

Letter emailed to Benjamin J. Rhodes 9-7-16

From: Graham, Thomas

Sent: Wednesday, September 07, 2016 5:51 PM

To: 'Benjamin_J_Rhodes@who.eop.gov' <Benjamin_J_Rhodes@who.eop.gov>

Cc: 'Jon_B_Wolfsthal@nsc.eop.gov' <Jon_B_Wolfsthal@nsc.eop.gov>; 'Avril_D_Haines@nsc.eop.gov' <Avril_D_Haines@nsc.eop.gov>

Subject: FW: letter

Dear Mr. Rhodes

I am writing again one more time in the waning months of the Obama presidential administration. The concern that has prompted me to do so is that realistically speaking this could be the last time in the foreseeable future when a legal prohibition on nuclear weapon testing can be achieved- to preserve the test ban treaty until it can one day be ratified and protect the long-term viability of the NPT, the indispensable security treaty. In my view, at least, if a resolution to accomplish this were to be brought before the UN Security Council with US support this fall it would most certainly be adopted. The next US president, I fear, may have too much confronting her of great immediacy and importance to permit her from even considering this issue perhaps for years. And the international support for the voluntary nuclear weapon test moratorium may not last forever. Thus failure to achieve a legal prohibition on nuclear weapon testing at this time could be to miss an important opportunity to enhance the security of the United States and the world community.

Please forward the attached letter at your convenience to the Office of the President.

Best regards, Tom Graham

Dear Mr. President:

I write to suggest another significant step that you could consider as you are winding down your outstanding White House tenure for which the American people will be forever grateful. You could support, or at least permit, a United Nations Security Council resolution that would “determine” that any further nuclear weapon testing by any country, anywhere, at any time, would constitute a "threat to international peace and security" and “decide” that no such testing shall be done. This would insure the lasting status of the nuclear weapon test moratorium until the entry into force of the Comprehensive Test Ban Treaty (the CTBT) can be achieved. The Council has done similar things before, for example, UN Security Council Resolution 1540 adopted with the encouragement of the Bush administration in 2004. It establishes legally binding obligations on all UN member states under Chapter Seven of the UN Charter to have and to enforce appropriate and effective measures against the proliferation of nuclear, chemical and biological weapons and their delivery systems, including by establishing controls.

On September 24, 1996 President Clinton was the first national government representative to sign the CTBT, at the United Nations. Earlier he had described the CTBT as the “longest sought, hardest fought” international arms limitation agreement.

When the Nuclear Non-Proliferation Treaty (NPT) was negotiated in the late 1960s, it was based on a strategic bargain, the most important part of which was a commitment from the NPT nuclear weapon states to at least stop testing their nuclear weapons in exchange for the rest of the world giving up those weapons and in 1995 with the permanent extension of the NPT giving up nuclear weapons forever, with the CTBT once again being the prime motivator. The CTBT is the only other nuclear arms limitation agreement mentioned in the NPT—preambular clause 10—as it was seen as the essential political cover for the NPT non-nuclear weapon states giving up the bomb. Yet 45 years after entry into force of the NPT, the CTBT has not passed that threshold and become legally effective.

With the Indo-Pakistani nuclear tests of 1998, the failure of the CTBT in the Senate in 1999 and the catastrophic NPT Review Conference of 2005, the NPT has become more and more fragile. The resumption of nuclear weapon reductions in the New Start Treaty which you achieved in 2010 was a bright spot, but further reductions appear to be off the table for the foreseeable future because of the current US-Russia relationship. And there appears to be no possibility of the U.S. Senate consenting to United States ratification of the CTBT which is required for its entry into force, as far into the future as anyone can see. As it has been put by a former senior U.S. government official, the Senate will consent to U.S. ratification of the CTBT “when the next moderate Republican President decides that he wants to do it.” That is not a hopeful formulation. The U.S. adopted the nuclear weapon test Moratorium in 1993 and gradually it has been recognized and emulated by virtually all of the world's governments—save only North Korea. But it lacks legal force, it is only an informal policy, and we have been relying on it for 23 years to substitute for the “essential glue” to establish the long-term viability of the NPT—the CTBT.

But there is a way to strengthen the Moratorium and make it legally binding to hold the line on nuclear weapons tests. The Security Council of the United Nations, acting under its Chapter Seven authority as stated above, could, by means of a Security Council resolution, “determine” that any further nuclear weapon testing by any country, anywhere, at any time, would constitute a "threat to international peace and security" and “decide” that no such testing shall be done. This resolution, pursuant to the United Nations Charter, would be legally binding on all states, regardless of whether they had signed, ratified or otherwise the CTBT and regardless of their status as NPT nuclear weapon state parties, NPT non-nuclear weapon state parties or non-parties of the NPT. The Security Council has the power to do this pursuant to its authority under Chapter Seven

of the United Nations Charter, approved by the United States Senate and ratified by the US President many years ago, along with all other governments around the world. Thus any nuclear weapon test by any United Nations member state would be contrary to international law and, by this act of the Security Council, an important part (but of course not all) of the “essential glue” to hold the NPT together—one of our highest national objectives—would be provided.

The Limited Test Ban Treaty of 1963, which prohibited nuclear weapon tests in the atmosphere, underwater, and in outer space, has always been regarded as President John F. Kennedy's most significant legacy. Given your strong emphasis on controlling nuclear weapons, and in particular the importance of ratifying the CTBT, it would be a most significant legacy to leave behind—of having successfully converted the nuclear weapon test Moratorium into a legally binding international obligation.

The 2015 NPT Review Conference may not be an outlier. Rather, it may be a harbinger that more countries rather than less may want nuclear weapons in the future. Climate change and the reduction of available arable land from sea rise and expanding desertification may cause that to happen. We cannot assume the Moratorium will last forever without legal force—for example China wanting MIRVs may decide to test and that would be the end of the Moratorium, the CTBT and maybe even the NPT.

If the Security Council option is to be viable, this fall is of course the last opportunity on your watch. Of the current 15 members of the Security Council, nine of the ten non-permanent members and three of the P-5 have already ratified the CTBT. Thus, for 12 of the 15 members such a resolution would be consistent with established national policy. Egypt, the 13th member and the one non-permanent member that has not ratified is waiting for Israel. Such a resolution would obligate Israel and as a result Egypt is likely to support it. And the 14th member, China, has a long-standing concern about being isolated and quite possibly would not consider such a resolution supported by 12 of the 15 members contrary to its national policy.

A Security Council Resolution is not a new idea. It has been around for a while. In June 2014, I published the linked article in WMD Junction, an online journal associated with the Monterey Institute and the James Martin Center for Non-Proliferation Studies http://wmdjunction.com/140603_prohibiting_nuclear_testing.htm. See also the article by Professor David Koplow in the Georgetown Journal of International Law in 2015. <https://www.law.georgetown.edu/academics/law-journals/gjil/recent/upload/zsx00215000475.PDF>.

I would hope that the U.S. government might advocate the adoption of such a resolution at the Security Council at the end of the year in November or December. It could be a great step forward for peace and security. If, on the other hand, it should be introduced by another Security Council member, I would hope that the U.S. government could at least be neutral toward it. If it were to be introduced by any Security Council member, as long as the U.S. does not express opposition, it will almost certainly pass.

If you or anyone on your staff would like to discuss this idea further, I and others would always be available.

Best regards,

Ambassador (ret.) Thomas Graham Jr.