

# United States Senate

WASHINGTON, DC 20510

September 8, 2016

The Honorable Barack Obama  
President  
The White House  
1600 Pennsylvania Ave NW  
Washington, DC 20500

Dear President Obama:

As you know, one of the fundamental underpinnings of Congress' role in national security is Article II, section 2 of the Constitution, which limits the President's power to make treaties subject to the advice and consent of the Senate. It is thus disturbing that your administration appears to be trying to circumvent the Senate's constitutional treaty role, this time by seeking to use the United Nations Security Council to endorse the Comprehensive Nuclear Test Ban Treaty (CTBT), which the Senate rejected in 1999.

The Senate has shown no interest in ratifying the CTBT since its rejection in 1999 and it does not appear that there is currently support for its ratification. Despite promising for eight years to "educate" Senators on the importance of the treaty, we instead are seeing a last minute effort to use the Security Council to attempt to bypass the Constitution as your Administration did with the Joint Comprehensive Plan of Action with Iran.

If you decide to pursue a Security Council Resolution that accepts the imposition of international obligations that the Senate has explicitly rejected, we would make every effort to prevent the authorization or appropriation of the approximately \$32 million per year, or 25% of the Comprehensive Nuclear Test Ban Treaty Organization (CTBTO) Preparatory Commission budget, that Congress has been willing to provide during your Administration notwithstanding the Senate's decision to reject the CTBT. The United States has no need for the CTBT international monitoring system given our own national capabilities.

Seeking a U.N. Security Council Resolution to limit or prohibit nuclear weapons testing would be an unconstitutional assertion of Executive authority and an abuse of the separation of powers. As we consider whether to pursue such a step to protect the Senate's role as entrusted to it by the Constitution, we seek your responses to the following questions:

1. Please, either personally, or through the Secretary of State, provide a clear written statement of what obligation under international law, if any, the United States has today to forego nuclear weapons testing under the CTBT, especially as the Senate has already decisively rejected that treaty in 1999, and then-Secretary of State Condoleezza Rice assured the Senate in writing in 2008 that, as a consequence of the 1999 vote, the United States did not "have obligations under international law as a signatory to the treaty." This statement should address:

- a. How the obligation under international law of the United States to forego nuclear weapons testing under the CTBT will change following the United Nations Security Council action on that issue sought by your Administration;
  - b. Whether Secretary Rice's 2008 letter was legally or factually in error, if so why, and if not, how the representations set forth in that letter can be reconciled with the Security Council action sought by your Administration;
  - c. If the obligation of the United States under international law to forego nuclear weapons testing under the CTBT depends entirely on the intentions of the current occupant of the White House, what procedural steps a future President opposed to US ratification of the CTBT would have to take to exempt the United States from the Security Council resolution being sought by your Administration;
  - d. Whether in the view of the Obama Administration, the principles set forth in Article 18 of the Vienna Convention on the Law of Treaties represent customary international law and therefore are binding on the United States, notwithstanding the provisions of Article II, section 2, clause 2 of the United States Constitution, and the failure of the Senate to provide advice and consent to ratification of the Vienna Convention.
  - e. Does the Senate's consistent objection to Article 18 amount to "persistent objection" under international law that would exempt the United States from whatever customary international legal obligation is embodied in that article?
2. Please describe whether either the proposed P5 statement or UN Security Council resolution will create any mechanism for the Security Council to review any nuclear weapons activity the United States may at some point feel it necessary to conduct to ensure the safety, security or reliability of its nuclear deterrent.
  3. Please provide a clear statement by the Secretary of State describing the nuclear weapons test activity that is prohibited by the CTBT and an assurance that it is the common understanding of both the P5 and all signatories to that treaty. Will this be the definition used in the P5 statement or UNSCR?
  4. Please detail and provide copies of any side agreements concerning what is permissible under the CTBT that were reached during the negotiation of the treaty by the P5. How will any side agreements impact the P5 statement or UNSCR?
  5. Please detail, based on the assessments of the United States Government, whether any signatory to the treaty has conducted any nuclear yield producing test since it was opened for signature in 1996.
  6. Please detail, based on the assessments of the United States Government, whether any signatory to the treaty has conducted any nuclear yield producing test during your Administration.

7. Please detail whether any of these activities would be considered consistent with the P5 statement or UNSCR your Administration intends to pursue. If not, would it be your intention to promptly ask the UNSC to investigate or condemn such activity?

While the Executive has a leading role in the conduct of foreign affairs, the proposed ban on underground nuclear testing, if it is to have the lasting impact your administration desires, must be accomplished constitutionally, if at all, through the ratification of a treaty by the U.S. Senate. Moreover, the Congress possesses the plenary power over the expenditure of federal funds. We urge you to respect your constitutional obligations and warn that if you do not, your efforts at the United Nations on this issue are likely to set back any supposed progress on achieving a testing ban, rather than advancing it.

We look forward to your responses in a timely manner to this request.

Sincerely,



Marco Rubio  
U.S. Senator



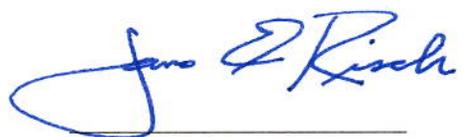
Tom Cotton  
U.S. Senator



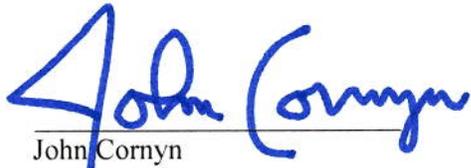
Lindsey Graham  
U.S. Senator



John McCain  
U.S. Senator



James Risch  
U.S. Senator



John Cornyn  
U.S. Senator



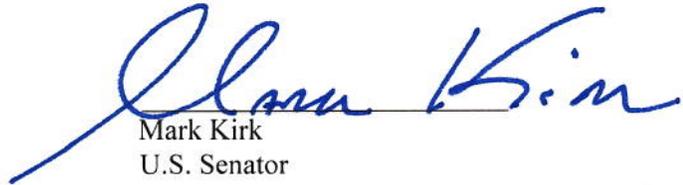
David Vitter  
U.S. Senator



Thom Tillis  
U.S. Senator



Ben Sasse  
U.S. Senator



Mark Kirk  
U.S. Senator



Mike Enzi  
U.S. Senator



Roger Wicker  
U.S. Senator



Bill Cassidy  
U.S. Senator

John Barrasso, M.D.  
U.S. Senator



Ted Cruz  
U.S. Senator



Susan Collins  
U.S. Senator



Jeff Sessions  
U.S. Senator



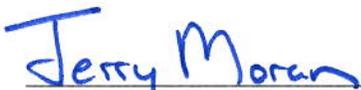
Johnny Isakson  
U.S. Senator



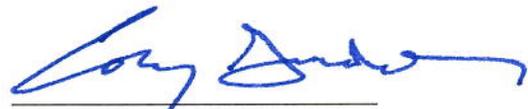
Jim Inhofe  
U.S. Senator



Orrin Hatch  
U.S. Senator



Jerry Moran  
U.S. Senator



Cory Gardner  
U.S. Senator



John Boozman  
U.S. Senator



Pat Roberts  
U.S. Senator



David Perdue  
U.S. Senator



Deb Fischer  
U.S. Senator



Tim Scott  
U.S. Senator



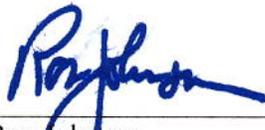
Roy Blunt  
U.S. Senator



James Lankford  
U.S. Senator



M. Michael Rounds  
U.S. Senator



Ron Johnson  
U.S. Senator



Dan Sullivan  
U.S. Senator



Dan Coats  
U.S. Senator