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U.S. Should Reject Ratification of the Comprehensive Test Ban Treaty

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The United States Senate voted to reject ratification of the 1996 Comprehensive Test Ban Treaty (CTBT) on October 13, 1999. This determinate action by the Senate should have marked the end of consideration of the treaty by the U.S. Nevertheless, Under Secretary of State for Arms Control and International Security Ellen Tauscher recently told an audience that the Administration is preparing to engage the Senate and the public on an education campaign that is designed to lead to U.S. ratification of the CTBT.¹

The substantive problems that led to the Senate's considered judgment in 1999 remain relevant today. If anything, they have worsened in the intervening years.² But procedurally, there is no justification for reconsideration of the treaty today. The institutional integrity of the Senate is now at stake.

Substantive Problems with the CTBT Persist.

According to Tauscher, Senate consent to the ratification of the CTBT may be justified on the basis that "times have changed." In reality, the substantive problems with the CTBT that led to its rejection in 1999 are still present. In fact, the problems regarding the maintenance of a safe, reliable, and militarily effective nuclear arsenal have grown worse over the intervening years:

- ***The CTBT does not define what it purports to ban.*** The text of the treaty remains identical to that which the Senate rejected in 1999. Its central provision, as well as its object and purpose, is to ban explosive nuclear testing. The treaty does not, however, define the term.³ The U.S. inter-

pretation is that it means a "zero-yield" ban, but other states may not share that interpretation.

- ***The U.S. nuclear weapons complex has grown weaker during the intervening years.*** After considerable pressure from a number of Senators, chief among them Jon Kyl (R-AZ), about the alarming decline in the U.S.'s nuclear weapons, the Obama Administration committed to invest more money in the complex in order to pressure the Senate into granting consent to the badly flawed New START arms control treaty with Russia. But this investment program is only just getting started, and its success is far from guaranteed.
- ***A zero-yield ban on nuclear explosive tests remains unverifiable.*** If the U.S. interpretation of the CTBT as a zero-yield ban is accurate, it was impossible to verify the ban in 1999, and it remains so today. The International Monitoring System (IMS) being put in place to detect violations depends largely on seismic evidence. The fact is that extremely low-yield tests are not likely to be detected by the IMS. Even Tauscher acknowledged that it is possible that a "country might conduct a test so low [in yield] that it

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would not be detected.” At the same time, she dismissed this possibility as “far-fetched.” In reality, it is not at all far-fetched.

- ***The Obama Administration has imposed self-defeating output limits on the nuclear weapons modernization program.*** While the Obama Administration has pledged to increase the investment level in the nuclear weapons complex and stockpile stewardship programs, it is also imposing limits on what the complex and program may do. Specifically, the April 2010 Nuclear Posture Review Report states: “The United States will not develop new nuclear warheads. . . . Life Extension Programs will use only nuclear components based on previously tested designs, and will not support new military missions or provide for new military capabilities.”⁴
- ***Nuclear proliferation trends are pointing in the wrong direction.*** The Obama Administration sees its nuclear disarmament agenda, of which CTBT ratification is a part, as necessary to giving the U.S. the moral standing to combat nuclear proliferation. The fact that countries such as Iran, North Korea, and Pakistan are continuing to pursue or expand their nuclear weapons capabilities suggests that the Obama Administration’s moral suasion argument is ineffective and that Iran and North Korea view the U.S. commitment to nuclear disarmament as a sign of weakness to be exploited.

Undermining the Senate’s Institutional Integrity. Tauscher charged that the debate in the Senate in 1999 was too politicized and too short. Contrary to her assertion, the Senate’s opponents of CTBT ratification did not fail to exercise due diligence in their review of CTBT at that time. They reviewed

the treaty carefully and made considered arguments against ratification. Their arguments proved convincing to the Senate as a whole, and they prevailed overwhelmingly in the subsequent vote.

Regarding the time for consideration, it was CTBT proponents in the Senate that insisted on its immediate consideration in 1999. They effectively charged Senator Jesse Helms (R–NC), a leading opponent of ratification, with engaging in obstructionism over the matter. Further, the debate and vote on the CTBT in the Senate was conducted under a painstakingly worked out *unanimous* consent agreement. This is a far cry from the recent procedure for the consideration of New START, where proponents, having failed to achieve a unanimous consent agreement, simply rammed the treaty through by invoking cloture. Clearly, the proponents of the CTBT now view the Senate’s 1999 vote to reject CTBT as procedurally illegitimate only because they lost.

The Senate should not take such an attack on its integrity lightly. Members of the Senate, therefore, would be justified in sending a letter to President Obama making the following two requests:

1. ***That President Obama ask the Senate to return the CTBT to the executive branch.*** On the basis that the 1999 Senate vote to reject ratification of the CTBT was the Senate’s considered and institutional judgment on the matter, President Obama should ask the Senate to terminate any further domestic consideration of the treaty’s ratification by returning it to the executive branch. If President Obama fails to respond, the Senate may wish to consider returning the treaty to the executive branch on its own volition.
2. ***That President Obama announce that the U.S. has no intention of ratifying the CTBT.*** Senators

1. Ellen Tauscher, Under Secretary of State for Arms Control and International Security, “The Case for the Comprehensive Test Ban Treaty,” remarks at the annual meeting of the Arms Control Association, May 10, 2011, at <http://www.state.gov/t/us/162963.htm> (May 16, 2011).
2. Baker Spring, “Ratifying the Comprehensive Test Ban Treaty: A Bad Idea in 1999, Worse Idea Today,” Heritage Foundation WebMemo No. 1533, June 29, 2007, at <http://www.heritage.org/Research/Reports/2007/06/Ratifying-the-Comprehensive-Test-Ban-Treaty-A-Bad-Idea-in-1999-a-Worse-Idea-Today> (May 16, 2011).
3. Federation of American Scientists, “Article-by-Article Analysis of the Comprehensive Test Ban Treaty, Article I: Basic Obligations,” at <http://www.fas.org/nuke/control/ctbt/text/artbyart/index.html> (May 18, 2011).
4. U.S. Department of Defense, “Nuclear Posture Review Report,” April 2010, p. 39, at <http://www.defense.gov/npr/docs/2010%20nuclear%20posture%20review%20report.pdf> (May 17, 2011).

may also ask President Obama to act in a manner consistent with Article 18 of the Vienna Convention on the Law of Treaties and announce that the U.S. has no intention of ratifying the CTBT. Not only would this relieve the U.S. of the obligation not to take actions contrary to the object and purpose of the treaty, but it would resolve the entire matter of CTBT entry into force. This is because Article XIV of the treaty requires that the U.S., among other states, become a party before it may enter into force. Senators, by making this request, would help bring the entire matter of the CTBT's entry into force to an appropriate conclusion.

Stand Up. The Senate's action to reject ratification in 1999 should be recognized and honored by its current members. Nothing has changed in the past 12 years to make the treaty any more palatable. Moreover, the integrity of the Senate as an institution is now being attacked. The Senate should not take this attack lying down.

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