

a regime would have any meaning for NACD. If pro-CTBT advocates are concerned that the United States will not support the Treaty, then antagonizing the US with a provisional EIF might fulfill that prophecy. It is not clear that ratifying states would even agree to provisional application. Russia, for one, has explicitly referenced the “strict compliance” of Article 14 EIF for the CTBT.⁴³

Yet there are actions that may be taken, and there is a strategy to move the CTBT along. Most importantly, the strengths of the CTBT lie in its verification capability, which is the most advanced for any NACD regime in the international system. This, coupled with the legal argument that signatory states should at the very least not work towards to defeat the purpose of the treaty, presents an fascinating scenario: the universality and effectiveness of the CTBTO is actually closer to EIF in the status quo than it would be with a provisional EIF. While not official, it might be argued that, with the strength of the Law of Treaties (especially Article 18), the global proclaimed desire for both a moratorium as well as verification, and the text creating the Preparatory Commission of the CTBTO, there is now a “de facto” EIF.

A “de facto” EIF?

The CTBT, at its present stage, does not meet the basic requirements of customary international law. But as this report has argued, ratifying states would be within the bounds of international customary law to seek a “provisional implementation” of the CTBT. It can be argued that there is the basis in treaty law to support the customary law argument. Supporters of the CTBT – ratifying states – are not legally bound to *not* pursue “some other manner so agreed” to facilitate EIF for the treaty.

However, officially moving ahead for a provisional EIF would not be the best course of action. It needs to be remembered, of course, that the United States has *not* indicated its desire to not be held to the Treaty, and still does contribute administrative personnel, verification and monitoring hardware and stations (the United States has “gifted” more monitoring stations to the IMS than any other states, and continues to do so). Moreover, the United States still contributes almost a quarter of the Preparatory Commission’s budget, while many so-called “proponents” of the CTBT do not make their payments at all. Third, other non-ratifying states would view the potential non-support on the part of the United States as a

⁴³Statement by H.E. Igor Sergeev, Assistant of the President of the Russian Federation on Strategic Stability, The Second Conference on Facilitating the Entry into Force of the Comprehensive Nuclear Test Ban Treaty, New York, 11 November 2001.
http://www.ctbto.org/reference/article_xiv/2001/111101_speaker9.pdf