

## Graham, Thomas

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**From:** Graham, Thomas  
**Sent:** Friday, July 10, 2015 10:33 AM  
**To:** Jon\_B\_Wolfsthal@nsc.eop.gov  
**Cc:** Graham, Thomas  
**Subject:** UNSC Resolution/Test Ban  
**Attachments:** Draft Security Council Resolution.docx; ATT00001.htm

Dear Jon:

I write (with due humility recognizing the tense and potentially decisive current stage in relations with Iran) to discuss another significant step that President Obama, in furtherance of his legacy, could support, or at least permit—a UN Security Council resolution that would “determine” that any further nuclear weapon testing by any country, anywhere, at any time, would constitute a “threat to the peace” and “decide” that no such testing shall be done.

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

When the NPT was negotiated in the 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 giving them up 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.

Ever since the Indo-Pak 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 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 US 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 US government official, the Senate will consent to US ratification of the CTBT “when the next moderate Republican President decides that he wants to do it.” That is not a hopeful formulation. The US adopted a

nuclear weapon test Moratorium in 1993 and gradually it has been embraced by virtually all of the world's governments. But it lacks legal force, it is only an informal policy, and we have been relying on it for 22 years to substitute for the "essential glue" 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 VII authority, 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 the peace" 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 nuclear weapon state parties, non-nuclear weapon state parties or non-parties of the NPT. Thus any nuclear weapon test by any 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 President Obama's strong emphasis on controlling nuclear weapons, and in particular the importance of ratifying the CTBT, it would be unfortunate if our current President left office without a similarly significant legacy of having successfully converted the nuclear weapon test Moratorium into a legally binding international obligation. And it is important for all of us to do all that we can at the present time to constrain nuclear weapons.

This year's NPT Review Conference may not be an outlier. Rather, it may be a harbinger that more countries rather than less may want nuclear weapons. And we can't assume the Moratorium will last forever without legal force—a 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 President is to consider the Security Council option, this fall likely will be the last opportunity. In 2016 he will be a lame duck and probably would not want to pursue such an objective without the explicit consent of the incoming President—which he probably would not get from a Republican or a Democrat—and he would have to be pursuing it in the middle of the presidential election.

Of the current 15 members of the Security Council, all ten of the non-permanent members and three of the P-5 have already ratified the CTBT. Thus, for 13 of the 15 members such a resolution would be consistent with established national policy. And the 14th member, China, has a long-standing concern about being isolated and quite possibly would not consider such a resolution supported by 13 of the 15 members contrary to its national policy.

A Security Council Resolution is not a new idea. I raised it in a speech on the margins of the United Nations in October of 2013. 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](http://wmdjunction.com/140603_prohibiting_nuclear_testing.htm). Since that time, I and others have discussed this idea with various interested parties, including UN Perm Reps and ambassadors accredited to Washington. If it should be raised or introduced by a Security Council member, I would hope that the US government could at least be neutral toward it. To oppose it either privately or formally would inevitably leak and possibly serve to make a mockery of an outstanding President's commitment to nuclear arms limitation.

I have attached a draft resolution that a few people have seen but which has no standing except as an explanatory document. I also refer you to David Koplow's excellent law review article on this and related subjects in the recent issue of the Georgetown Journal of International Law. <https://www.law.georgetown.edu/academics/law-journals/gjil/recent/upload/zsx00215000475.PDF>

If you or anyone would like to discuss this idea further, I would always be available, along with others.

Best regards,  
Tom