

# United States Senate

WASHINGTON, DC 20510

March 8, 2019

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. President,

We write to you today to express several concerns we have regarding the Comprehensive Nuclear-Test-Ban Treaty (CTBT).

As you know, the CTBT is a deeply flawed treaty that purports to ban all nuclear weapons tests. Therefore, we were pleased that your Administration's recent Nuclear Posture Review affirmed that the Administration will not seek Senate approval of the CTBT.

However, efforts persist both within the United States and internationally to bring the treaty into force despite its many flaws, and notwithstanding the Senate's resounding rejection of it in 1999. We are concerned that these efforts rest on false premises about what was agreed among the parties that negotiated the CTBT, which in turn has given rise to wishful thinking about Russian and Chinese compliance with the treaty. We also are concerned that confusion intentionally has been created about whether the United States remains a signatory to the treaty, and therefore has an ongoing obligation under international law not to defeat the treaty's object and purpose.

To elucidate our concerns, and hopefully prompt consideration of appropriate policy responses, we are posing to you the following questions about the CTBT:

## Failure to Define Activities Prohibited by the CTBT

1. The 2009 report of the bipartisan Perry-Schlesinger Commission on America's Strategic Posture contained the startling assertion that:

“...the treaty remarkably does not define a nuclear test. In practice this allows different interpretations of its prohibitions and asymmetrical restrictions. The strict U.S. interpretation precludes tests that produce nuclear yield. However, other countries with different interpretations could conduct tests with hundreds of tons of nuclear yield—allowing them to develop or advance nuclear capabilities with low-yield, enhanced radiation, and electro-magnetic-pulse.”

Is it correct that the CTBT does not define what constitutes a nuclear test, and therefore other nuclear weapon states are permitted by the treaty to adopt interpretations that allow them to conduct tests with hundreds of tons of nuclear yield?

2. On October 7, 1999, Ambassador Stephen Ledogar, the Chief U.S. CTBT negotiator, stated:

"I have heard some critics of the Treaty seek to cast doubt on whether Russia...committed itself...to a truly comprehensive prohibition of any nuclear explosion, including an explosion...of even the slightest nuclear yield. In other words, did Russia agree that hydronuclear experiments, which do produce a nuclear yield, although usually very, very slight, would be banned, and that hydrodynamic explosions, which have no yield because they do not reach criticality, would not be banned? The answer is a categorical 'yes.' The Russians as well as the rest of the P-5 did commit themselves."

Based on all information available to the Administration, does Ambassador Ledogar's statement accurately characterize commitments made by Russia and other members of the P-5 in connection with the CTBT?

3. On April 20, 1996, Russian President Boris Yeltsin stated:

"We are prepared to sign today a ban on nuclear weapons tests in any environment starting with this year, and on tests of any magnitude."

Based on all information available to the Administration, does President Yeltsin's statement accurately characterize commitments made by Russia in connection with the CTBT?

4. One of the unanimous bipartisan recommendations of the Perry-Schlesinger Commission was that:

"To prepare the way for Senate re-review of the CTBT, the administration should...secure P-5 agreement on a clear and precise definition of banned and permitted test activity."

Has an effort been made by the U.S. government, prior to or following the release of the 2009 Perry-Schlesinger Commission report, to obtain P-5 agreement consistent with the recommendations in the Commission report? If so, what were the results of that effort? If not, can you explain why no such effort was made, even by Administrations that were committed to bringing the CTBT into force, and even after the Commission, acting unanimously, effectively established this as a prerequisite to future Senate consideration of the CTBT?

5. Will you provide to the relevant committees of Congress, and also declassify, any memoranda, codicils, letters or other correspondence, directives, transcripts, meeting minutes, reporting cables, portions of the negotiating record, side-agreements, and any other documents that shed light on what understanding was reached, or was sought to be reached, with respect to the definition of testing activity to be prohibited under the CTBT?

### Inconsistent State Practice

6. After explaining how parties to the CTBT are free to adopt interpretations of the treaty allowing them to conduct tests with hundreds of tons of nuclear yield, the Perry-Schlesinger Commission report contains the assertion that “apparently Russia and possibly China are conducting low yield tests.” Based on all information available to the Administration, is it correct that Russia, and possibly also China, are conducting nuclear yield-producing tests?
7. Since the United States adopted a moratorium on nuclear testing in 1992, has the United States conducted any nuclear yield-producing tests?
8. It is anomalous, to say the least, that Russia and China—which both profess to want to bring the CTBT into force as state parties—are conducting nuclear yield-producing tests. However, the United States—which has re-established under your Administration that it does not intend to ratify or seek to bring into force the CTBT—is refraining from conducting such tests in deference to a unilateral testing moratorium. If this is the case, what steps is your Administration taking to rectify this anomaly?

### Purported Obligation of the United States Not to Defeat the Object and Purpose of the CTBT

9. Following the Senate’s rejection of the CTBT in 1999, and in defiance of common sense as well as the prerogatives of the United States Senate, Secretary of State Madeleine Albright asserted to other signatories of the CTBT that the United States remained a signatory of the CTBT, still aimed to bring the treaty into force, and therefore had a continuing obligation under international law not to defeat the object and purpose of the treaty, irrespective of the Senate’s action. Secretary of State Condoleezza Rice repudiated this view in a letter to Senator Jon Kyl in 2008, stating that due to steps taken by the Bush Administration to make clear that the United States did not intend to become party to the treaty:

“The United States has no international legal obligations resulting from the 1996 signature of the CTBT, and *we do not believe that such obligations would arise unless the treaty was to be ratified by the United States.*” (emphasis added)

Notwithstanding Secretary Rice’s statements, Secretary of State John Kerry asserted to Senate Foreign Relations Committee Chairman Bob Corker in 2016 that:

“Although the policy of the last Administration was not to pursue U.S. ratification of the CTBT, that has not been the current Administration’s policy...As a matter of international law, treaty signatories are obliged to refrain from acts which would defeat the object and purpose of a treaty, unless they make their intention clear not to become a party to the treaty. *A future Administration could make clear that the United States no longer intends to become a party to the treaty, in*

*which case the United States would no longer have such obligations.” (emphasis added)*

Do you believe that Secretary Kerry’s statements to Chairman Corker indicating that, in 2016, the United States was obliged under international law not to defeat the object and purpose of the CTBT were incorrect as a matter of law?

10. The implication of these statements is that the United States’ obligation to the CTBT, under international law, depends on the state of mind of the current President. In other words, if the current President favors ratification of the CTBT, the United States is obliged not to defeat the object and purpose of the treaty, but if he does not, the United States has no such obligation. The Trump Administration has made its opposition to the CTBT clear. Do you believe that if a future President takes a different view of the Treaty, that will have the effect of re-imposing on the United States an obligation under international law not to defeat the object and purpose of the treaty?
11. Is there no action that the United States Senate can take, and no action that your Administration can take, to preclude a future Administration from re-imposing legal obligations on the United States under the CTBT? If there is some action that either the Senate or your Administration can take to preclude a future Administration from re-imposing legal obligations on the United States under the CTBT, please describe what action or actions would have that effect.
12. At a hearing of the Senate Foreign Relations Committee regarding the CTBT on September 7, 2016, several members of the Committee attached great importance to the fact that the Bush Administration formally “unsigned” the Rome Statute of the International Criminal Court by notifying the treaty depositary that the United States did not intend to become party to the treaty, but had taken no similar step with the depositary of the CTBT. These members suggested that as a consequence of “unsigned” the Rome Statute the United States had no continuing obligations under that treaty, but the failure of the United States to “unsign” the CTBT meant that the United States had continuing legal obligations under the CTBT. Were these members correct in suggesting that there was then, is today, or could be in the future, a difference in the obligations of the United States under the Rome Statute as compared with the CTBT because of the “unsigned” of the former and the failure to “unsign” the later?
13. Even if your answer to question 12 is no, would you consider putting an end to misunderstandings that have arisen within the Senate regarding the legal obligations of the United States under the CTBT by “unsigned” the CTBT in the same manner that the Bush Administration “unsigned” the Rome Statute?
14. Would you support an effort to remove the CTBT from the Senate calendar and return it to the Administration?

We appreciate your attention to our questions, and look forward to working with your Administration to address the concerns we have identified.

Sincerely,

A handwritten signature in blue ink that reads "Tom Cotton". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

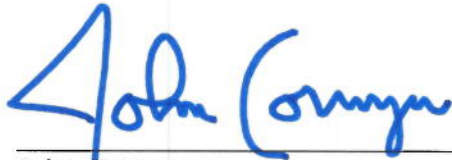
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Tom Cotton  
United States Senator

A handwritten signature in blue ink that reads "Marco Rubio". The signature is stylized and cursive, with the first name and last name clearly distinguishable.

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Marco Rubio  
United States Senator

A handwritten signature in blue ink that reads "John Cornyn". The signature is cursive, with the first name and last name clearly distinguishable.

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John Cornyn  
United States Senator

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James Lankford  
United States Senator