



The Heritage Foundation
Background
Executive Summary

No. 1183

May 21, 1998

INDIA'S NUCLEAR TESTS SHOW FOLLY OF RUSHING TEST BAN TREATY

BAKER SPRING

The Clinton Administration is expected to demand that the Senate move quickly to take up the Comprehensive Test Ban Treaty (CTBT), which would prohibit the kind of nuclear weapons testing that India undertook last week. This treaty has profound implications for the security of the United States, and the Senate should not allow itself to be bullied by the Administration. By taking the time to conduct a careful review of the CTBT, the Senate will discharge its responsibility to make a well-informed judgment on this complex and far-reaching treaty, which took four decades to negotiate.

The Senate should move deliberately for several reasons:

REASON #1: India's recent nuclear tests make it clear that the CTBT will not enter into force in the foreseeable future. Ratification by 44 specified states is required for the treaty to enter into force. Three of them—India, North Korea, and Pakistan—have not even signed the treaty, and only six have formally ratified it. India stated at the conclusion of the CTBT negotiations in 1996 that it had no intention of signing the treaty. As a practical matter, India's series of nuclear tests on May 11 and May 13

have put a global ban on nuclear testing out of reach for some time to come.

REASON #2: By moving carefully, the Senate can better determine whether the CTBT will undermine America's nuclear deterrent. The Senate must determine whether the Department of Energy and the national laboratories can guarantee the safety and reliability of America's nuclear arsenal under test ban strictures. It must therefore take the time to review the Department of Energy's Stockpile Stewardship and Management Program. It also must assess whether the ban on the construction of new nuclear weapons and replacements for America's aging arsenal will endanger national security.

Produced by
The Kathryn and Shelby
Cullom Davis International
Studies Center

Published by
The Heritage Foundation
214 Massachusetts Ave., N.E.
Washington, D.C.
20002-4999
(202) 546-4400
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REASON #3: The Clinton Administration is using a 1999 examination conference to force early consideration. Ratifying states may request a conference in 1999 to examine the reasons why others have not ratified the CTBT. Administration officials are demanding early approval of the treaty so the United States can participate. By itself, the conference will have little impact. There are fears, however, that the Clinton Administration will use the conference to modify treaty provisions to allow the CTBT to go into effect without holdout states India, North Korea, and Pakistan. This would make a mockery of the Senate's consideration of the CTBT and ignore Senate prerogatives to review amendments to treaties under the advice and consent process.

REASON #4: The Administration is attempting to implement provisions of the CTBT before it is ratified. The United States is participating in—and funding—the treaty implementation activities of the Vienna-based Preparatory Commission of the Comprehensive Nuclear-Test-Ban Treaty Organization. Further, the U.S. is helping to maintain existing monitoring stations and establish new stations that will be used to verify treaty compliance. Some of these facilities are located on U.S. territory. In each case, the Clinton Administration is acting as if the Senate already had consented to the treaty.

REASON #5: History demonstrates that the Senate is often justified in giving deliberate consideration to far-reaching arms control agreements. Arms control agreements frequently assume that the existing security environment will remain unchanged for some time to come. Unforeseen events, such as India's nuclear tests, can leave the United States in the position of having to honor arms control agreements that actually undermine its security in a new era. One example is the 1972 Anti-Ballistic Missile (ABM) Treaty, which barred the

United States from deploying an effective missile defense system. The United States continues to honor this treaty, even though the other treaty partner (the Soviet Union) no longer exists, and despite the emergence of new threats unforeseen in 1972, such as the risk of accidental or unauthorized missile launches from Russia and the proliferation of missile technology to rogue states such as Iran and North Korea.

REASON #6: The Senate has more pressing business on its treaty agenda. Several items on the Senate's treaty agenda require its immediate attention. These include a package of three agreements related to the ABM Treaty, signed by a U.S. delegation in New York last September, and the 1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change. The Administration is attempting to bypass the Senate by implementing provisions of these treaties without Senate review. In the case of the agreements related to the ABM Treaty, the Clinton Administration has yet to send them to the Senate for consideration, despite President Clinton's clear commitment to do so. The Senate has no choice but to step in and assert its prerogatives in the face of the constitutionally suspect actions of the Clinton Administration.

India's recent nuclear tests have proven the need for a careful and considered review of the CTBT. The issues surrounding ratification of the treaty are complex, and the implications for America's national security are profound. Members of the Senate should proceed without haste and without apology as they undertake the important job that the Constitution has entrusted to them.

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Now that the Senate has approved the amendment to the NATO Charter expanding membership in the North Atlantic Treaty Organization to include the Czech Republic, Hungary, and Poland, it can expect the Clinton Administration to demand that it move quickly to take up another treaty. The Comprehensive Test Ban Treaty (CTBT) would prohibit the kind of nuclear weapons testing that India undertook last week. Despite what is likely to be a vocal public relations campaign to pressure the Senate into acting hastily, the Senate should insist on its own timetable for considering this treaty.

Senate Foreign Relations Committee Chairman Jesse Helms (R-NC) outlined the committee's priorities in a January 21 letter to President Bill Clinton. He warned the President against provoking a confrontation with the Senate by attempting to coerce it into hasty consideration of the CTBT. President Bill Clinton's February 10 response makes it clear that he will insist that the committee approve the CTBT in the coming months.

Senator Helms and his colleagues on the Senate Foreign Relations Committee are right to assign a low priority to consideration of the CTBT. In fact, there are a host of substantive reasons for the Senate to defer consideration of this complex and far-reaching arms control treaty. For example, India's tests make it clear that the CTBT will not enter

into force in the foreseeable future. As a result, there is no need for the Senate to rush its consideration. Further, the Senate needs to undertake an exhaustive analysis of the extent to which a permanent end to nuclear testing will undercut the nation's nuclear deterrent. Finally, the Senate has other, more pressing priorities on its treaty agenda, including agreements to revive and broaden the application of the 1972 Anti-Ballistic Missile (ABM) Treaty and the 1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change.

A decision by the Senate Foreign Relations Committee to move more slowly in its consideration of the CTBT than the Clinton Administration desires should not be seen as a judgment that the treaty is unimportant. Quite the opposite: It should be seen as an indication that the Senate Foreign Relations Committee views the CTBT as an exceedingly important treaty with pro-

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found implications for the security of the United States.

FOUR DECADES OF NEGOTIATIONS

The effort to negotiate a ban on nuclear testing goes back to the Eisenhower Administration. The initial discussions started in May 1955 under the auspices of the United Nations Disarmament Commission. These talks became bogged down over the issue of whether nuclear disarmament should precede a test ban and verification. Following years of little progress, President John F. Kennedy announced that a conference of the governments of the United States, Great Britain, and the Soviet Union would be convened in Moscow to discuss a test ban. The conference resulted in the August 5, 1963, signing of the Limited Test Ban Treaty, which banned nuclear tests in the atmosphere, in outer space, and under water, but not underground. The Senate approved the treaty the following month, and it was ratified by President Kennedy on October 7, 1963.

For the remainder of the 1960s, the nuclear testing issue received little attention. The 1970s, however, saw two related treaties further limiting nuclear testing. The first, the Threshold Test Ban Treaty (TTBT), prohibits underground nuclear tests with yields in excess of 150 kilotons. President Richard Nixon signed the TTBT on July 3, 1974. The second treaty imposed similar limitations on the yields of nuclear detonations for "peaceful purposes," such as earth moving, and is called the Peaceful Nuclear Explosions Treaty (PNET). President Gerald Ford signed this treaty on May 28, 1976. Both treaties went unratified until 1990 because of questions about their verifiability, which were resolved by the addition of verification protocols.

President Jimmy Carter resumed negotiations on a comprehensive nuclear test ban agreement between the United States, Great Britain, and the Soviet Union in 1977. The Carter Administration, however, failed to complete the talks before the

end of its term. The Reagan Administration, questioning the wisdom of a comprehensive test ban, discontinued the negotiations in 1982.

President George Bush continued the policies of the Reagan Administration, but Members of Congress came to support a moratorium on nuclear testing. Moratorium legislation was incorporated into a broader bill which was supported by President Bush, who signed it into law on October 2, 1992.¹ The United States conducted its last nuclear test in 1992.

The Clinton Administration moved to pursue negotiations on the CTBT shortly after taking office in 1993. The negotiations resumed under the auspices of the United Nations Conference on Disarmament in Geneva in 1994. In an attempt to move the negotiations forward, President Clinton announced on August 11, 1995, that the United States would support a "zero yield" standard for banning nuclear testing under the CTBT. This meant that the treaty would ban all nuclear test explosions, no matter how small their yields. He also announced at that time a series of requirements for maintaining the U.S. nuclear stockpile without testing. If these requirements could not be met, the United States would invoke the supreme national interest clause under the treaty and resume testing. The Conference on Disarmament failed to approve the CTBT in 1996 because of objections raised by India. Instead, a resolution of endorsement of the CTBT was offered in the United Nations General Assembly. This resolution was adopted on September 10, 1996, and the treaty was then opened for signature. President Clinton signed it on September 24, 1996.

REASONS FOR CAREFUL CONSIDERATION OF THE CTBT

Although it took four decades to negotiate the CTBT, the Clinton Administration is now demanding that the Senate rush to approve the treaty. It is very likely that the Administration is concerned that close scrutiny by the Senate will reveal flaws

1. Section 507 of the Energy and Water Development Appropriations Act, 1993, Public Law 102-377. Under the terms of this law, India's nuclear tests last week mean that the United States no longer must observe the moratorium.



in the CTBT. The Senate, however, should not allow itself to be bullied into considering the treaty under an artificial timetable. By taking the time for a careful review of the CTBT, the Senate will discharge its responsibility to make a well-informed judgment on this complex and far-reaching treaty.

More specifically, the Senate should move deliberately for the following reasons:

REASON #1: India's recent nuclear tests make it clear that the CTBT will not enter into force in the foreseeable future. Article XIV of the CTBT states, "This Treaty shall enter into force 180 days after the date of deposit of the instruments of ratification by all states listed in Annex 2 to this Treaty, but in no case earlier than two years after its opening for signature."

The CTBT was opened for signature in September 1996. The earliest the treaty could enter into force, then, is this September. But this will not happen. Annex 2, referred to in Article XIV, lists 44 states whose ratification is required for the treaty to enter into force. Three of these states—India, North Korea, and Pakistan—have not signed the treaty. As of April 7, 1998, moreover, only six of the 44 had ratified it.

The problem is compounded because one of the 44 states is India. India stated at the conclusion of the CTBT negotiations in 1996 that it had no intention of signing the treaty. When India conducted a series of nuclear tests consisting of five detonations on May 11 and May 13, it proved that it does not feel constrained from conducting nuclear tests and pursuing the nuclear weapons option. A global ban on nuclear testing, as a practical matter, has been put out of reach for the foreseeable future. For the treaty to move forward as if India's tests had not occurred would give other states an

incentive to test nuclear weapons as quickly as possible.

REASON #2: By moving carefully, the Senate can better determine whether the CTBT will undermine America's nuclear deterrent. The most important reason why the Senate must take time to consider ratification of the CTBT is the need to determine the extent to which it could undermine America's nuclear deterrent. To do this, the Senate needs to pose two questions, the answers to which will require an exhaustive review by individual Senators.

The first question is whether the Department of Energy and the national laboratories will be able to guarantee the safety, reliability, and effectiveness of America's nuclear arsenal without the option of testing. Such a guarantee will rest on the success of the Department of Energy's Stockpile Stewardship and Management Program (SSMP). While those knowledgeable about nuclear weapons requirements are optimistic about the future success of the SSMP, they are not certain of a positive outcome.² The program's success depends on such things as proper funding, the development and testing of new diagnostic equipment and experimental facilities, the retention of trained technicians, and expected advancements in nuclear science. If the SSMP cannot certify that the nation's nuclear stockpile is safe, reliable, and effective, President Clinton has declared that he will invoke the treaty's supreme national interest clause—assuming, of course, that the CTBT is ratified—and resume testing. On August 11, 1995, the President stated: "While I am optimistic that the stockpile stewardship program will be successful, as president, I cannot dismiss the possibility, however unlikely, that the program will fall short of its objectives."³

The President's statement should serve as a warning to the Senate. The wisdom of ratifying the CTBT is contingent on the success of the

2. S. S. Hecker, Director, Los Alamos National Laboratory, letter to Senator Jon Kyl (R-AZ), September 24, 1997.

3. The White House, "Briefing on the Comprehensive Nuclear Test Ban," August 11, 1995.



SSMP. It is therefore proper for the Senate to delay its consideration of the CTBT. This will allow time for the establishment of a longer track record regarding SSMP and will give the Senate a better opportunity to measure the likelihood that the program will succeed.

The second question Senators will need to answer is whether maintaining the U.S. nuclear deterrent requires the modernization of nuclear forces. Virtually everyone involved in the debate over the CTBT acknowledges that the ban on nuclear testing will bar the construction of new nuclear weapons and replacements for older weapons. This means that the weapons in the existing force will have to suffice far into the future. This raises the question of whether the existing weapons systems, as distinct from nuclear warheads alone, can last even a few more years, let alone forever. The Minuteman III missile, for example, was first deployed in 1970. Can this missile, now approaching 30 years of age, last until it is 50, 75, or 100 years old? Answering this question will take a lengthy investigation as members of the Senate review the systems now in the arsenal and assess their life expectancies.

Answering this question also adds a new and critical factor to the Senate debate over the CTBT. If the CTBT will require the retirement of nuclear weapons systems without replacements, it is a test ban treaty in name only; in reality, it will be a nuclear disarmament agreement that renders hollow the Clinton Administration's commitment to retaining the U.S. nuclear deterrent in the absence of testing.

By demanding that the Senate approve the CTBT immediately, the Administration is asking Senators to accept on faith White House assertions that the treaty serves the security interests of the United States. Given the implications of the CTBT for national security, the

Senate has a responsibility to investigate the details of the treaty for itself. Detailed examination of this complex treaty will take considerable time, and the Senate has no reason to apologize for taking a careful look at its requirements. If the CTBT were so obviously in the interest of the United States, it would not have taken four decades to negotiate.

REASON #3: The Clinton Administration is using a 1999 examination conference to force early consideration. If the treaty has not entered into force within three years of the date it was opened for signature, Article XIV states that a majority of ratifying states may request a conference to examine the reasons for the delay. This three-year period ends in September 1999. As participation is limited to the ratifying states, Administration officials are demanding early Senate approval of the CTBT so that the United States can participate in this examination conference.⁴

Unless the examination conference changes the requirements of Article XIV or Annex 2 of the CTBT by allowing entry into force with fewer than the 44 states now required, it will have little impact. There is little political pressure that could be applied by conference participants to holdout states—and India in particular—that will not have been applied by 1999. Under these circumstances, the Administration's expressed desire to participate in the 1999 examination conference should be seen as nothing but an excuse for rushing Senate consideration of the CTBT.

There may be another explanation, however, for the Clinton Administration's eagerness to be part of the examination conference. Arms control advocacy groups have suggested that the Clinton Administration use the conference to modify the entry-into-force provisions.⁵ Under this plan, the Administration then

4. John Holum, Director, Arms Control and Disarmament Agency and Acting Under Secretary of State for Arms Control and International Security Affairs, testimony before the Subcommittee on International Security, Proliferation and Federal Services, Committee on Governmental Affairs, U.S. Senate, March 18, 1998, p. 6.
5. Spurgeon M. Keeny, Jr., "CTB: Too Soon to Declare Victory," *Arms Control Today*, August 1996, p. 2.



would claim that the modification, which by any objective standard is an amendment to the treaty, is not an amendment but an informal agreement. Modifying the entry-into-force provisions in this way would violate the intention of Articles VII and XIV of the CTBT. Article VII restricts the consideration of amendments to the treaty to formal amendment conferences, which may occur only after entry into force. Article XIV defines the 1999 conference as an examination conference, not an amendment conference.

It is quite clear what will happen if the Senate does not block this amendment strategy. The Administration will seek to obtain Senate approval of the CTBT on the basis that all 44 required states will be participating. If successful, it will then go to the conference with the intention of bringing the treaty into force with fewer than the required 44 states. It is now clear that India will not participate, and it is safe to assume that North Korea and Pakistan will be holdouts as well. The conference would alter the entry-into-force requirements by allowing entry into force without these three states participating.

Under this circumstance, a basis for Senate approval of the CTBT will have been removed. Adding insult to injury, this plan would bar Senate review of what is clearly an amendment to the original treaty. It would make a mockery of the Senate's consideration of the CTBT and ignore Senate prerogatives to review amendments to treaties under the advice and consent process. The easiest—if not the only certain—way to bar the Administration from ignoring the Constitution in this manner is to defer consideration of the CTBT and thereby stop the Administration from participating in the conference in 1999.

REASON #4: The Administration is attempting to implement provisions of the CTBT before it is ratified. The fact that only a few of the neces-

sary nations have ratified the CTBT has not stopped backers of the treaty from implementing it.

The implementation process is being handled by an organization called the Preparatory Commission of the Comprehensive Nuclear-Test-Ban Treaty Organization. This Vienna-based organization was established by a resolution adopted by CTBT signatories, including the United States, at a November 1996 meeting in New York. As of January 1, 1998, it had 101 employees, and it expects to grow to 190 persons by the end of the year. Its projected budget for 1998 is over \$58 million. It is working to establish a worldwide network of 321 stations to monitor possible nuclear explosions.⁶

The activities of the Preparatory Commission are likely to cost the U.S. Treasury about \$15 million in 1998. Further, the U.S. is helping to maintain existing monitoring stations and to establish new stations that will be used to implement the treaty's verification provisions. Some of these facilities are located on U.S. territory.

These activities are in fact implementation measures. As such, they represent another attempt by the Clinton Administration to implement a treaty before obtaining Senate consent. Given the questionable constitutionality of U.S. activities supporting the Preparatory Commission, congressional committees need to hold hearings on these activities and, in order to protect the prerogatives of the Senate, withhold funds for all such activities until after the CTBT has been ratified.

REASON #5: History demonstrates that the Senate is often justified in giving deliberate consideration to far-reaching arms control agreements. Determining whether a specific arms control treaty will serve the national interest requires visionary leadership. Often, such agreements

6. Preparatory Commission of the Comprehensive Nuclear-Test-Ban Treaty Organization's Web site, "Information on the Preparatory Commission," last modified on February 9, 1998.



are based on the assumption that the existing security environment will remain unchanged for some time to come. Unforeseen events, such as India's nuclear tests, can undermine this assumption and leave the United States in the position of having to honor arms control agreements that actually undermine its security in a new era.

Another recent example of this is the 1972 Anti-Ballistic Missile (ABM) Treaty, which barred the United States from deploying an effective missile defense system. This treaty was premised on the existence of the Soviet Union as an opposing superpower against which a narrow doctrine of nuclear deterrence, called mutual assured destruction (MAD), was applied. The United States continues to honor the treaty as a matter of policy despite the fact that the Soviet Union not only is no longer a superpower, but does not even exist. This situation undermines U.S. security because the government continues to adhere to a posture of being naked to missile attacks, as was required by the ABM Treaty, while facing a new kind of missile threat against which the MAD doctrine cannot be applied. MAD and the ABM Treaty assumed that the Soviet Union's (now Russia's) missile arsenal was under strict control and that the Soviet Union was the primary threat to U.S. security. The new threat includes a greater risk of accidental or unauthorized missile launches from Russia and the proliferation of missile technology to rogue states such as Iran and North Korea. These new threats should serve as a warning to the Senate that it is often best to delay consideration of arms control agreements until a clearer picture of the security situation emerges.

The best example of the Senate's wisdom in waiting to ratify an arms control agreement is found in its treatment of the Geneva Protocol of 1925. The Geneva Protocol banned the use of chemical and biological weapons in war, though not their possession. When the United States signed the protocol in 1925, World War I was deemed to be the "the war to end all

wars" and war was considered obsolete as an instrument of foreign policy.

Despite the existing sentiment, the Senate wisely deferred consideration of the Geneva Protocol. This allowed President Franklin Roosevelt to make a credible threat, in the midst of World War II, to retaliate in kind for any use of chemical weapons by Axis powers against Allied forces. Had the United States ratified the Geneva Protocol, Roosevelt could not have issued his threat, and in all likelihood the Axis powers would have used chemical arms in the course of the war. History also demonstrated that the assumptions behind the drafting of the Geneva Protocol in the 1920s no longer were pertinent in the 1940s. World War I was not the war to end all wars, and Germany and Japan certainly came to see war as a useful instrument of foreign policy.

With the benefit of hindsight, the Senate revisited the question of ratifying the Geneva Protocol in the 1970s. The Nixon Administration agreed to attach a reservation to the protocol that would allow the United States to retaliate with chemical arms against any enemy state and its allies that refused to observe the ban on the use of such arms. With this reservation in place, the Senate voted to consent to ratification of the Geneva Protocol in December 1974. Thus, the Senate's 1926 decision to delay ratification served to protect U.S. interests during World War II and allowed the protocol to be made consistent with an effective deterrence policy in the 1970s.

Every arms control agreement is different, of course, and not every one should take the Senate five decades to conclude. But it is important to remember that the CTBT would ban the U.S. indefinitely from building and modernizing its nuclear weapons. This is a grave commitment to make in a dangerous world, as India's unexpected nuclear tests demonstrate. The Senate should be forthright about requiring as much time as it needs to get thoughtful answers to tough questions on the treaty's impact on national security. The Clinton



Administration is certain to complain, but history will prove the Senate right if it proceeds patiently.

REASON #6: The Senate has more pressing business on its treaty agenda. While the CTBT is an important and far-reaching arms control treaty, the need for its consideration by the Senate is not immediate. Other items on the Senate's treaty agenda, however, do require its immediate attention. These items include a package of three treaties related to the ABM Treaty, and signed by a U.S. delegation in New York last September. Another is the Kyoto Protocol to the United Nations Framework Convention on Climate Change. Senator Helms listed these agreements at the top of the Senate Foreign Relations Committee agenda in his January 21 letter to President Clinton.

These treaties require immediate Senate consideration for essentially the same reason: The Administration is attempting to prevent the Senate from exercising its constitutional responsibility to advise and consent to all treaties by implementing their provisions without Senate review. In the case of the agreements related to the ABM Treaty, the Clinton Administration has yet to send them to the Senate for consideration despite President Clinton's clear commitment to do so. The Senate has no choice but to respond quickly to the constitutionally suspect actions of the Clinton Administration.

The ABM Treaty-related agreements seek both to revive the ABM Treaty by establishing new treaty partners to replace the Soviet Union and to broaden the scope of the treaty by extending its coverage to defensive systems for countering shorter-range missiles. During the course of the negotiations over these agreements, which lasted from 1993 until 1997, the Clinton Administration sought to deny Senate

review of all three agreements. Only loud complaints from Congress caused the Administration to relent in the case of the two agreements that broaden the scope of the ABM Treaty. In the case of the agreement to revive the ABM Treaty, the Senate had to attach a condition to another treaty in May 1997 requiring President Clinton to certify to Congress that he would send it to the Senate following signature. Given this history, the Senate has every reason to suspect that the Clinton Administration intends to bypass it with regard to these ABM Treaty-related agreements.

The Senate's reasonable suspicions should be heightened by indications that the Clinton Administration is implementing the ABM Treaty-related agreements despite the lack of Senate approval. For example, the Administration continues to treat the ABM Treaty as a legally binding agreement even though the treaty was effectively terminated under international law when the Soviet Union collapsed in 1991.⁷ Further, the ongoing meeting in Geneva of the ABM Treaty's implementing body (the Standing Consultative Commission) reportedly is being conducted as if the agreement designating new treaty partners to replace the Soviet Union were already ratified; the new states apparently are being treated as full members of the commission.⁸ Finally, it is reported that the Administration is taking steps to apply the new agreements' confidence-building measures designed to ensure compliance with limits on defenses against shorter-range missiles.⁹ These agreements are not to enter into force, however, until after the agreement designating replacement states for the Soviet Union is ratified; and the agreement establishing the confidence-building measures is not supposed to enter into force until the agreements governing defenses against shorter-range missiles enter into force.

7. William J. Clinton, letter to Representative Benjamin A. Gilman, November 21, 1997.

8. Thomas Moore, "Flouting the Constitution: Clinton's New ABM Treaty Lacks Senate Consent," Heritage Foundation *Background* No. 1174, April 23, 1998.

9. *Ibid.*



The Kyoto Protocol seeks to impose strict limits on the release by U.S. citizens and industries of greenhouse gases, which are reputed to cause global warming. Imposition of these limits could well cripple the U.S. economy. As with the agreements related to the ABM Treaty, there are indications that the Clinton Administration is planning to use executive powers to implement provisions of the Kyoto Protocol. For example, there are reports that the Environmental Protection Agency (EPA) is seeking to use its authority under the Clean Air Act to force power plants to reduce emissions in accordance with the demands of the protocol.¹⁰

When faced with presidential actions that subvert its role in the treaty-making process, the Senate has no choice but to act quickly. Otherwise, its constitutional role in the treaty-making process would be rendered meaningless. Administration actions would have the Senate advise and consent to treaty obligations not in advance of ratification, but following implementation. The constitutional process was not designed to work this way, and the Senate should step in and assert its prerogatives. The first step in stopping the Administration's unconstitutional implementation policy is for the Senate to defer consideration of the CTBT. The second step is for the Senate to get the Clinton Administration to honor its prior commitments to send the package of ABM Treaty-related agreements to the Senate and to

bar it from implementing the provisions of the Kyoto Protocol before ratification.

CONCLUSION

As important as the implications of the Comprehensive Test Ban Treaty are for America's national security, preserving the integrity of the Senate's constitutional role in the treaty-making process is more immediately important. Absent the preservation of this role, the Senate would not now have the opportunity to review the CTBT or any other treaty in any meaningful sense. Senator Helms is to be commended for his staunch defense of this process in his January 21 letter to President Clinton. All Senators should insist (1) that President Clinton immediately transmit the package of ABM Treaty-related agreements to the Senate and (2) that the Kyoto Protocol not be implemented before ratification.

Given the complexity of the issues surrounding CTBT ratification, including India's recent nuclear tests, the Senate would be well advised to move deliberately in reviewing its requirements. Indeed, India's actions have proven Senator Helms right about the need for a careful and considered review of the CTBT. Members of the Senate should follow Senator Helms's lead and not allow President Clinton to bludgeon them into considering the CTBT without a full review of the treaty's implications for U.S. security.

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10. Patrice Hill, "White House May Be Secretly Trying to Enact Kyoto," *The Washington Times*, March 10, 1998, p. A6.