

United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

August 12, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue
Washington D.C. 20500

Dear Mr. President:

I write to express my strong opposition to efforts by your administration to circumvent the U.S. Congress and the Senate's constitutional role by promoting ratification of the Comprehensive Test Ban Treaty (CTBT) at the United Nations. The Senate could not have been more straightforward in its opposition to U.S. ratification of the CTBT with 51 members of the Senate voting against ratification in 1999. The U.S. Constitution clearly provides the Senate - not the United Nations - the right to the provision of advice and consent for the ratification of any treaty, including the ability to identify when a treaty or the application of the provisions contained in a treaty is not in the U.S. interest.

Your administration seeks to ignore the judgment made by a co-equal branch of government regarding the treaty. Following the defeat of the CTBT, the Executive Branch came into line with the Senate's view through a 2007 Statement of Administration Policy that "[i]t would be imprudent to tie the hands of a future administration that may have to conduct a test" and Secretary Condoleezza Rice stated that "the Administration does not support the Comprehensive Test Ban Treaty and does not intend to seek Senate advice and consent to its ratification." The planned U.N. effort would reverse course on that shared understanding between the Senate and Executive Branch.

A recent State Department letter explains that the administration will support ratification of the CTBT through a resolution in the U.N. Security Council and a "political statement expressing the view that a nuclear test would defeat the object and purpose of the CTBT" that will be referenced in the U.N. resolution. A political statement invoking the "object and purpose" language could trigger a limitation on the ability of future administrations to conduct nuclear weapons tests. "Object and purpose" obligations for countries that have signed and not ratified a treaty are specifically articulated in Article 18 of the Vienna Convention on the Law of Treaties, which the United States also has not ratified; but they have been recognized by successive U.S. administrations as customary international law that present a binding restriction on the United States.

By signing onto language declaring avoidance of nuclear weapons testing to be essential to the “object and purpose” of the CTBT, the State Department is in effect submitting the United States to the restrictions of a treaty that has not entered into force. Regardless of one’s view about the necessity of nuclear testing, seeking to limit a future administration through a customary international law mechanism, when your administration has only four months left in office, is inappropriate. The appropriate mechanism would be to have sought and fought for ratification of the treaty. Should your administration have a different view about the planned actions’ effect on customary international law, I would appreciate knowing that.

Support for the constitutional division of powers and the U.S. ability to make decisions about our own best interests in carrying out foreign policy demands a rethinking of any effort to pass a resolution and issue political statements in the United Nations that could impose international legal restrictions on the U.S. nuclear deterrent capability without first obtaining the advice and consent of the Senate.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Corker", with a long horizontal flourish extending to the right.

Bob Corker
Chairman
Committee on Foreign Relations

cc:

The Honorable John Kerry, Secretary, U.S. Department of State

The Honorable Samantha Power, U.S. Permanent Representative to the United Nations