Zone entered into force for 28 of the 53 African Union Member States and three of the five Nuclear Weapon States under the Treaty on the Non-Proliferation of Nuclear Weapons. Five years later, a look back at actions and effort of stakeholders in realizing the goals of the zone in the context of the increasing momentum and political willingness shown by NPT States Parties and organizations since the Treaty entered into force in July 2009 reveals a mixed bag of progress, challenges, and opportunities. To address these issues, a document review-based study of progress of, challenges and opportunities to stakeholders were conducted. Progress in additional ratifications and establishments of the African Commission of Nuclear Energy was examined. Challenges associated with negative security protocols and sticky diplomatic disputes were analyzed. Opportunities for operationalizing the Secretariat of the African Commission on Nuclear Energy, consulting with stakeholders, and leveraging resources through partnerships are presented. This study underscores the commitment of African states to distance their territory and their populations completely from the nuclear arms race and its implications for development and international relations. The act of establishing a nuclear-weapon-free zone is a sovereign right protected by Article 1 of the Charter of the United Nations and Article VII of the Treaty on the Non-Proliferation of Nuclear Weapons.

Keywords: africa, nuclear weapon, free zone, pelindaba treaty, energy commission, entry into force.

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Abbreviations

AFCONE	African Commission on Nuclear Energy
AFRA	African Regional Cooperative Agreement for Research, Training, and Development
AU	African Union
AUC	African Union Commission
ANWFZ	African Nuclear-Weapon-Free Zone
CSP	Conference of State Parties
CTBTO	Comprehensive Nuclear Test Treaty Organization
CWC	Chemical Weapons Convention
FNRBA	Forum of Nuclear Regulatory Bodies in Africa
IAEA	International Atomic Energy Agency
NNWS	Non-Nuclear Weapon State
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NWFZ	Nuclear-Weapon-Free Zone
NWS	Nuclear Weapon State
OAU	Organization of African Unity
RevCon	Review Conference
SADR	Sahrawi Arab Democratic Republic
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

I. INTRODUCTION

The African Nuclear Weapon Free Zone Treaty (also known as the Treaty of Pelindaba) entered into force on 15 July 2009.¹ Since then, it has received considerable attention in high-level policy fora at international and regional levels. Some experts have pronounced it as indicative of an increasing momentum and political willingness of NPT States Parties to realize the goals and objectives of the zone in all its aspects.² At the international level, for example, the United Nation General Assembly's (UNGA) First Committee adopted 63 resolutions focusing on nuclear disarmament during the sixty-ninth session in 2014.³ In particular, in resolution 69/52 of 2 December 2014, the Committee reaffirms the importance of Nuclear-Weapon-Free Zones (NWFZs) and supports the creation of such zones to combat proliferation.⁴ Another example that reflects this momentum is the significant number of positive statements on Article VII and NNWS security that were made by States Parties during the eight NPT Review Conference on 3-28 May 2010 in New York.⁵ Indeed, paragraph 98 of the *Final Document* of the Conference reaffirms that increasing momentum as follows:

The Conference reaffirms the conviction that the establishment of the internationally recognized nuclear-weapon-free zones on the basis of arrangements freely arrived at among the States of the region concerned enhances global and regional peace and security, strengthens the nuclear non-proliferation regime and contributes towards realizing the objectives of nuclear disarmament (par 98).⁶

Regionally, the Treaty has received consideration interest within the African Union Commission (AUC) and Treaty's Conferences of State Parties (CSP)⁷. Remarks by AUC's Peace and Security Division director Mr. El-Ghassim Wane while speaking at the Second CSP on 26 July 2012 at the AU Headquarters in Addis Ababa, Ethiopia, confirms this when he said:

The establishment of AFCONE has generated high expectations, from both States Parties and within the wider international community, on the important role that it can play in all nuclear-related issues: monitoring of compliance by the State Parties with their non-proliferation obligations; nuclear and radiation safety and security; nuclear sciences and technology; partnership and technical cooperation.⁸

His statement highlights the need for African states to contribute toward the realization of the goal of the zone. In his opening statement at the same conference, Ambassador A. S. Minty of South Africa, the Chair of AFCONE (2011-2013), confirmed AFCONE establishment received considerable attention within [the] multilateral fora.⁹ For instance, he, representing AFCONE, participated at the November 2011 NWFZ Forum of possible relevance to the creation of an NWFZ in the Middle East. The Forum was organized by the IAEA in Vienna, Austria. The most important message here is that Africa's experience in the process of establishing an NWFZ could contribute to the creation of other zones, especially in the Middle East.

The number of regional organizations that attended the three CSPs in 2010, 2012, and 2014 also reflects States Parties' interest on the expected activities of AFCONE. Not only States participation has been significant but also that of organizations within and outside the continent. Conclusions reached at the third CSP on 29 May 2014 at the AU headquarters in Addis Ababa best reflect this. For example, paragraph 4 of the conclusions reads:

The AU Commissioner for Peace and Security Ambassador Smail Chergui opened the Conference. The opening ceremony also featured statements by the Chairperson of AFCONE, Ambassador Abdul Samad Minty; as well as by the FNRBA [Forum of Nuclear Regulatory Bodies in Africa] Chair, Mr Augustin Simo, the Director for Africa at the IAEA Department

for Technical Cooperation, Mr Dazhu Yang, and the Director of External Relation and Legal Division at the CTBTO Preparatory Commission, Mr Genxin Li.¹⁰

Simply put, regional and international organizations have demonstrated considerable interest toward the realization of the function of the ANWZ. Despite this considerable interest following the Treaty's entry into force in July 2009, the actions of stakeholders are desiring. The purpose of this paper is to put this increasing momentum and political willingness shown by States and organizations regarding the realization of the goals of the ANWFZ into perspective of the required actions within the context of the 2015 NPT Review Conference.

The argument is addressed in the following structure:

- Background Information
- Adherence and Compliance Progress
- Enforcement Challenges
- Opportunities and Next Steps

II. BACKGROUND INFORMATION

The effort to establish the African continent and its surrounding territories a zone free of nuclear weapons is not new. It dates back to 1964, when the first Summit of the Organization of African Unity (OAU)¹¹ met in Cairo, Egypt, and formally stated its desire for a Treaty to ensure that Africa becomes an area free of nuclear weapons and related military activities.¹² Thirty-two years later and from 1993 to 1995, the text of the Treaty of Pelindaba on the African Nuclear-Weapon-Free Zone was finally negotiated and drafted, under the auspices of the Organization of African Unity (OAU) and the United Nations (UN), following a series of resolutions adopted by the OAU and the United Nations General Assembly (UNGA).¹³ It was adopted by the OAU at Pelindaba in South Africa on 2 June 1995. Pelindaba is the site where the South African Government constructed its first nuclear weapon. On 11 April 1996 in Cairo, Egypt, the Treaty was opened for signature by the fifty-three States Parties to the then Organization of African Unity. Today, there are 54 independent states of African Union that may be members of this zone.¹⁴

A further thirteen years after the Treaty was opened for signature, it entered into force on 15 July 2009 when Burundi became the 28th State to deposit its instrument of ratification with the Treaty's depository, the Secretariat of the African Union Commission (AUC) in accordance with the provisions of Article 12.¹⁵ Equally important to note is the fact that the entry into force of the Treaty is the latest of five regional agreements in force banning nuclear weapons in their area of application. The other four are the 1959 Antarctic Treaty, the 1967 Treaty of Tlatelolco (Treaty for the Prohibition of Nuclear Weapon in Latin America and the Caribbean), the 1985 Treaty of Rarotonga (South Pacific Nuclear-Weapon-Free-Zone Treaty), the 1995 Treaty of Bangkok (Southeast Asia Nuclear Weapon-Free-Zone Treaty), and the 2006 Treaty of Semipalatinsk (Central Asia Nuclear Weapon-Free-Zone Treaty).¹⁶ Although Mongolia declared itself as a single-state zone in 1998, it is viewed as redundant because the country is a Party to the Non-Proliferation Treaty (NPT). As a result, the United Nations website listed only the five treaties as the basis for existing nuclear-weapon-free zones.¹⁷

Similar to the four preceding NWFZ treaties, the Treaty of Pelindaba has three Protocols. Protocol I invite all five NWS under the NPT: China, France, Russia, the United Kingdom of Great Britain and Northern Ireland, and the United States to undertake and provide negative security assurances to Parties to the Treaty and Protocol III, Protocol II invite the same NWS to undertake and renounce nuclear testing within the zone. Finally, Protocol III invites only France and Spain to agree to apply

certain of the Treaty's substantive provisions "in respect of the territories for which [they are] internationally responsible" within the zone. The Protocols entered into force at the same time for those Protocol signatories that had deposited their instruments of ratification. The current Treaty's depository is the Secretariat of African Union Commission, which succeeded the OAU in 2002.

The Treaty establishes legal rights and obligations between States, which are parties to it. Under the Treaty, African states pledge to the, among other obligations, renunciation of nuclear explosive devices, prevention of the stationing of nuclear explosive devices, prohibition of the testing of nuclear explosive devices, prohibition of the dumping of radioactive waste, and promotion of peaceful nuclear activities and verification of their peaceful uses. Article 8 of the Treaty on peaceful nuclear activities provides for the right to use of nuclear science and technology for peaceful purposes including the promoting the use of nuclear science and technology for economic and social development and making use of program of assistance available in the IAEA and, in connection, to strengthen cooperation under the African Regional Cooperation Agreement for Research, Training and Development Related to Nuclear Science and Technology (AFRA).

For the purpose of the Treaty and its Protocols, certain terms are defined. One definition that is relevant to this study is that for the "African Nuclear-Weapon-Free Zone." According to definition a of Article 1 of the Treaty, the ANWFZ means the territory of the continent of Africa, Islands States members of the then OAU and all islands considered by the OAU in its resolutions to be part of Africa.¹⁸ Another relevant definition is the "Territory", which means the land territory, internal waters, territorial seas and archipelagic waters and the airspace above them as well as the seabed and subsoil beneath. Under those definitions, the Treaty's scope of application is the territory that extends across the entire continent of mainland Africa, and the following islands: Agalega Island, Bassas da India, Canary Islands, Cape Verde, Cardagos Carajos Shoals, Chagos Archipelago - Diego Garcia, Comoros, Europa, Juan de Nova, Madagascar, Mauritius, Mayotte, Prince Edward & Marion Islands, Reunion, Rodrigues Island, Sao Tome and Principe, Seychelles, Tomelin Island, Zanzibar & Pemba Islands. For a detailed Map of the zone and its surrounding territories as defined in Article 1 of the Treaty, see Appendix A.

III. PROGRESS

This section discusses additional adherence to the Treaty by AU-member states, additional ratifications of Protocols I and II by NWS, establishment of AFCONE by the AU Commission, and steps toward operationalization of AFCONE's Secretariat by AFCONE's Bureau. These achievements put into perspective the actions of stakeholders toward realizing the goals of the zone in the context of the increasing momentum and political willingness shown by NPT States Parties and organizations since the Treaty entered into force in July 2009.

A. *Joined the Zone*

The number of additional ratifications of the Treaty of Pelindaba by zonal States and the number of corresponding deposits of the instruments of ratifications with the African Union Commission's Secretariat is a significant example of adherence progress. It puts into perspective the actions of Treaty of Pelindaba's stakeholders in the context of the increasing momentum and political willingness shown by NPT States Parties since 29 July 2009 when the Treaty entered into force. During that period, eleven additional AU Member States joined the Treaty: Angola, Cameroon, Chad, Comoros, Congo, Ghana, Guinea-Bissau, Namibia, Sahrawi Arab Democratic Republic, Seychelles,

and Zambia.¹⁹ Thus, as of April 2015, thirty-nine AU Member States were currently Parties to the Treaty.

Looking back, the Treaty had 23 signatories of the 53 AU member states yet to ratify it at the time of entry into force. The signatory states includes Morocco that withdrew from the AU in 1984 and Sahrawi Arab Democratic Republic (SADR) that is a Member State of the AU.²⁰ A point to remember about SADR's status with the zone is that the country is neither a member of the UN nor eligible to join the NPT. With attention to the eligible States, the AU's membership increased from 53 in 2009 to 54 in 2011 when South Sudan, which is the world's newest and 193rd independent country to join the community of nations, the UN on 14 July 2011.²¹ The country was admitted, as the 54th Member States, to the AU on 27 July 2011 and; hence, eligible to join the zone.²² However, it was yet to accede to the Treaty of Pelindaba as of April 2015.²³ In fact, South Sudan was the only African state outside the NPT as of the start of the ninth NPT Review Conference in April 2015.

Another key point is that fifteen zonal States were yet to join the Treaty of Pelindaba as of April 2015.²⁴ Appendix B contains three lists of countries, which have signed, ratified or acceded to the Treaty of Pelindaba, Treaty Protocol I, Protocol II, and Protocol III as of April 2015. The calls for ratifications did not end with the entry into force of the Treaty. During the past five years, high-level meetings like the CSPs have repeatedly called on zonal States outside the Treaty to join the zone to ensure full adherence of African States. In like manner, those Conferences have appealed to eligible extra-zonal States that are not Party to the Protocols to ratify or accede to the relevant Protocols to support the realization of the functions of the zone. The most compelling evidence is Paragraph 8 of the Conclusions of the Third CSP that was held on 29-30 May 2014 at the AU Headquarters in Addis Ababa:

In this regards, [the Conference] called on AU Member States that have not yet done so, to sign and ratify the Treaty without further delay. It also appealed to the concerned non-African States to speedily sign and ratify the relevant Protocols to the Treaty and to comply with all the commitments contained therein.²⁵

Ambassador AS Minty, Chair of AFCONE (2010-2013) made a similar call in 2011 in Vienna, Austria, where he shared Africa's experience in the establishment of the ANWFZ at the "IAEA Forum on Experience of Possible Relevance to the Creation of a Nuclear-Weapon-Free Zone (NWFZ) in the Middle East". In his statement, he encouraged zonal States not yet Parties to the Treaty of Pelindaba "to complete their ratification or accession procedures as soon as possible to enable all African States to be party to the Pelindaba Treaty."²⁶

It is important to remember that these calls serve as reminders and motivation to outlier States to either expedite or complete the legislative steps in their national ratification process and to ultimately deposit the instrument of ratification with the Treaty's depository, AUC Secretariat.

B. Ratified Protocols I and II

Russia's ratification of the Treaty's Protocols I and II and the deposit of its instrument of ratification with the African Union Commission's Secretariat is another example of adherence progress, which puts into perspective the actions of stakeholders in the context of the increasing momentum and political willingness shown by NPT States Parties since 29 July 2009 when the Treaty of Pelindaba entered into force. Russia deposited its instrument of ratification with the AUC Secretariat on 5 April 2011²⁷ and became the fourth of the five NWS that are Parties to Protocols I and II. The deposition stemmed from the 20 March 2011 consent of the Russia's Federal Assembly or Duma that approved the President to ratify the protocols. The AUC welcome the "Ratification of Protocols to the Treaty of Pelindaba by the Russian Federation" in an AUC *Press Release* on 8 July 2011.²⁸ Prior to the

ratification, a Russian statement on Article VII of the NPT released at the May 2010 NPT Review Conference announced Medvedev's government ongoing process of preparing for the ratification in order to further assist the efforts of the African States in achieving the aims and objectives of the Treaty.²⁹ In August 2010, President Dmitry Medvedev's submitted the two protocols to the Duma for ratification, according to United Press International as reported by a Russian News Agency ITAR-TASS.³⁰

A further example of adherence progress by an NWS is the US effort in initiating the process of ratification during the past five years. The US effort puts into perspective the actions of the Treaty of Pelindaba's stakeholders in the context of the increasing momentum and political willingness shown by NPT States Parties regarding the realization of the goals of the ANWFZ since 29 July 2009 when the Treaty entered into force. The US intention was first announced at the eight NPT Review Conference in New York in 2010. In her statement on 3 May, the U.S. Secretary of State Hillary Clinton remarked: "we will submit protocols to the United States Senate to ratify our participation in the nuclear-weapon-free zones that have been established in Africa and the South Pacific (p.6)."³¹ In line with the announcement, the Obama administration submitted Protocols I and II of the Treaty of Pelindaba for Senate advice and consent to ratification on 2 May 2011.³² Although the US Department of State website states that the Treaty of Pelindaba and its Protocols meet all seven criteria that the United States has established for supporting any proposed nuclear-weapon-free zone, the Senate was yet to approve ratification as of April 2015, and it is unclear whether action will be taken in 2015. For a list of the seven criteria, see Appendix C.³³ As of the start of the 2015 NPT Review Conference in April in New York, the US was the only NWS yet to ratify Protocols I and II of the Treaty of Pelindaba and to deposit the instrument of ratification with the Treaty's depository African Union Commission's Secretariat. The overall idea here is that the signature and ratification of the Protocols I and II by all five NWS can ensure the full and effective functioning of the African nuclear-weapon-free zone.

C. Establishment of AFCONE

Progress in the number of additional AU States that joined the Treaty and Russia ratification of Protocols I and II and deposit of its instrument of ratification; however, often overshadow progress in the establishment of the African Commission on Nuclear Energy (AFCONE). This example further puts into perspective the actions States Parties to the Treaty of Pelindaba in the context of the increasing momentum and political willingness shown by NPT States Parties since 29 July 2009 when the Treaty of Pelindaba entered into force. AFCONE was established under the auspices of the Treaty's depository AUC Secretariat. Paragraph 1 of Article 14 of the Treaty of Pelindaba reads:

A Conference of all Parties to the Treaty shall be convened by the Depository 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 12.³⁴

Since July 2009 when the Treaty entered into force, the Treaty's depository AUC Secretariat convened three Conferences of States Parties (CSPs) – the First CSP on 4 November 2010,³⁵ the Second CSP on 12-13 November 2012,³⁶ and the Third CSP on 29-30 May 2014³⁷, which all took place at the AU Headquarters in Addis Ababa, Ethiopia. The objective of the First CSP was to bring together countries of the Zone, the concerned extra-zonal countries and the relevant regional and international bodies, to consider matters relating to the implementation of the Treaty, the operationalization of AFCONE Secretariat, as well as other issues of concern to the Zone.³⁸ At the

First CSP, 12 Commissioners for a three-year term were elected and the decision to establish AFCONE's Secretariat in South Africa was endorsed.³⁹

Further progress in the establishment of AFCONE was the creation of its Bureau,⁴⁰ one of the two organs that make up AFCONE's structure – the other being the Secretariat. AUC Secretariat convened three Ordinary Sessions of the Commissioners on 4 May 2011⁴¹, on 26 July 2012, and on 11-12 November 2013⁴², which all took place at the AUC Headquarters in Ethiopia's capital Addis Ababa in accordance with the provision of Paragraph 3 of Article 12. For each session, the AUC presented draft proposals including AFCONE rules of procedure, a program of work, AFCONE structure, and scale of assessment for its budget for the Session's consideration.⁴³ During sessions, members exchanged views and discussed various issues essential to AFCONE's operation.⁴⁴ The conclusions reached at each Session were submitted to the forthcoming CSP in 2012 and 2014. An important event to note was the election of Mr. Abdul Samad Minty of South Africa and Mr. Mourad Telmini of Tunisia as Chairperson and Vice-Chairperson of AFCONE respectively at the First Session in accordance with Paragraph 2 of Annex III, which requires the Bureau to have a Chairman, the Vice-Chairman, and the Commissioners.⁴⁵ The Second Session's discussion focused on documents and activities necessary for the early operationalization of AFCONE Secretariat, which included finalization and adoption of its Rules of Procedure, programme of work for 2011-2013, and advertising the position of the AFCONE Executive Secretary.⁴⁶

D. Operationalizing AFCONE's Secretariat

In addition to previously mentioned progress in the number of additional ratifications of the Treaty by AU Member States, Protocols I and II by an NWS, and establishment of AFCONE, positive steps taken to operationalize AFCONE's Secretariat is another example of AFCONE's progress. Those steps put into perspective the actions of Treaty of Pelindaba's stakeholders in the context of the increasing momentum and political willingness shown by NPT States Parties since 29 July 2009 when the Treaty entered into force. For instance, the Second CSP finalized and adopted the key documents, which included the structure of AFCONE, the scale of assessment, and AFCONE three-year budget.⁴⁷ Positive steps were also taken to negotiating the AFCONE Secretariat host country agreement between the Government of South Africa and AUC Secretariat. The report of AFCONE's Chair Ambassador Minty in his opening statement at the Second CSP in 2012 confirms this progress. Paragraph five of the statement reads:

In this regard, I am pleased to report that steady progress is being made with the negotiations on the host country agreement with South Africa on the hosting of the AFCONE. The formal establishment of the AFCONE Headquarters will also be guided by the agreed budget of AFCONE, and the appointment of the Executive Secretary and staff.⁴⁸

Minty's statement also highlights the fact that financial resource is a key determining factor in the effort to operationalize AFCONE's Secretariat including recruitment of the Executive Secretary and staff. It is unclear whether the Secretariat will be operational in 2015.

Another positive activity toward the operationalization of AFCONE Secretariat was the initiation of a process to appoint AFCONE Executive Secretary. The position was advertised in July 2011 by the AUC Chairperson and candidates were interviewed 2012.⁴⁹ Minty also confirmed this progress in his opening statement at the 2012 Second CSP. He reported, "progress has also been made towards the appointment of the Executive Secretary of AFCONE."⁵⁰ According to the statement, potential candidates were interviewed in 2012. However, a successful candidate was not announced as of April 2015.

IV. CHALLENGES

This section examines the issues of negative security assurances and sticky diplomatic problems in realizing the goals of the ANWFZ zone. These questions put into perspective the challenges of stakeholders in the context of the increasing momentum and political willingness shown by NPT States Parties and organizations since the Treaty entered into force in July 2009.

A. *Providing Negative Security Assurances*

NWS provision of negative security assurances to NNWS is one issue that put into perspective the challenges against achieving full adherence to the ANWFZ Treaty and its Protocols despite the increasing momentum and political willingness shown by NPT States Parties and organizations since the Treaty entered into force. In the context of NPT diplomacy, negative security assurances are guarantees by the five NPT nuclear-weapon states not to use or threaten to use nuclear weapons against states that have formally renounced them.⁵¹ The non-nuclear-weapon states have traditionally pressed for such assurances in the form of a free-standing treaty ever since the Treaty's inception. Indeed, the provision of negative security assurances to Parties to nuclear weapon free zones by nuclear weapons States constitutes one of the pillars of NWFZ treaties.⁵² Under the ANWFZ Treaty, Protocol I invites the five NWS to pledge not to use or threaten to use a nuclear weapon against Parties to the Treaty and Protocol III. Four of the five NWS have signed and ratified Protocol I – France, Russian Federation, and United Kingdom of Great Britain and Northern Ireland.

Full adherence of NWS to the requirements of Protocols I to guaranteeing negative security without declarative statements and reservations are important incentives to all types of stakeholders to the Treaty and its Protocols. However, three of the States made statements and reservations to the security assurance protocol at the time of signatures and at the time of deposit of the corresponding instruments.⁵³ For example, Russia attached a statement and a reservation to Protocol I at the time of signature on 5 November 1996 and at the time of ratification on 20 March 2011, respectively.⁵⁴ The statement made on the signature interprets Russia's obligation to exclude the provision of negative security assurance in some cases including an armed attack on the Russian Federation or its interest carried out by a State party to the ANWFZ Treaty in association with a NWS.

Russia's statement at the time of signature highlights the understanding and position of its Government and Federal Assembly of the matter of Diego Garcia Island within Chagos Archipelago, a territory of the zone as defined in Article 1 of the Treaty, where the United States has a military base. In the same way, at the time of ratification, Russia's reservation that purports to exclude the legal effect of the provision of negative security guarantee to Parties to the Treaty and Protocol III required under Protocol 1. Paragraph 1 of the reservation reads:

The Russian Federation assuming that in accordance with Article I of the Treaty "African nuclear-weapon-free zone" means the territory of the continent of Africa, insular Member States of the African Union and other adjoining islands considered by the African Union in its resolutions as a part of Africa, does not however consider itself legally bound under Protocol I in respect of such territories, provided (as long as) these territories have military bases of nuclear powers, as well as of territories in respect of which other nuclear states consider themselves legally unbound under Protocol I.⁵⁵

A further potential issue of negative security assurance concerns US ratification, which was pending as of April 2015.⁵⁶ Although the United States did not attach a note or declaration to Protocols I and II at the time of signature in 11 April 1996, US military installations in Diego Garcia and the provision of negative security assurances may be some of the issues to be addressed in ratification process. If the US were to complete the ratification process of the two protocols, it is unclear whether

it will make a declaration or reservation concerning the Treaty's scope and application of negative security assurances.⁵⁷

For example at the 2010 NPT Review Conference, the US stated that US ratification of ANWFZ "protocols will provide Parties of those agreements legally binding negative security assurances that the United States will not use or threaten to use nuclear weapons against them" and will fully respect the nuclear-free zone status of the Africa.⁵⁸ However, the US has also stated "[t]he activities of the U.S. Armed Forces on Diego Garcia would not be impeded by U.S. ratification of Protocols I and II to the Treaty."⁵⁹ To this end, US inaction to ratify the protocols or action to ratify with the reservation would further challenge the realization of the goals of the zone.

Overall, pending ratifications of negative security protocol to NWFZ treaties and ratification attached with declarative statements raises questions on the role of NWS in promoting the creation of the zones and strengthens their full and effective functioning. It contradicts the political commitments of NWS to the decisions taken at the 1995 Review Conference to the Parties to the NPT, and their commitment to contribute significantly to the realization of the ANWFZ in all its aspects.⁶⁰ It also contradicts the commonly understood idea that the NWFZ zones contribute, as a transitional measure, towards the achievement of nuclear disarmament and, finally, to general and complete disarmament that is the ultimate goal of the NPT.⁶¹ Thus, the ratification of negative security protocol and without attaching declarative statements helps to emphasize the basic principle that security is guaranteed by joining NWFZ zones and not by possessing nuclear weapons.

B. Political Disputes

Sticky diplomatic problems concerning two or more stakeholders to the ANWFZ is another issue that put into perspective the challenges against achieving full adherence to the Treaty and its Protocols despite the increasing momentum and political willingness shown by NPT States Parties and organizations since the Treaty entered into force. In a political dispute, the disputants are left to determine a settlement according to their own norms as opposed to a legal dispute that is capable of settlement by the application of existing legal norms.⁶² Diplomatic disputes were obstacles not only to creating the zone but also protract efforts to achieving full adherence and effective functioning of the zone. For example, sovereignty dispute by Mauritius, the United States and the United Kingdom over Chagos Archipelago's Diego Garcia, one of the islands within the geographic area described in Article 2 and Annex I of the Treaty, creates a dilemma to stakeholders concerning the Treaty's scope and application.⁶³

The 55-island chain Chagos Archipelago, part of the British Indian Ocean Territory (BIOT, last-born of British colonies, established by order-in-council in 1965),⁶⁴ located south of India approximately halfway between Africa and Indonesia, is an overseas territory of the UK; administered by a commissioner, resident in the Foreign and Commonwealth Office in London.⁶⁵ While Mauritius has rejected the UK's sovereignty over the Chagos Archipelago, it is used by the US under a formal 50-year agreement⁶⁶ that was signed in 1966, making Diego Garcia available to meet defense requirements for both nations.⁶⁷ Under a series of bilateral agreements with Britain, the US built large naval and air installations on the atoll from 1971 to support the deployment of nuclear-capable attack submarines and long-range bombers.⁶⁸ However, Mauritius, an AU Member and Party to the Treaty of Pelindaba has asserted a claim of sovereignty over Chagos in many international fora.⁶⁹ An important point to note is that Chagos is enshrined in Chapter XI of Mauritius Constitution.⁷⁰ Although the UK has rejected Mauritius claim of sovereignty over Chagos, the claim has been endorsed by the Organization for African Unity (now the African Union) unanimously in resolutions in 1980, 2001, and 2010.⁷¹

A recent call by Ambassador Milan J. N. Meetarbhan, permanent representative of the Mauritius to the United Nations in New York further illustrates this dispute. On 30 September 2014 during the general debate of the 69th session of the UN General Assembly, he expressed the wish of Mauritius sovereignty over Chagos. The paragraph reads:

Both the United States and the United Kingdom should recognize the sovereignty of Mauritius over the Chagos and engage, in good faith, in meaningful discussion with the African Union resolution 1(XVI) adopted at the 16th Ordinary Session held in Addis Ababa, Ethiopia from 30 to 31 January 2011 [which] echoes the long-standing AU decision on the issue to [support] fully the action of the Government of the Republic of Mauritius at the United Nations General Assembly with a view to enabling Mauritius to exercise its sovereignty over the Archipelago.⁷²

In other words, claims and rejections of sovereignty over Chagos Archipelago by the UK and Mauritius, put into question the ability of the US to ratify Protocols I and II without attaching declarative statements, Russia and the UK to guarantee not to use or threaten to use nuclear weapons against Parties to the Treaty and Protocols III, unconditionally.

Sticky diplomatic dispute concerning Morocco's sovereignty claim over Sahrawi Arab Democratic Republic's (SADR) and SADR's claim for independence is another issue that put into perspective the challenges against achieving full adherence to the Treaty and its Protocols despite the increasing momentum and political willingness shown by NPT States Parties and organizations since the Treaty entered into force. SADR is a recognized independent State within Africa since 27 February 1976, an AU Member State since 1982, and a Party to the Treaty of Pelindaba since 27 January 2014.⁷³ However, SADR is not recognized internationally as an independent state, particularly by the UN and the US. On the contrary, Morocco is yet to ratify the Treaty because of diplomatic concerns regarding AU's recognition of SADR's independence and admission to the Union. The problem is not new. It dates back to 14 November 1984 when the then OAU invited a representative of SADR to be seated at the 20th OAU Assembly of Heads of State and Government.⁷⁴ In protest, Morocco walked out of the summit and claimed that SADR was and remains part of its territory called Western Sahara.⁷⁵ Its ratification is likely to be difficult to acquire in the short term due to political opposition, although it signed the Treaty in 1996.

A further sticky diplomatic dispute, Egypt's primary concerns over Israel's nuclear status and Iran's nuclear intentions, is a further issue that put into perspective the challenges against achieving full adherence to the Treaty and its Protocols despite the increasing momentum and political willingness shown by NPT States Parties and organizations since the Treaty entered into force. In the context of arms control, Egypt has gradually conditioned its willingness to take any additional arms control steps, including the ratification of the Treaty of Pelindaba, on Israel's NPT accession.⁷⁶ Although Egypt signed the Treaty on 11 April 1996 when it opened for signature in Cairo, Egypt, its ratification is likely to be difficult to acquire in the short term due to political opposition. These issues suggest that the path to achieving full adherence is not an easy one. However, Ambassador Minty has argued that "Africa should never abandon this objective, nor tire in the face of seemingly insurmountable obstacles."⁷⁷

V. OPPORTUNITIES

This final section analyzes operationalizing AFCONE's Secretariat, consulting with stakeholders, and leveraging resources through a partnership that favor the realization of the goals of the ANWFZ zone. These opportunities offer next steps required of stakeholders to addressing challenges and making

further progress in the context of the increasing momentum and political willingness shown by NPT States Parties and organizations since the Treaty entered into force in July 2009.

A. *Operationalizing AFCONE Secretariat*

Foundation to this opportunity is the need for the day-to-day operation of AFCONE Secretariat, which is a powerful vehicle for the verification of compliance, ensure Parties may derive long-term general benefits as provided by the ANWFZ Treaty's 'rights and privileges', and provide an impartial forum to address issues of non-complying states under the Treaty at a regional scope. To achieve these objectives, AFCONE's Secretariat has to become operational that requires completion of necessary and outstanding formalities, in the short term. Along this line, the next CSP and in consultation with AFCONE Chairperson, may request AUC Chairperson to complete the process of appointing AFCONE Secretariat's Executive Secretary, a position that was advertised in 2011, candidates screened and interviews conducted in 2012.

The appointment of the Executive Secretary and operation of the Secretariat would be a catalyst for the ensuring personnel, technical and financial resources necessary to lay a foundation for the strategic operation of the commission. From a financial resource front, the operation of the Secretariat and activities would appeal to AU Member States, in particular those that are Party to the Treaty, as well as international governmental and non-governmental organizational and foundations, to make voluntary contributions to strengthen the Commission's programs and activities. Also, the finalization of the host country agreement is a necessary step to put the Secretariat to operation. This entails the South African Government fulfill its pledge by providing office space, necessary equipment and administrative support. In fact, the operationalization of AFCONE's Secretariat is necessary to complete AFCONE's structure as provided under the Treaty.

B. *Consulting with Stakeholders*

Another opportunity to addressing challenges and making further compliance progress is consulting with stakeholders of the ANWFZ zone under the Treaty at a regional scope. Consultation is a vital tool in addressing political disputes, engaging outlier states to join the zone, and acting on regional and international nonproliferation and disarmament actions. For example, the Final Document of the 2010 NPT RevCon called on, amongst many action items, NWS to withdraw, revise or otherwise reconsider the reservations and interpretive declarations previously attached to their signatures or ratifications. The action further called on both NWS and NWFZ to engage in consultations to facilitate the withdrawal of declarations, statements or reservations in case NWS failed to revise unilaterally or withdraw those declarations or reservations. In this context, AFCONE could engage Russia⁷⁸ and the United Kingdom⁷⁹ in an effort to reach an agreement that would allow them to remove or revise the declarative statements and reservations made at the time of signature and ratifications. This type of engagement can be extremely useful in addressing diplomatic disputes, and it is believed that AFCONE's ability to consult with stakeholders will increase the compliance rate and strengthen enforcement relationship.

AFCONE could also consult with the US to address possible outstanding issues concerning US ratification of Protocols I and II. Importantly, the regional security environment in Africa, from WMD perspective, had reasonably improved since 2003 when Libya gave up its WMD program under international verification. The situation now is conducive for the US Senate to consider ratification of the negative security protocol. In the past, for instance, the US delay to ratify the Protocols in 1996 was the concern over a suspected chemical weapons production site at Tarhunah in

Libya that US argued could be effectively deterred with nuclear warheads. As of March 2010, Libya was a party to all WMD regional and international nonproliferation and disarmament agreements including the Treaty of Pelindaba, the Chemical Weapons Convention (CWC), and Comprehensive Nuclear Test Ban Treaty (CTBT) and ratified the Additional Protocol to their Comprehensive Safeguards Agreements (CSA).

C. Leveraging Resources through Partnerships

Leveraging resources through partnerships in the areas of mutual interest in the nonproliferation and disarmament regimes between AFCONE and the CTBTO, IAEA and AFRA is a further opportunity to realizing the goal of the ANWFZ zone at a regional scope. Organizational partnership helps to identify priority tasks, to complement each other's tasks, and to fill resource gaps. It avoids duplicating similar administrative functions, financial expenses, and technical programs implemented by similar organizations. For instance, the Treaty of Pelindaba requires safety measures, and this relates to other measures such as the United Nations Security Council Resolution 1540, IAEA Comprehensive Safeguards Agreement (CSA) and the Bamako Convention. All these treaties have no regional secretariat to monitor compliance activities, and AFCONE could complement their implementation at the continental level.

Specifically, a partnership between AFCONE and IAEA is an opportunity to leverage resources. Pursuant to (Art 12(1)) of the Treaty of Pelinadaba, Mechanism for Compliance, Parties' obligations include inter alia - prohibition of nuclear testing; promotion of peaceful nuclear activities; verification of peaceful uses (safeguards); acceptance of Annex IV complaints or settlement of disputes procedure; and reporting and exchange of information. Moreover, the IAEA has international long-standing experience, a robust inspectorate, and sufficient technical resources to promote the peaceful uses of nuclear energy and independently verify non-diversion of established civilian programs. To that end, an IAEA-AFCONE partnership would have benefits to the implementation of the Treaty of Pelindaba. From an administrative resource front, for example, AFCONE may serve as a regional secretariat to strengthen the work of IAEA in ensuring compliance, reporting and accounting in Africa. Again, AFCONE could help expand IAEA Technical Cooperation activities with greater benefits to Parties to the ANWFZ Treaty.

From a technical front, in case of complaint or breach of obligation that warrants inspections under the ANWFZ Treaty, AFCONE can request the IAEA to conduct inspections and designates its representatives to accompany IAEA inspectors, through an appropriate IAEA-AFCONE relationship and agreement. This could significantly reduce the financial burden to African governments associated with the carrying out of inspections and verification missions that are well established under the IAEA and the CTBTO. Through AFCONE-AIEA partnership, Parties to the ANWFZ Treaty may benefit from IAEA support in the drafting and implementation of nuclear policies especially in the area of bilateral nuclear export. The IAEA is already using a non-mechanistic, non-discriminatory, country-specific approach with safeguards, and such an approach promise great application for many African countries that are yet to start significant nuclear programs.

VI. CONCLUSION

It has been shown that a five-year look back of actions and effort by the stakeholders of the African Nuclear-Weapon-Free-Zone Treaty against the backdrop of an increasing momentum and political willingness shown by NPT States and organizations regarding the realization of the goals of the ANWFZ reveals a mixed bag of progress, challenges and opportunities. Since April 2009 when the Treaty entered into force, prior to the eight NPT Review Conference in April 2010, and April 2015 when the ninth NPT Review Conference started, eleven additional AU-Member States joined the

zone. Also, Russia ratified Protocols I and II on 20 March 2011. Besides, the Obama administration submitted Protocols I and II to the Treaty of Pelindaba on 2 May 2011 for Senate advice and consent to ratification. As of April 2015, 39 of the 54 AU Member States were Parties to the Treaty, four of the five NWS under the NPT were Parties to Protocols I and II, and one of the two eligible States France was Party to Protocol III. Simply put, as at April 2015, 15 AU Members were yet to join the zone, the US was yet to ratify Protocols I and II, and Spain was yet to accede to Protocol III.

Progress was also made in creating a compliance mechanism to ensure Parties are benefitting their rights and fulfilling their obligations under the Treaty. The First CSP held in 2010 at the AU Headquarters in Addis Ababa, Ethiopia, the Conference established AFCONE and elected its twelve pioneer Commissioners into AFCONE Bureau for a three-year term, and endorsed South Africa as the Headquarters of AFCONE.

Despite stakeholder actions and effort that resulted in additional ratifications and the establishment of AFCONE in the context of the increasing momentum and political willingness shown by States and organizations since the Treaty's entry into force in 2009, the issues of negative security assurances and sticky diplomatic problems continue to challenge stakeholder actions and effort against realizing the goals of the ANWFZ in all its aspects. It was shown that three of the four NWS Parties to Protocols I and II attached declarative statements or reservations to their signatures or ratifications – France, Russian Federation, and United Kingdom of Great Britain and Northern Ireland. It was also shown that declarations or reservations attached to NWS signatures or ratifications of NWFZ protocols contradicts the commonly held view that NWFZs are the only legally-binding steps that a non-nuclear weapon state can take to protect its territory from the presence of nuclear weapons and to contribute positively and incrementally towards nuclear disarmament. As a result of the issues of negative security assurances and sticky diplomatic problems, additional ratifications by Morocco and Egypt, and perhaps the United States, are likely to be difficult to acquire in the short term due to political opposition.

Beyond the progress and challenges to realizing the goals of the ANFWF zone, operationalizing AFCONE's Secretariat, consulting with stakeholders, and leveraging resources through partnerships are opportunities to maximize resources necessary to implement the Treaty's provisions. They collectively 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. In an importance sense, it was shown that the operationalization of AFCONE's Secretariat would require appointment of AFCONE's Executive Secretary, staff, finalization of host-country agreement and other formalities to make the Secretariat operational. It was also shown that AFCONE's consulting with other similar Treaty stakeholders including IAEA and CTBTO may be helpful in addressing existing and emerging challenges at the regional and international level and build on existing resources with significant advantages.

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VII. APPENDICES

Appendix A:

Map of an African Nuclear-Weapon-Free Zone



Note. The African Nuclear-Weapon-Free Zone extends across the entire continent of mainland Africa, and the following islands: Agalega Island, Bassas da India, Canary Islands, Cape Verde, Cardagos Carajos Shoals, Chagos Archipelago - Diego Garcia, Comoros, Europa, Juan de Nova, Madagascar, Mauritius, Mayotte, Prince Edward & Marion Islands, Reunion, Rodrigues Island, Sao Tome and Principe, Seychelles, Tomelin Island, Zanzibar & Pemba Islands. The proviso, appears without prejudice to the questions of sovereignty, is a declarative statement that was inserted at the request of the UK during negotiations, a reference to the long-standing diplomatic dispute between the UK and Mauritius over the archipelago.

Source: Institute for Security Studies

Appendix B:

List of Countries which Have Signed, Ratified/Acceded to the
African Nuclear-Weapons-Free Zone Treaty
(The treaty of Pelindaba)
(as of 30 April 2015)

◆◆◆◆◆
African Union
Organisation de l'Union Africaine
◆◆◆◆◆

Liste des pays qui ont signé, ratifié/adhéré au
Traité sur la zone exempte d'armes nucléaires en Afrique
(Traité de Pelindaba)
(date : 31 avril 2015)

No.	COUNTRY/PAYS	DATE OF/DE SIGNATURE	DATE OF/DE RATIFICATION/ ACCESSION	DATE DEPOSITED/ DATE DE DEPOT
1	Algeria	11/04/1996	23/12/1997	11/02/1998
2	Angola	11/04/1996	-	-
3	Benin	11/04/1996	17/07/2007	04/09/2007
4	Botswana	09/06/1998	04/02/1999	16/06/1999
5	Burkina Faso	11/04/1996	12/05/1998	27/08/1998
6	Burundi	11/04/1996	22/06/2009	15/07/2009
7	Cameroon	11/04/1996	11/06/2009	28/09/2010
8	Central African Rep.	11/04/1996	-	-
9	Cape Verde	11/04/1996	-	-
10	Chad	11/04/1996	18/10/2011	18/01/2012
11	Côte d'Ivoire	11/04/1996	20/05/1999	28/07/1999
12	Comoros	11/04/1996	12/07/2012	24/07/2012
13	Congo	27/01/1997	18/08/2013	26/11/2013
14	Djibouti	11/04/1996	-	-
15	Democratic Rep. of Congo	11/04/1996	-	-
16	Egypt	11/04/1996	-	-
17	Equatorial Guinea	-	20/12/2002	19/02/2003
18	Eritrea	11/04/1996	-	-
19	Ethiopia	11/04/1996	18/02/2008	13/03/2008
20	Gabon	11/04/1996	18/05/2007	12/06/2007
21	Gambia	11/04/1996	03/09/1996	16/10/1996

22	Ghana	11/04/1996	11/05/2011	27/06/2011
23	Guinea-Bissau	11/04/1996	23/12/2011	04/01/2012
24	Guinea	11/04/1996	26/05/1999	21/01/2000
25	Kenya	11/04/1996	15/11/2000	09/01/2001
26	Libya	11/04/1996	12/02/2005	11/05/2005
27	Lesotho	11/04/1996	06/03/2002	14/03/2002
28	Liberia	09/07/1996	-	-
29	Madagascar	-	12/12/2003	23/12/2003
30	Mali	11/04/1996	27/05/1999	22/07/1999
31	Malawi	11/04/1996	06/03/2009	23/04/2009
32	Mozambique	11/04/1996	29/07/2008	28/08/2008
33	Mauritania	11/04/1996	10/01/1998	24/02/1998
34	Mauritius	11/04/1996	19/04/1996	24/04/1996
35	Namibia	11/04/1996	06/02/2012	01/03/2012
36	Nigeria	11/04/1996	20/04/2000	18/06/2001
37	Niger	11/04/1996	-	-
38	Rwanda	11/04/1996	23/01/2007	01/02/2007
39	South Africa	11/04/1996	13/03/1998	27/03/1998
40	Sahrawi Arab Democratic Republic	20/06/2006	27/11/2013	27/01/2014
41	Senegal	11/04/1996	20/09/2006	25/10/2006
42	Seychelles	09/07/1996	-	23/05/2014
43	Sierra Leone	11/04/1996	-	-
44	Somalia	23/02/2006	-	-
45	Sao Tome & Principe	09/07/1996	-	-
46	Sudan	11/04/1996	-	-
47	South Sudan	-	-	-
48	Swaziland	11/04/1996	13/11/1996	17/07/2000
49	Tanzania	11/04/1996	27/05/1998	19/06/1998
50	Togo	11/04/1996	28/06/2000	18/07/2000
51	Tunisia	11/04/1996	14/09/2009	07/10/2009
52	Uganda	11/04/1996	-	-
53	Zambia	11/04/1996	28/06/2010	18/08/2010
54	Zimbabwe	11/04/1996	09/02/1998	06/04/1998
TOTAL	54 States	51 Signatories	39 States	39 Depositories

Note.

- ◆ Adopted in Cairo, Egypt, on 11 April 1996.
- ◆ Needed for Treaty Entry into Force: 28
- ◆ Entered into force on 15 July 2009.

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	20/03/11	05/04/11
4.	United Kingdom of Great Britain and Northern Ireland	11/04/96	27/02/01	19/03/01
5.	United States of America	11/04/96		
TOTAL	5 States	5 Signatories	4 ratifications	4 Depositories

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	20/03/11	05/04/11
4.	United Kingdom of Great Britain and Northern Ireland	11/04/96	27/02/01	19/03/01
5.	United States of America	11/04/96		
TOTAL	5 States	5 Signatories	4 States	4 Depositories

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			
TOTAL	2 States	1 Signatory	1 State	1 Depository

Note. From “List of Countries which have signed, ratified/acceded to the African Nuclear -Weapon-Free-Zone Treaty (The Treaty of Pelindaba),” by the African Union, as of 28 January 2014 United Nations as of 30 April 2015

Appendix C:

Seven criteria that the United States has established for supporting any proposed nuclear-weapon- free zone.

1. the initiative for the creation of the zone should come from the States in the region concerned;
2. all States whose participation is deemed important should participate;
3. the zone arrangement should provide for adequate verification of compliance with its provisions;
4. the establishment of the zone should not disturb existing security arrangements to the detriment of regional and international security or otherwise abridge the inherent right of individual or collective self-defense guaranteed in the Charter of the United Nations;
5. the zone arrangement should effectively prohibit its Parties from developing or otherwise possessing any nuclear device for whatever purpose;
6. the establishment of the zone should not affect the existing rights of its Parties under international law to grant or deny other States transit privileges within their respective land territory, internal waters and airspace to nuclear powered and nuclear capable ships and aircraft of non-party nations, including port calls and overflights; and
7. the zone arrangement should not seek to impose restrictions on the exercise of rights recognized under international law, particularly the high seas freedoms of navigation and overflight, the right of innocent passage of territorial and archipelagic seas, the right of transit passage of international straits, and the right of archipelagic sea-lanes passage of archipelagic waters.

VIII. REFERENCES

¹ Pelindaba, which derives from the Zulu words “phelile indaba” means “the matter is settled or the discussion is closed”,

² Tabassi, L. (2009). National Implementation and Enforcement of Nuclear-Weapon-Free Zone Treaties. *Nuclear Law Bulletin*, (83), 29-57.

³ United Nations (Ed.). (2015, April 2). United Nations, main body, main organs, General Assembly. Retrieved April 25, 2015, from <http://www.un.org/en/ga/69/resolutions.shtml>. See also <http://www.un.org/disarmament/publications/yearbook/en/EN-YB-VOL-39-2014-part1.pdf>

⁴ United Nations. (2014, December 11). United Nations Official Document. Retrieved April 25, 2015, from http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/52

⁵ United Nations. (n.d.). 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 3-28 May 2010. Retrieved April 25, 2015, from <http://www.un.org/en/conf/npt/2010/statements/statements.shtml#us>

⁶ Final Document. NPT/CONF.2010/50 (Vol. I) Par 122. For the complete Volume, see [http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50 \(VOL.I\)](http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50 (VOL.I))

⁷ The Conference of State Parties is the highest decision making body in the implementation of the Treaty of Pelindaba, which convenes at least one every two years to review the implementation of the Treaty, and adopt the necessary decisions to ensure the smooth operations of AFCONE.

⁸ See <http://www.peaceau.org/uploads/auc-speech-director-afcone-meeting-26-07-2012.pdf> for the complete speech

⁹ For the complete statement, see <http://www.peaceau.org/uploads/statement-by-amb.-minty-26-july-2012-.pdf>

¹⁰ For the full conclusions, see <http://www.peaceau.org/uploads/auc.com.pelindaba.29-05-2014-1-.pdf>

- ¹¹ OAU was superseded by the African Union in 2002
- ¹² U.S. Department of State. (n.d.). African Nuclear-Weapon-Free Zone Treaty and Protocols. Retrieved April 25, 2015, from <http://www.state.gov/t/isn/4699.htm>
- ¹³ African Union. (n.d.). African Nuclear-Weapon-Free Zone Treaty (Pelindaba Treaty). Retrieved April 25, 2015, from http://www.au.int/en/sites/default/files/Treaty_En_African_Nuclear_Weapon_Free_Zone_AddisAbaba_July1995.pdf
- ¹⁴ For a historical overview of the birth of African Union from the Organization fo African Unity, see <http://www.au.int/en/about/nutshell>
- ¹⁵ U.S. Department of State. (n.d.). African Nuclear-Weapon-Free Zone Treaty and Protocols. Retrieved April 25, 2015, from <http://www.state.gov/t/isn/4699.htm>
- ¹⁶ Finaud, M. (2014, May 1). The Experience of Nuclear Weapon-Free Zones. Retrieved April 25, 2015, from http://www.basicint.org/sites/default/files/finaud_nwfz-fin_1.pdf
- ¹⁷ For details, see <http://www.un.org/disarmament/WMD/Nuclear/NWFZ.shtml>
- ¹⁸ See resolution on 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, which formed the foundation for the negotiation and signature of the Treaty of Pelindaba.
- ¹⁹ See: <http://www.au.int/en/sites/default/files/pelindaba%20Treaty.pdf> for a complete list of AU-Member States, which have signed, ratified or acceded to the African Nuclear -Weapon-Free-Zone Treaty (Treaty of Pelindaba) in the website of African Union as of 28 January 2014. The site showed only 38 States Parties even when consulted in April 2015. But the UN website showed 39 States Parties including Seychelles that deposited its instrument of ratification on 28 May 2014. See also <http://disarmament.un.org/treaties/t/pelindaba> for a complete list of UN-Member States, which have signed, ratified or acceded to the African Nuclear -Weapon-Free-Zone Treaty (Treaty of Pelindaba) in the website of United Nations as of 30 April 2015.
- ²⁰ See http://www.au.int/en/member_states/countryprofiles for a complete list of AU member States and their dates of independence.
- ²¹ See <http://www.un.org/apps/news/story.asp?NewsID=39034#.VV4LsEazlyQ> for UN news on the admission of South Sudan to the community of nations.
- ²² See <http://www.au.int/en/content/african-union-welcomes-south-sudan-54th-member-state-union> for AU PRESS RELEASE N 79/2011 on the admission of South Sudan to the UN
- ²³ See http://www.au.int/en/member_states/countryprofiles for a comprehensive list of AU Member States and their dates of independence. See also http://www.au.int/en/member_states/countryprofiles for a comprehensive list of AU Member States and their dates of independence.
- ²⁴ This number excludes Morocco, which is no longer an AU Member State since 1984. This is the only African state not a Member of the African Union
- ²⁵ For a complete view of the conclusions, see <http://www.peaceau.org/uploads/conclusions-3rd-csp-pelindaba-en.pdf>. Paragraph 10 of the Conclusions of the First CSP made a similar call, see <http://www.peaceau.org/uploads/conclusions-1st-conference-of-states-parties-treaty-of-pelindaba-en.pdf>
- ²⁶ See <https://www.iaea.org/sites/default/files/afcone211111.pdf> for a complete statement that was delivered by AFCONE Chair Ambassador Abdul Samad Minty of South Africa at the IAEA Forum on Experience of Possible Relevance to the Creation of a Nuclear Weapon-Free-Zone in the Middle East in Vienna, Austria, on 21 November 2011
- ²⁷ See http://disarmament.un.org/treaties/t/pelindaba_1 for a complete list of NWS, which have signed, ratified or acceded to the African Nuclear -Weapon-Free-Zone Treaty (Treaty of Pelindaba) in the website of the UN as of 30 April 2015. The page also contrains details on note, statement, declaration, or reservation, attached to the signature or depository action.
- ²⁸ For the full press release, see http://www.au.int/en/sites/default/files/Press%20release_Russia%20ratifies%20Pelindaba-1.pdf
- ²⁹ See Final Document. NPT/CONF.2010/50 (Vol. II) Par 122. For the complete Volume, see [http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50%20\(VOL.%20II\)](http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50%20(VOL.%20II))
- ³⁰ UPI.com. (2010 , Aug 24). Russia backs African nuclear treaty. Retrieved from United Press International, Inc: http://www.upi.com/Top_News/Special/2010/08/24/Russia-backs-African-nuclear-treaty/65881282680525/
- ³¹ For a full statement, see http://www.un.org/en/conf/npt/2010/statements/pdf/usa_en.pdf
- ³² For the full message, see https://www.whitehouse.gov/sites/default/files/2011african_msg_rel.pdf

³³ U.S. Department of State. (n.d.). African Nuclear-Weapon-Free Zone Treaty and Protocols. Retrieved April 25, 2015, from <http://www.state.gov/t/isn/4699.htm>

³⁴ African Union. (1995). *African Nuclear Weapons Free Zone Treaty(Pelindaba Treaty)*. Retrieved from African Union: http://www.au.int/en/sites/default/files/Treaty_En_African_Nuclear_Weapon_Free_Zone_AddisAbaba_July1995.pdf

³⁵ Euroafrica.net. (2010 , November 5). *AU Operationalizes the Treaty of Pelindaba*. Retrieved from EuroAfrica.net: <http://euroafrica.net/2010/11/05/au-operationalizes-the-treaty-of-pelindaba/>

³⁶ African Union. (2012, November 1). *The Second Conference of States Parties to the African Nuclear-Weapon-Free Zone Treaty*. Retrieved from African Union Peace and Security: <http://www.peaceau.org/en/article/press-statement-of-the-peace-and-security-council-of-the-african-union-au-at-its-497th-meeting-on-the-recent-elections-in-nigeria-the-union-of-the-comoros-the-kingdom-of-lesotho-and-the-republic-of-zambia-as-well-as-on-th>

³⁷ For a complete view of the conclusions, see <http://www.peaceau.org/uploads/conclusions-3rd-csp-pelindaba-en.pdf>.

³⁸ African Union. (1995). *African Nuclear Weapons Free Zone Treaty(Pelindaba Treaty)*. Retrieved from African Union: http://www.au.int/en/sites/default/files/Treaty_En_African_Nuclear_Weapon_Free_Zone_AddisAbaba_July1995.pdf

³⁹ African Union. (2010, November 4). Conclusions of the First Conference of State Parties to the African Nuclear-Weapon-Free-Zone Treaty (Treaty of Pelindaba). Retrieved April 25, 2015, from <http://www.peaceau.org/uploads/conclusions-1st-conference-of-states-parties-treaty-of-pelindaba-en.pdf>

⁴⁰ For the Treaty text, see http://www.au.int/en/sites/default/files/Treaty_En_African_Nuclear_Weapon_Free_Zone_AddisAbaba_July1995.pdf

⁴¹ See <http://www.peaceau.org/uploads/afcone-1st-ordinary-session-conclusions-en-.pdf> for conclusions of the First Ordinary Session

⁴² See <http://www.peaceau.org/uploads/2nd-csp-pelindaba-conclusions-en.pdf> for all the conclusions of the Second Conference of State Parties that was held on 12-13 November 2012 at the African Union headquarters in Addis Ababa, Ethiopia

⁴³ <http://www.au.int/fr/sites/default/files/Press%20release%20AFCONe%201st%20OrdinarySessionEN%20-%2026%20May%202011.pdf>

⁴⁴ Noel Stott, “The Treaty of Pelindaba: Towards the Full Implementation of the African WNFZ Treaty,” UNIDIR report, p. 21, <http://unidir.org/pdf/articles/pdf-art3083.pdf>

⁴⁵ See <http://www.peaceau.org/uploads/afcone-1st-ordinary-session-conclusions-en-.pdf> for all the conclusions of the First Ordinary Session of the African Commission on Nuclear Energy (AFCONe) that was held on 4 May 2011 at the African Union headquarters in Addis Ababa, Ethiopia.

⁴⁶ See <http://www.au.int/fr/sites/default/files/Press%20release%20AFCONe%201st%20OrdinarySessionEN%20-%2026%20May%202011.pdf> for the Press Release of 26 May 2011 on the African Union Commission Working Towards the Early Operationalization of the African Commission on Nuclear Energy.

⁴⁷ For Conclusions of the Second CSP, see <http://www.peaceau.org/uploads/2nd-csp-pelindaba-conclusions-en.pdf> for all the conclusions of the Second Conference of State Parties that was held on 12-13 November 2012 at the African Union headquarters in Addis Ababa, Ethiopia

⁴⁸ See <http://www.peaceau.org/uploads/statement-by-amb.-minty-26-july-2012-.pdf> for a statement that was delivered by AFCONe Chair Ambassador Abdul Samad Minty of South Africa at the opening of the Second AFCONe meeting on 26 July 2012 at the African Union headquarters in Addis Ababa, Ethiopia.

⁴⁹ For the Treaty text, see http://www.au.int/en/sites/default/files/Treaty_En_African_Nuclear_Weapon_Free_Zone_AddisAbaba_July1995.pdf. Also see <http://au.int/en/sites/default/files/Executive%20Secretary%20of%20AFCONe%20-%20English.pdf> for the vacancy announcement for the Executive Secretary of AFCONe Secretariat that was advertised by the African Union in 2011.

⁵⁰ See <http://www.peaceau.org/uploads/statement-by-amb.-minty-26-july-2012-.pdf> for a statement that was delivered by AFCONe Chair Ambassador Abdul Samad Minty of South Africa at the opening of the Second AFCONe meeting on 26 July 2012 at the African Union headquarters in Addis Ababa, Ethiopia.

⁵¹ For a comprehensive analysis on Negative Security Assurances by Leonard S. Spector and Aubrie Ohlde of Arms Control Today, see http://www.armscontrol.org/act/2005_04/Spector_Ohlde

⁵² Du Preez, J. (n.d.). Security Assurances Against the Use of Threat of Use of Nuclear Weapons: Is Progress Possible at the NPT PrepCom? Retrieved April 25, 2015, from http://cns.miis.edu/treaty_npt/pdfs/security_assurances.pdf

- ⁵³ For a complete list of States' statements, declarations or reservations to Protocol I of the Treaty of Pelindaba made at the time of signature or at the time of the deposit of the corresponding instrument, see http://disarmament.un.org/treaties/t/pelindaba_1
- ⁵⁴ See http://disarmament.un.org/treaties/a/pelindaba_1/russianfederation/sig/cairo for the complete statement made by the Russian Federation at the time of signature of Protocols I and II to the Treaty of Pelindaba.
- ⁵⁵ See http://disarmament.un.org/treaties/a/pelindaba_1/russianfederation/rat/cairo for the complete reservation made by the Russian Federation at the time of deposit of its instrument of ratification.
- ⁵⁶ See <http://www.au.int/en/sites/default/files/pelindaba%20Treaty.pdf> for a complete list of AU-member States, which have signed, ratified or acceded to the African Nuclear -Weapon-Free-Zone Treaty (Treaty of Pelindaba) in the website of African Union as of 28 January 2014.
- ⁵⁷ Sand, P. (2008). African Nuclear-Weapon-Free Zone in Force: What Next for Diego Garcia? *Insights*, 13(12). Retrieved March 12, 2015, from <http://www.asil.org/insights/volume/13/issue/12/african-nuclear-weapon-free-zone-force-what-next-diego-garcia>
- ⁵⁸ For a full statement, see http://www.un.org/en/conf/npt/2010/statements/pdf/usa_en.pdf
- ⁵⁹ U.S. Department of State. (n.d.). African Nuclear-Weapon-Free Zone Treaty and Protocols. Retrieved April 25, 2015, from <http://www.state.gov/t/isn/4699.htm>
- ⁶⁰ For the three Decisions and Resolution on the Middle East WMD Free Zone adopted at the 1995 NPT Review and Extension Conference, see <http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/1995NPT.shtml>
- ⁶¹ See Article VI of the NPT Treaty at <http://www.un.org/disarmament/WMD/Nuclear/NPTtext.shtml>
- ⁶² For a distinction between political and legal dispute, see http://www.bhutto.org/1957-1965_speech28.php
- ⁶³ Sand, P. (2008). African Nuclear-Weapon-Free Zone in Force: What Next for Diego Garcia? *Insights*, 13(12). Retrieved March 12, 2015, from <http://www.asil.org/insights/volume/13/issue/12/african-nuclear-weapon-free-zone-force-what-next-diego-garcia>
- ⁶⁴ The World Factbook, 'British Indian Ocean Territory', *cia.gov*, updated 7 January 2014, <https://www.cia.gov/library/publications/the-world-factbook/geos/io.html>
- ⁶⁵ For information on the British Indian Ocean Territory, see <https://www.cia.gov/library/publications/the-world-factbook/geos/io.html>
- ⁶⁶ The World Factbook, 'British Indian Ocean Territory', *cia.gov*, updated 7 January 2014, <https://www.cia.gov/library/publications/the-world-factbook/geos/io.html>
- ⁶⁷ Harris, J. (2003, December 1). U.S. Military Presence in Diego Garcia: National Interests vs. Human Rights. Retrieved April 25, 2015, from <http://www1.american.edu/tes/ice/diego-garcia.htm>
- ⁶⁸ DefenceWeb. (2010, June 7). Treaty of Pelindaba raises questions on Diego Garcia. Retrieved April 25, 2015, from http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=8330
- ⁶⁹ The Permanent Court of Arbitration. (n.d.). Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom). Retrieved April 25, 2015, from http://www.pca-cpa.org/showpage.asp?pag_id=
- ⁷⁰ Sand, P. (2008). African Nuclear-Weapon-Free Zone in Force: What Next for Diego Garcia? *Insights*, 13(12). Retrieved March 12, 2015, from <http://www.asil.org/insights/volume/13/issue/12/african-nuclear-weapon-free-zone-force-what-next-diego-garcia>
- ⁷¹ For a comprehensive analysis of the distributed sovereignty, see <http://www.natureseychelles.org/knowledge-centre/scientific-papers-database/international-and-regional-documents/162-the-chagos-archipelago-footprint-of-empire-or-world-heritage/file>
- ⁷² For the complete statement, see http://gadebate.un.org/sites/default/files/gastatements/69/MU_en.pdf
- ⁷³ African Union. (n.d.). Member States. Retrieved April 25, 2015, from http://www.au.int/en/member_states/countryprofiles
- ⁷⁴ Bamidele, O. (2013). African foreign policy and diplomacy from antiquity to the 21st century, Volume 1, Daniel Don Nanjira: book review. *Africa Insight*, 43(1), 118-121.
- ⁷⁵ Bamidele, O. (2013). African foreign policy and diplomacy from antiquity to the 21st century, Volume 1, Daniel Don Nanjira: book review. *Africa Insight*, 43(1), 118-121.
- ⁷⁶ For a review of Egypt's diplomatic efforts see Robert J. Einhorn, "Egypt: Frustrated but Still on a Non-Nuclear Course," in Kurt M. Campbell et al, eds., *The Nuclear Tipping Point* (Washington: Brookings, 2004), pp. 43-82.
- ⁷⁷ See <https://www.iaea.org/sites/default/files/afcone211111.pdf> for a complete statement that was delivered by AFCONE Chair Ambassador Abdul Samad Minty of South Africa at the IAEA Forum on Experience of Possible Relevance to the Creation of a Nuclear Weapon-Free-Zone in the Middle East in Vienna, Austria, on 21 November 2011
- ⁷⁸ Russia attached reservations to its ratification of Protocols I and II of the Treaty of Pelindaba in 2011.

⁷⁹ At the time of negotiating the Treaty and Protocols, a footnote (inserted at the request of the United Kingdom) stating that the territory appears without prejudice to the question of sovereignty, a reference to the long-standing diplomatic dispute between the UK and Mauritius over the archipelago. *See* Sola Ogunbanwo, *The Treaty of Pelindaba: Africa is Nuclear-Weapon-Free*, 27 SECURITY DIALOGUE 185, 192 (1996);