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Comments

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A war today or tomorrow, if it led to nuclear war, would not be like any war in history. A full-scale nuclear exchange, lasting less than 60 minutes, with the weapons now in existence, could wipe out more than 300 million Americans, Europeans, and Russians, as well as untold numbers elsewhere. And the survivors . . . the survivors would envy the dead. For they would inherit a world so devastated by explosions and poison and fire that today we cannot even conceive of its horrors. So let us try to turn the world away from war. Let us make the most of this opportunity, and every opportunity, to reduce tension, to slow down the perilous nuclear arms race, and to check the world's slide toward final annihilation.

President John F. Kennedy¹

1. President John F. Kennedy's Radio and Television Address to the American People, 1963 PUB. PAPERS 601 (July 26, 1963).

I. Introduction

On October 13, 1999,² the U.S. Senate voted not to ratify the Comprehensive Nuclear Test Ban Treaty.³ As a result of this vote, many debates have arisen as to whether the vote put the U.S. in a weaker position throughout the world regarding national security and moral leadership.⁴ Concerns have arisen from foreign leaders and ambassadors, as well as from the American people and their leaders. These concerns regard the aftermath of the vote on world security and partisan politics, foreign affairs and national security issues.⁵

A major world issue is whether the treaty, which has been in the works for over five years, will wither away and die as a result of the Senate's decision.⁶ Over the past forty years the U.S., as a superpower, has had enormous influence over nuclear disarmament and nonproliferation throughout the world.⁷ Since the days of Presidents Dwight D. Eisenhower in 1959 and John F. Kennedy in the 1960's, the road to a nuclear test ban treaty has been paved.⁸

However, national security concerns have increased in the U.S. and other countries, such as Russia, China, India, and Pakistan, with the recent increase in nuclear weapon development throughout the world.⁹ The increase of these developments makes the world a much more dangerous place, especially recently in times of Asian friction and more specifically concerning a territory conflict between India and Pakistan.¹⁰

2. 145 CONG. REC. S12504-01 (daily ed. Oct. 13, 1999) (Senate Vote on Ratification of the Comprehensive Nuclear Test Ban Treaty).

3. Comprehensive Nuclear Test Ban Treaty, *opened for signature* Sept. 24, 1997, S. Treaty Doc. No. 105.28 [hereinafter Comprehensive Test Ban Treaty or CTBT].

4. Jack Kelley, *U.S. Rebuked on Test Ban Vote Nations Cite 'Dangerous' Message*, USA TODAY, Oct. 15, 1999, at 01A.

5. *Id.*

6. Barbara Crossette, *World Leaders Criticize the U.S. for Defeat of Test Ban Treaty*, SUN SENTINEL, Oct. 15, 1999, at 12A.

7. *World: South Asia 'Constructive' US-Pakistani Talk*, BBC NEWS ONLINE NETWORK, at http://news.bbc.co.uk/hi/english/world/south_asia/newsid_158000/158344.stm (last modified Aug. 25, 1998).

8. 145 CONG. REC. S12278 (daily ed. Oct. 8, 1999) (Senate debate on the CTBT).

9. Videotape: THE CTBT - A DAMAGE ASSESSMENT OF SENATE ACTION (Arms Control Association 1999) (on file with The Brookings Inst.).

10. Michael Fathers, with reporting by Meenaski Ganguly and Maseeh Rahman, Ghulan Hasnain and Yusuf Jameel, *On the Brink; Spring Has Only Just Arrived, but After Pakistani Incursions, Indian Bombings and Downed Aircraft*,

It is the conflict between India and Pakistan that draws many concerns. Tensions and periodic fighting have existed between these bordering neighbors since their independence from Great Britain in 1947.¹¹ The tension became a significant world issue a two and a half years ago when first India and then Pakistan began underground testing of nuclear weapons in May of 1998.¹² Until that point, there was no known public threat that either country would become a nuclear power.¹³ The recent strains between the two countries have evolved over a decade-long border conflict concerning the Kashmir territory.¹⁴ It is feared that the newest bloodshed in the Kashmir conflict between the two nations in May 1999, sparked the advent of a very real possibility of nuclear war.¹⁵

An even greater threat of nuclear war between India and Pakistan emerges from the coup of Pakistani Prime Minister Nawaz Sharif and his recently elected democratic government.¹⁶ Over the past two and a half years, U.S. officials have had several conversations with Indian and Pakistani officials concerning the testing and development of their nuclear arsenals.¹⁷ As a result of the overthrow of the Pakistani government, the U.S. and the rest of the international community are unsure about any ensuing Pakistani nuclear testing or detonation policies.¹⁸

In the same week that the nuclear threat in South Asia became more tense, the U.S. decided not to ratify the nuclear test ban treaty which it had been progressively persuading India and Pakistan to sign.¹⁹ This U.S. abandonment of the treaty may adversely affect Indian and Pakistani decisions to sign the treaty.²⁰ Because of the appearance of the U.S. deserting the

Kashmir is Facing Its Most Dangerous Season in Years, TIME, June 7, 1999, at 16.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Fathers*, *supra* note 10.

15. *Id.*

16. Celia W. Dugger, *No Timetable to Restore Pakistani Democracy*, N.Y. TIMES, Nov. 2, 1999, at A10.

17. *Supra* note 7.

18. Jonah Blank & Tasgola Karla Bruner, *The Generals Step In: A Military Coup Puts Pakistan's Democracy on Hold*, U.S. NEWS & WORLD REP., Oct. 25, 1999, at 39.

19. Romesh Ratnesar, *The Good News Coup? Pakistanis Exult Over the Fall of Sharif. But Will Military Rule Make the Volatile Subcontinent Any Safer?*, TIME, Oct. 25, 1999, at 21.

20. Dugger, *supra* note 16.

treaty, the Senate's vote may indeed affect the ratification possibilities of Russia and China, the other two "big five" nuclear powers that have not ratified the Comprehensive Nuclear Test Ban Treaty, which will in turn have a greater effect on whether India and Pakistan, and other rogue states will sign the CTBT.²¹

Because of its probable devastation of the CTBT community's efforts, leaders from around the world have condemned the U.S.' decision not to ratify the test ban treaty at this time.²² Although the treaty may go back to the Senate floor for ratification again, many people around the world believe this to be the beginning of the end for the Nuclear Test Ban Treaty and for the moral influence²³ and power that the U.S. has concerning world affairs. It may also be the consequential event that sends the world spiraling into an all-consuming nuclear war.²⁴

This comment will discuss the background of the Comprehensive Nuclear Test Ban Treaty, American disarmament and nuclear nonproliferation, recent American partisan politics regarding the Clinton administration and the CTBT, and finally the ongoing conflict between India and Pakistan. After the background discussion, the arguments for and against the CTBT will be outlined and there will be a discussion of the way the Senate handled the vote on the treaty. Concluding the comment will be a discussion regarding the aftermath of the Senate vote and the future of the CTBT.

21. Videotape: TEST ANXIETY: SHOULD AMERICA RATIFY THE CTBT? (ADM 1999) (on file with the Center for Defense Information). The "Big Five" Nuclear powers are the U.S., Russia, China, France and Britain. *Id.* All five of these countries have signed the Comprehensive Nuclear Test Ban Treaty, but only France and Britain have successfully ratified the document. *Id.* The U.S. was the first country, not just the first of the "Big Five," to vote on and reject the treaty. *Id.*

22. John Diamond, *President Assails GOP Over Failed Treaty, World Reaction Swift, Negative*, CHI. TRIB., Oct. 15, 1999, at 1. Leaders from Russia, Britain and Japan have made public comments regarding the Senate's vote as a major setback to the goals of the treaty's entry into force. *Id.*

23. 145 CONG. REC. S12277 (daily ed. Oct. 8, 1999) (Senate debate on the CTBT). Moral influence refers to the persuasive power the U.S. has in the world as a role model. *Id.* This influence is based on the premise of one country acting as an example for other countries as to how to behave concerning international affairs. *See id.*

24. Byron Dorgan & Arlen Specter, *U.S. Wants, Needs Nuclear Test Ban Pact*, U.S.A. TODAY, Sept. 13, 1999, at 27A.

II. Background

A. *The Comprehensive Nuclear Test Ban Treaty*

Negotiations on the Comprehensive Nuclear Test Ban Treaty began at the Conference on Disarmament at Geneva in January 1994.²⁵ The final draft, sponsored by 127 nations, was submitted to the United Nations General Assembly two years later and adopted on September 10, 1996.²⁶

Under the scope of the treaty, each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion. In addition, the treaty prohibits and prevents any such nuclear explosion at any place under its jurisdiction or control. Further, the treaty's State Parties are to refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion.²⁷

The Comprehensive Nuclear Test Ban Treaty is the result and culmination of over forty years²⁸ worth of efforts toward the ultimate goal of the elimination of nuclear weapons in the world. Preceding the CTBT was the Partial Test Ban Treaty of 1963 prohibiting all nuclear explosions in the atmosphere, in space and under water, but not underground.²⁹ Next, the Threshold Test Ban Treaty of 1974 limited the yield of underground nuclear weapon tests to 150 kilotons.³⁰ But perhaps the most important arms control treaty in force today is the Non-Proliferation Treaty, because of the states parties' promises not to trade nuclear weapons and because of its influence over the U.S.³¹

25. Daryl Kimball, *Chronology of Key Events in the Effort to End Nuclear Weapons Testing: 1945-1999*, at <http://www.clw.org/coalition/ctch4050.htm> (last modified June 1999). The Geneva Conference on Disarmament was attended by 172 of countries. *Id.*

26. *Id.*

27. Comprehensive Test Ban Treaty, Art. I (Basic Obligations) (1996).

28. Kimball, *supra* note 25. In April 1954, Prime Minister Jawaharlal Nehru of India proposed that the nuclear weapon testing should be suspended. *Id.*

29. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, *opened for signature* September 8, 1963, 14 U.S.T. 1313, 480 U.N.T.S. 43 [hereinafter Limited Test Ban Treaty or LTB].

30. TTBT, *supra*, note 9.

31. TOM Z. COLLINA, ET AL., FOR A SAFER AMERICA: THE CASE FOR A COMPREHENSIVE TEST BAN TREATY 3 (Coalition to Reduce Nuclear Dangers 2d ed. 1999). The U.S. used the CTBT as a negotiating tool to extend the life of the NPT. *Id.*

These international arms control agreements have been and will continue to be crucial for the existence of world peace and stability. Since the day of the first nuclear weapons explosion in July 1945,³² to the signing date of the CTBT,³³ over 2,000 test explosions have been registered. In existence today, there are over 12,000 nuclear weapons throughout the U.S. and Russia alone, any one of which could start a nuclear holocaust. The CTBT is the most comprehensive arms control agreement that has ever been proposed at a multi-national level, proffering a zero yield testing ban.³⁴

The CTBT document consists of a preamble, seventeen articles, two annexes and a Protocol. The Protocol contains two annexes and describes verification procedures. One annex lists the 337 facilities comprising the International Monitoring System (IMS)³⁵ and the other annex describes parameters for standard event screening by the International Data Center (IDC) created by the treaty.³⁶ The CTBT also establishes an Executive Council which would be comprised of 51 states and a Technical Director-General who will assist States Parties to implement the treaty and carry out verification and other functions.³⁷

For the Treaty to be entered into force, forty-four³⁸ of the States' Parties listed in Annex two³⁹ of the Treaty must have deposited their instruments of ratification with the Secretary-General of the United Nations. At this time, thirty-one of these states have ratified the treaty.

32. *Id.* In July 1945, the U.S. was the first country to conduct a nuclear weapon test. *Id.*

33. Kimball, *supra* note 25. The CTBT was opened for signature and signed first by the U.S. on September 24, 1997. *Id.*

34. *Id.* A zero yield test ban would not allow any nuclear explosions. *Id.*

35. Comprehensive Nuclear Test Ban Treaty, Annex I (1996).

36. Comprehensive Nuclear Test Ban Treaty, Annex II (1996).

37. Comprehensive Nuclear Test Ban Treaty, Art. II (1996).

38. Comprehensive Nuclear Test Ban Treaty, Art. XIV (Entry Into Force) (1996). The Treaty requires that 44 specific States Parties ratify it for it to go into effect. *Id.* These states are those that are believed to have some ability to build at least a crude bomb. *Id.*

39. Comprehensive Nuclear Test Ban Treaty, Art. II (1996). The States Parties who must ratify the CTBT in order for it to be entered into force are Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Democratic People's Republic of Korea, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Mexico, Netherlands, Norway, Pakistan, Peru, Poland, Romania, Republic of Korea, Russian Federation, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, U.S. of America, Viet Nam, Zaire. Annex II, CTBT. *Id.*

In order to understand fully the theories behind a need for the Comprehensive Test Ban Treaty, it is necessary to look to the history of nuclear testing, the international community's views on disarmament and the politics of the nuclear powers' decisions involving nuclear policy. The discussion begins with the U.S. because of its leading role in the international community as the only stable world power in the aftermath of the Cold War.⁴⁰

B. American Disarmament and Nonproliferation

Since the presidencies of Eisenhower⁴¹ and Kennedy⁴², the American nuclear weapon trend has been to clear a new path toward the goals of nuclear disarmament⁴³ and nonproliferation.⁴⁴ In the past two decades, there have been treaties agreed to between the U.S. and other foreign nations concerning the futures of nuclear⁴⁵ and chemical⁴⁶ weapons and testing. In 1992, President George Bush signed a legislative moratorium⁴⁷ on nuclear testing. Today, the U.S. nuclear policy is to continue not to test its nuclear weapons, but to maintain its nuclear arsenal.

The U.S. was the first to test nuclear weapons and deploy bombs in 1945 leading to worldwide proliferation of nuclear arsenals. Soon after the U.S. bombings of Hiroshima and Nagasaki during World War II,⁴⁸ the then Union of Soviet

40. 145 CONG. REC. S12268 (daily ed. Oct. 8, 1999) (Senate debate on the Comprehensive Test Ban Treaty).

41. WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 1665 (New Revised ed. 1997). Dwight D. Eisenhower's presidency ran from 1953-1961. *Id.*

42. *Id.* John F. Kennedy's presidency ran from 1961-1963. *Id.*

43. *Id.* Disarmament is defined as the act or instance of disarming; the reduction or limitation of the size, equipment, armament, etc., of the army, navy, or air forces of a country. *Id.*

44. *Id.* *Nonproliferation* is defined as a failure or refusal to proliferate; the action or practice of curbing or controlling an excessive, rapid spread. *Id.*

45. Treaty Between the U.S. of America and the Union of Soviet Socialist Republics on the Limitation of Underground Nuclear Weapon Test, *opened for signature* July 3, 1974, U.S.-U.S.S.R., S. Treaty Doc. No. 101-19, KAV 1782, 2607 [hereinafter Threshold Test Ban Treaty or TTBT].

46. The Chemical Weapons Treaty creates a limit to the kinds of chemical weapons that may be legally used in warfare. S. Res. 75, 105th Cong. (1997) (enacted).

47. 137 CONG. REC. S13939 (1992) (Hatfield-Exon Amendment). A Moratorium is defined as an order of suspension or cessation of some act. WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 1665 (New Revised ed. 1997).

48. Kimball, *supra* note 25. The U.S. bombed Hiroshima on August 6, 1945,

Socialists Republic⁴⁹, the United Kingdom, France and China began testing their own nuclear weapons.⁵⁰ With the rapid increase of the existence of nuclear weapons in the world, tensions heightened regarding the possibility of nuclear war.

The Cold War era⁵¹ of the 1940s to 1980s escalated those tensions. From the first nuclear test in 1945, to the end of the Cold War in the late 1980s, over 2,000 nuclear tests had been conducted.⁵² Recognizing the rapidly deteriorating likelihood of world peace with every nuclear test being conducted, the U.S. and the USSR discussed a nuclear test ban in 1954.⁵³ Many proposals and talks occurred throughout the next few years, but the two superpowers failed to reach an agreement. President Eisenhower proposed a conference to explore test ban verification in 1958 in order to promote further a nuclear test ban.⁵⁴ On August 22, 1958, President Eisenhower proposed a one-year test moratorium, contingent to a Soviet refrain from testing.⁵⁵ This initiated the first test ban negotiations between the U.S., the United Kingdom and the USSR.⁵⁶

In February 1960, President Eisenhower's administration proposed a comprehensive test ban, banning all nuclear tests in the atmosphere, oceans, space and beneath the surface of the earth.⁵⁷ The USSR initially accepted the proposal making it

and Nagasaki on August 9, 1945, leading to over 200,000 casualties. *Id.*

49. Hereinafter referred to as Russia for the period after the cold war, and as the USSR for the period during the cold war.

50. *Id.* The Soviet Union conducted its first nuclear test explosion on August 29, 1949. The United Kingdom conducted its first nuclear test on October 3, 1952. *Id.* France conducted its first nuclear test in February, 1960. China conducted its first nuclear weapons test on October 16, 1964. *Id.*

51. President John F. Kennedy, Radio and Television Address to the American People on the Nuclear Test Ban (July 26, 1963). The Cold War was a term to describe intense economic, political and military rivalry just short of gun-fired, military conflict. The term Cold War was primarily used to describe relations between the U.S. and the USSR concerning conflicts in Berlin and Cuba. WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 1665 (New Revised ed. 1997).

52. This statistic covers only tests of the "Big Five" nuclear weapons states. *Comprehensive Test Ban Treaty Briefing Book: Total Tests By Calendar Year*, COUNCIL FOR A LIVABLE WORLD, at <http://www.clw.org/ef/ctbtbook/totals.html> (last modified Sept. 24, 1999).

53. Kimball, *supra* note 25.

54. *Id.*

55. *Id.*

56. *Id.* Negotiations for a tri-lateral nuclear test ban began on October 31, 1958. *Id.*

57. President Dwight D. Eisenhower, News Conference on the Nuclear Test Ban (Feb. 11, 1960).

likely that the treaty would be signed.⁵⁸ Due to increased Cold War hostilities, however, the test ban proposal was postponed until 1963.⁵⁹

Test ban negotiations renewed in 1963 under President Kennedy's administration.⁶⁰ President Kennedy announced a long range goal of complete disarmament, in which the U.S. would refrain from conducting atmospheric tests, as long as other states would also refrain.⁶¹ Due to disagreements over on-site inspections of nuclear testing facilities, an agreement could not be reached concerning a comprehensive test ban.⁶² In the alternative, the U.S., the USSR and Britain signed the Limited Test Ban Treaty (LTB) on July 25, 1963.⁶³ The LTB limits the testing of nuclear weapons in the atmosphere, space and beneath the surface of the ocean.⁶⁴ In an address to the American public, President Kennedy reiterated his administration's long term goal of complete disarmament, as well as his assurance that the nation's security was not harmed by the LTB.⁶⁵

Throughout the 1970s, the non-proliferation process was slow moving. Despite this, in 1974, the Threshold Test Ban Treaty (TTBT) went into effect for the U.S. and the USSR.⁶⁶ The TTBT limits the explosive yields of underground tests to 150 kilotons.⁶⁷ Between 1977 and 1980, American, British and Soviet negotiators worked toward a comprehensive test ban treaty, making substantial progress.⁶⁸ However, after the Soviet invasion of Afghanistan and additional opposition from the U.S., the third opportunity for an agreement on a comprehensive test ban expired.⁶⁹ In 1986, under President Ronald Reagan's

58. *Id.*

59. Kimball, *supra* note 25. The shoot-down of an American U-2 spy plane over the Soviet Union on May 1, 1960 led to an atmosphere of heightened hostility between the U.S. and the SOVIET UNION, crushing the chance for a test ban. *Id.*

60. *Id.* The USSR invited British and American negotiators to a Moscow conference to negotiate a comprehensive nuclear test ban treaty. *Id.*

61. President John F. Kennedy, Address at American University on a Comprehensive Nuclear Test Ban (June 10, 1963).

62. *Id.*

63. Kimball, *supra* note 25.

64. LTB, *supra* note 10.

65. *Supra* note 61.

66. TTBT, *supra* note 9.

67. *Id.*

68. Kimball, *supra* note 25.

69. *Id.*

administration, a fourth attempt at a comprehensive test ban agreement with the Soviet Union failed.⁷⁰

The 1990s gave new hope to the idea of a comprehensive test ban treaty. In 1992, the U.S. Congress passed the Hatfield-Exon amendment, which President George Bush signed.⁷¹ The amendment put into effect a unilateral underground testing moratorium for the U.S.⁷² In January 1994, comprehensive test ban treaty negotiations began in Geneva.⁷³ The U.S. signed the CTBT on September 24, 1996.⁷⁴ Senate politics allowed the CTBT to sit in a foreign relations committee from September 22, 1997 when President Clinton submitted it for the U.S. Senate's advice and consideration, until October 11, 1999, while the Senate waited to vote on it for ratification.⁷⁵ On October 13, 1999, the U.S. senate voted not to ratify the CTBT.⁷⁶

The Senate's vote not to ratify the CTBT has become the topic of much controversy. The world view and the view of a majority of the American people is that partisan politics played a detrimental and inappropriate role in the ratification vote.⁷⁷ The discussion now turns to an examination of the role of American politics during President Clinton's administration.

C. *Recent American Politics*

During the administration of President Clinton in 1992, there has been increasingly inflexible tension between U.S. Republicans and Democrats in Congress. The tension only intensified during the Congressional impeachment proceedings of 1998.⁷⁸ A majority of Congress' Republicans lobbied extensively for the removal of President Clinton from U.S. office for allegations of perjury concerning sexual harassment investigations and the vastly publicized Monica Lewinsky scandal.⁷⁹

70. *Id.*

71. Hatfield-Exon Amendment, *supra* note 24.

72. *Id.*

73. Kimball, *supra* note 25.

74. CTBT, *supra* note 2.

75. Kimball, *supra* note 25.

76. Robert A. Jordan, *World a Less Safe Place for GOP After Test Ban Treaty Rejection*, BOSTON GLOBE, Oct. 17, 1999, at E4.

77. *Id.*

78. Kathy Kiley, 'It Ain't Over,' *New Independent Counsel Says*, U.S.A. TODAY, Jan. 10, 2000, at 8A.

79. *Id.* The scandal concerned inappropriate sexual conduct by President Clinton and an intern, Monica Lewinsky, and his alleged attempts to cover it up in

There is a widely held belief in the political world that elected House and Senate Republicans were bound and determined not to allow President Clinton to have any political victories throughout the remainder of his term in office.⁸⁰ Reports state that since impeachment was defeated by a marginal status, partisan politics were strictly in order in every action that concerned Congress and the Clinton White House Administration.⁸¹ The 106th U.S. Congress, in term during Clinton's administration, was led by a majority of Republicans.⁸² Former democratic president, Clinton is an avid supporter of the Comprehensive Nuclear Test Ban Treaty.

In order to understand further why many Americans and world officials think the defeat of the CTBT was primarily based on partisan politics, it is necessary to investigate the arguments for and against U.S. ratification of the CTBT. It is first necessary, however, to examine current situations in India and Pakistan, as well as the nuclear policies of countries which also have not yet ratified the CTBT.

D. The India-Pakistan Conflict

Since their independence from Great Britain in 1947, India and Pakistan have been to war twice over the long-disputed Kashmir territory.⁸³ Under a partition plan provided by the Indian Independence Act of 1947, Kashmir was free to accede to India or Pakistan.⁸⁴ The Maharaja decided to accede to India, signing over key powers to the Indian government.⁸⁵ Pakistan believes that Kashmir should have become part of Islamabad

front of a Grand Jury and the American public. *Id.* There were also allegations that the President gave Miss Lewinsky a job in order to relocate her and keep her silence about the affair. *Id.*

80. Kenneth T. Walsh, *Where Are the Wise Men? Petty Politics, But Also a Real Dispute*, U.S. NEWS & WORLD REP., Oct. 25, 1999, at 20.

81. See John Diamond, *President Assails GOP Over Failed Treaty World Reaction Swift, Negative*, WASH. POST, Oct. 15, 1999, at 1; see also Charles Babington and Michael Grunwald, *President Requests Treaty Vote Deferral But GOP Seeks A Delay Until At Least 2001*, BUS. DAY (SOUTH AFRICA), Oct. 18, 1999 at 13.

82. There are currently 55 Republicans in the Senate and 45 Republicans in the House of Representatives.

83. Fathers, *supra* note 10.

84. *World: Q & A: Kashmir Dispute*, BBC NEWS ONLINE NETWORK, available at http://news.bbc.co.uk/hi/english/world/south_asia/newisd_353000/353352.stm (last modified Aug. 11, 2000).

85. *Id.*

because Muslims are in the majority in the region.⁸⁶ The partition of 1947, however, gave Muslims a state of their own, Pakistan.⁸⁷ India was created to have an independent land where both Muslims and Hindus could live.⁸⁸

For the past ten years, Pakistan has backed a Muslim separatist uprising in the Indian-held part of Kashmir.⁸⁹ Indian security forces have been fighting to suppress the invasions leaving more than 30,000 casualties. In recent years, Islamabad, Pakistan has given covert support to battle-trained Islamic extremists from outside Kashmir who seek to liberate the mainly Muslim territory from Indian control. The infiltrators tend to enter Indian-held Kashmir undercover of artillery bombardments from Pakistan.

The latest fighting between the two nations is taking place over a 140-kilometer stretch of mountain ridges 4,500 meters high near the strategic Indian garrison town of Kargil.⁹⁰ The town lies on the only usable road between Srinagar, capital of Indian Kashmir, to the west and Leh, another military stronghold near the Chinese Border, to the east. During the brutal winters the area is isolated from the rest of India by heavy snow. At the first sign of spring, both armies move in to reoccupy the heights they abandoned during the winter freeze.⁹¹

The spring of 1999 was a different situation. Indian forces were taken by surprise when they found that approximately 600 infiltrators had taken advantage of the low snow levels to dig in early on the high ground about five kilometers inside Indian territory.⁹² The infiltrators were occupying positions previously held by the Indian army.⁹³ The Indian forces were fighting up a steep ravine on a frontal assault, which made it impossible to dislodge the infiltrator forces.⁹⁴ In addition, Pakistani long-range guns destroyed part of the Indian army's main munitions dump forcing the town's 10,000 inhabitants to flee.⁹⁵ In June, for the

86. *Id.*

87. *Id.*

88. Stephen Kinzer, *The World Takes Notice: Kashmir Gets Scarier*, N.Y. TIMES, June 20, 1999, at 16.

89. Fathers, *supra* note 10.

90. *Id.* This is the highest battlefield in the world. *World: Q & A*, *supra* note 84.

91. Fathers, *supra* note 10.

92. *Id.*

93. *Id.*

94. *Id.*

95. Fathers, *supra* note 10.

first time since the last war between India and Pakistan in 1971, air raids occurred. The two countries have contradictory versions on every aspect of the conflict.

Indian officials describe the infiltrators as a mix between Pakistani soldiers and mercenaries and claim that the group is a well-organized operation of the Pakistani army.⁹⁶ Pakistan's government denied that its forces were involved.⁹⁷ The escalating conflict raised questions over Pakistani Prime Minister Nawaz Sharif's relationship with Pakistani armed forces.⁹⁸ During the Kashmir dispute, Pakistan talked with international powers and asked for mediation in the conflict.⁹⁹ India has persistently refused any world involvement in the dispute.¹⁰⁰ In May, 1998, India broke the international consensus of nonproliferation when it tested a nuclear weapon underground for the first time since 1974.¹⁰¹ Not more than two weeks later, rival Pakistan conducted its first underground nuclear test.

These actions did not come without consequences. The U.S., pursuant to its non-proliferation laws, imposed serious economic sanctions against both countries.¹⁰² Of the two countries, Pakistan has been affected more seriously by the sanctions because of its greater dependence on international loans.¹⁰³

The two countries talked with the U.S. and other foreign administrations concerning the return to non-proliferation. Constructive talks have occurred between the U.S. and India and Pakistan concerning the lifting of the imposed economic sanctions.¹⁰⁴ The talks have been aimed at getting the two South Asian countries to sign the CTBT in an effort to resume worldwide non-proliferation. Both countries insist that they will not sign the treaty unless the other signs it as well. India's concerns are more stringent and apprehensive. It stipulates that

96. *Id.*

97. *Id.*

98. *Id.*

99. *World: South Asia 'Constructive' US-Pakistani Talks*, BBC NEWS ONLINE NETWORK, available at http://news.bbc.co.uk/hi/english/world/south_asia/newsid_158000/158344.stm (last modified Aug. 25, 1998).

100. *Id.*

101. Kimball, *supra* note 25.

102. *Pakistan Tables Nuclear Offer*, BBC NEWS ONLINE NETWORK, available at http://news.bbc.co.uk/hi/english/events/asia_nuclear_crisis/latest_news/newsid_179000/179088.stm (last modified Sept. 24, 1998).

103. *World: South Asia*, *supra* note 99.

104. *Id.*

the nuclear powers¹⁰⁵ particularly the “Big Five”, should work toward full nuclear disarmament to make India¹⁰⁶ more equal and secure in the world community.¹⁰⁷

Both India and Pakistan indicated during their talks with the U.S. that they would sign the treaty after the U.S. takes the lead and ratifies the CTBT.¹⁰⁸ The two countries were under enormous pressure from the major world leaders, especially from the U.S..¹⁰⁹

The movement toward Indian and Pakistani signatures on the CTBT slowed when on October 12, 1999, the Pakistani army led by General Pervez Musharraf took control of the government. Musharraf arrested Prime Minister Nawaz Sharif on corruption charges after Sharif tried to fire the general.¹¹⁰

One week later, the CTBT’s movement to attain Indian and Pakistani signatures was further slowed to a near halt when the U.S. Senate voted not to ratify the CTBT. The effect the U.S. vote will have on India and Pakistan will have a major effect on how other nuclear rogue states such as Korea, Iran and Iraq will decide on the CTBT. The U.S. has always played the role of moral leader and persuasive power. Now, the world asks itself, as do American leaders, what is in store for the CTBT, the nuclear arms race and the U.S. as a world leader.

III. The U.S. Senate’s Vote on the CTBT

With the October 13, 1999, vote not to ratify the CTBT, many questions have arisen concerning whether or not the treaty was defeated on its merits or because of partisan politics and the contempt many Republicans feel toward President Clinton. The discussion begins with a critique of the Senate process for the CTBT vote and the arguments for and against the test ban treaty.

105. Fathers, *supra* note 10. India considers the nuclear power nations to be the “haves”. *Id.*

106. *Id.* India considered itself to be a “have-not” before its nuclear tests in May, 1998. *Id.*

107. Indian Foreign Minister Jaswant Singh, Article Submitted to Foreign Affairs. Quoted in “India’s nuclear doctrine: A Pakistani perspective,” Foreign Minister of Pakistan read at Foreign relations in Washington, D.C., available at http://www.pak.gov.pk/personal/main/india_doctrine.htm (last modified Sept/Oct 1998).

108. *India & Pakistan Commit to Join CTBT by 1999* (Coalition to Reduce Nuclear Dangers, Washington, D.C.), Sept. 30, 1998. (Vol. 2 at 1).

109. *Id.*

110. Dugger, *supra* note 16.

A. *Why the Wait? Why Now, Why So Quickly?*

For two years, Senator Jesse Helms, the chairperson for the Foreign Relations Committee, tied the CTBT up in committee without conducting any hearings on the issues of a zero-yield nuclear test ban. Without committee consideration, the treaty could not go to the Senate floor for debate, nor could the rest of Senate become informed on the substantial issues for ratification.

1. *A Fair and Comprehensive Debate Can Not Occur Until the Committee Chair Allows It to Happen.*—After he put his signature on the CTBT as the U.S. leader and representative in September 1996, President Clinton submitted the CTBT, along with six safeguards, to the Senate for its advice and consent for ratification of the treaty in September 1997. For two years, the CTBT was held up in the Senate Foreign Relations committee at the mercy of Republican right-wing extremist, Senator Jesse Helms.

In those two years, Senate Democrats and the Clinton White House administration repeatedly asked for hearings and debate of the CTBT privately and publicly in speeches.¹¹¹ Senator Helms refused to satisfy the requests and made it perfectly clear that he would not allow the vote to have even committee consideration until after two other treaties passed through the Senate, nonetheless full Senate consideration.¹¹²

Some Senate Republicans say that the Clinton administration was threatening to tie up legislative business if the CTBT vote did not come to the floor.¹¹³ In their minds, the threat justified compromising the integrity of the U.S. and the Senate by taking advantage of the structure of the American political system. With only ten days notice and knowing that the CTBT did not have the sixty-seven votes for the necessary two-thirds majority vote for ratification,¹¹⁴ Senator Helms scheduled

111. *This Week: Interview with Secretary of State Madeleine K. Albright* (ABC television broadcast, Oct. 12, 1999).

112. Videotape: TEST ANXIETY, *supra* note 21. In a letter to President Clinton on January 21, 1998, Senator Helms wrote, "Mr. President, let me be clear: I will be prepared to schedule committee consideration of the CTBT only after the Senate has had the opportunity to consider the vote on the Kyoto Protocol and the amendments to the ABM Treaty." *Id.*

113. *Id.*

114. The U.S. Constitution provides the Senate with the authority to make and ratify international agreements with a two-thirds majority vote. U.S. CONST. art II, § 2, cl. 2.

the vote to come to the floor on October 14, 1999 with only two days of committee hearings.¹¹⁵

2. *A Legitimate and Statesmanlike Process is Necessary to Argue the Merits of an Issue.*—Many politicians argue that the Senate vote on the CTBT was not done in a legitimate political fashion.¹¹⁶ A normal treaty ratification process would be on a hearing schedule with several months' notice.¹¹⁷ Typically when a hearing schedule is set, political parties begin to lobby the public and Senators heavily.¹¹⁸ President Clinton noted that every time he tried to talk to a Senator concerning the CTBT vote, s/he would respond by saying that the CTBT was not even on the calendar and was not going to come up, making it difficult to lobby Senators' support.¹¹⁹

Selected Republicans argue that the Democrats did not do their homework while pushing for Senate consideration on the treaty.¹²⁰ Those Republicans say that the Senate treaty advocates, mostly Democrats, should have known they did not have the requisite 67 votes and should not have pushed for the vote.¹²¹ Secretary of State, Madeleine K. Albright and President Clinton say they did not know that they would finally, after two years, have the chance to lobby for Senator support.¹²² They also argue that they were at the least, pushing for committee consideration and hearings.¹²³ This is the first major international treaty to pass through the Senate with only two days of Foreign Relations Committee hearings and a mere fourteen hours of debate on the Senate floor.¹²⁴

115. President's Remarks at Press Conference on the Comprehensive Test Ban Treaty, 35 WEEKLY COMP. PRES. DOC. 2035 (Oct. 14, 1999).

116. *This Week, supra* note 111.

117. *President's Remarks, supra* note 115.

118. *Id.*

119. *Id.*

120. *This Week, supra* note 111.

121. *Id.*

122. *Id.*; see also President's Remarks at Press Conference on the Comprehensive Test Ban Treaty, 35 WEEKLY COMP. PRES. DOC. 2035 (Oct. 14, 1999).

123. *This Week, supra* note 111.

124. 145 CONG. REC. S12278 (daily ed. Oct. 8, 1999) (Senate debate of the Comprehensive Test Ban Treaty). The ABM Treaty had 8 days of Foreign Relations Committee hearings, and 18 days of Senate debate on the floor of the Senate. The Intermediate Nuclear Forces Treaty in 1988 had 23 days of committee hearings in the Foreign Relations Committee and 2 days of Senate floor consideration. The START I Treaty had 19 days of hearings and 5 days on the Senate floor. The START II Treaty had 8 days of Foreign Relations Committee hearings and 3 days on the Senate floor. The Chemical Weapons Convention had

To add insult to injury, with every major international treaty to pass through the Foreign Relations Committee before the CTBT, the Committee members create a report to make determinations and to inform and give advice to Senators not on the committee.¹²⁵ No report was created or filed for the Senators on the CTBT issues.¹²⁶ In addition, there were Senators who had made commitments on the CTBT vote before ever hearing a debate on the merits of the case.¹²⁷ In fact, most Senators did not bother to attend the short debate on the Senate floor.¹²⁸

Making matters seem that much worse in the CTBT Senate process, Majority Leader Senator Lott would not defer the vote as requested by President Clinton and 62 Senators just days before the vote.¹²⁹ Senator Lott stipulated that he would only postpone the vote under two conditions: that President Clinton write a letter requesting the delay and that the President promise not to ask for Senate consideration on the CTBT again as long as Mr. Clinton remained in office.¹³⁰ The President would not promise to forego asking Senate consideration on the CTBT within the following year.¹³¹ Foreign policy concerns that ratification of the CTBT is necessary in order to keep the Non-Proliferation Treaty alive left the President unable to secure that promise to the majority leader.¹³² Senator Lott pushed the vote ahead, knowing that the votes to ratify were not possible to attain.¹³³ In a gross display of strategizing to defeat the agreement and its makers, Senator Helms would not allow the six safeguards that the

14 days of hearings and 3 days on the Senate floor. The NATO Enlargement Agreement had 7 days of hearings and 8 days on the floor. *Id.*

125. 145 CONG. REC. S12293 (daily ed. Oct. 8, 1999) (Senate debate on the Comprehensive Test Ban Treaty). In each other international treaty, committees filed reports and positions were taken. Many Senators considers these reports necessary. *Id.*

126. *Id.*

127. *President's Remarks, supra* note 115.

128. 145 CONG. REC. S12268 (daily ed. Oct. 8, 1999) (Senate debate on the Comprehensive Test Ban Treaty). Senator Moynihan states, "[World leaders] are speaking to us in this near-empty Chamber. Some of our most distinguished authorities in these matters are here. Most Senators are not." *Id.*

129. *See* President's Remarks at Press Conference on the Comprehensive Test Ban Treaty, 35 WEEKLY COMP. PRES. DOC. 2035 (Oct. 14, 1999); *see also* 145 CONG. REC. S12549 (daily ed. Oct. 8, 1999) (letter to Majority Leader Trent Lott signed by 62 Senators requesting a delay on consideration of the CTBT).

130. President's Remarks at Press Conference on the Comprehensive Test Ban Treaty, 35 WEEKLY COMP. PRES. DOC. 2035 (Oct. 14, 1999).

131. *Id.*

132. *See id.*; *see also* Videotape: A DAMAGE ASSESSMENT, *supra* note 9.

133. Jordan, *supra* note 76.

administration attached to the treaty to go to the floor with the CTBT.¹³⁴ Many supporters of the CTBT are proponents for its entry into force because of those safeguards, which allow the U.S. to back out of the treaty if a national security interest should arise.¹³⁵ Supporters of ratification of the CTBT, contingent upon having the safeguards attached, became unable to vote for ratification the treaty because the vote did not include the safeguards.¹³⁶

B. The Senate Debate of the CTBT for Ratification

Several Republican Senators contended that the treaty was defeated because of the dangers and risks for the U.S. that the CTBT imposes on national security. The Clinton administration and treaty proponents asserted that the CTBT strongly serves the interests of the U.S. There are two major arguments in opposition to the CTBT and many reasons for its ratification. Perhaps the most overwhelmingly supported argument is that the vote should have been postponed for a specific time when the Senate would give it the proper and serious consideration it deserves.

1. *The Major CTBT Issue is Whether or Not It is Effectively Verifiable.*—The first argument against the CTBT is that the treaty is not effectively verifiable. Verification, in terms of the CTBT, is understood to be the process of verifying that parties to the treaty are not conducting tests that are not allowed pursuant to the Comprehensive Test Ban Treaty. Under the CTBT, no tests producing explosive yields are allowed. Effective verification is generally accepted to mean there is a high confidence that militarily significant cheating will be detected in a timely manner.¹³⁷

Scientists argue that there is a possibility that countries would be able to cheat by conducting sub-kiloton underground tests with low enough yields that would not be able to be

134. *Id.*

135. 145 CONG. REC. S12268 (daily ed. Oct. 8, 1999) (Senate debate on the CTBT). Senator Biden stated, "First, the very essential safeguards the chairman indicated all military guys want, I find it fascinating that the Republican leadership would not allow the Senate to include those in the treaty. That indicates what a stacked deck this is and how outrageous is this approach of how we are proceeding on this is." *Id.*

136. *Id.*

137. Kathleen C. Bailey, *The Comprehensive Test Ban Treaty: The Costs Outweigh the Benefits*, Policy Analysis No. 330, Jan. 15, 1999.

recognized by the equipment that is available in modern technology. Scientists concede that any explosions under 500 tons of yield do not provide militarily significant data. The U.S. is able to conduct adequate nuclear tests at levels of one to ten kilotons. Any newly designed weapons could feasibly be tested below the detectable yield range. At present the technology to detect all levels of explosive yield does not exist and may not for another ten to fifteen years.¹³⁸

Another realistic prospect is that with increased technology, weapons tests that produce lower yields will be more difficult to distinguish from natural seismic activities such as earthquakes, volcanoes at sea and meteorite impacts in the atmosphere.¹³⁹ These tests could conceivably be indistinguishable from mining explosions and explosions from geophysical exploration.¹⁴⁰

There is already a concern about a seismic event that occurred near a Russian testing site in 1999.¹⁴¹ Activity was detected, but experts were unsure whether the seismic event was a result of nuclear testing or some natural event.¹⁴² The U.S. government concluded that the event was an earthquake occurring beneath the surface of the ocean.¹⁴³ Skepticism about this actual cause of this event remains in some scientists' minds.¹⁴⁴

Another verification issue is that under the CTBT it would take 29 other nations to agree to an on-site inspection of a suspected testing site. Treaty opponents argue that it is not a certainty that the U.S. will be able to get support to investigate a possible violator of the CTBT.

Although the details presented by the treaty's opponents concerning verification are true to an extent, the bigger picture has been left out. Although currently there is not a detection system in place that can with an absolute certainty detect all minimal yield tests, if the treaty were to go into effect, the technology would be available in a short number of years and cost the U.S. 75% less than what it currently pays to have a detection system that can not pick up low-yields from testing.¹⁴⁵

138. Suzanna van Moyland & Roger Clark, *The Paper Trail*, 54 BULL. ATOM. SCIENTISTS 1, 1 n.4 (1998).

139. *This Week*, *supra* note 111.

140. *Id.*

141. *Id.*

142. *Id.*

143. Bailey, *supra* note 137.

144. *Id.*

145. Donald G. McNeil, Jr., *Weight of U.S. Treaty Vote Emerges At Vienna Panel*, N.Y. TIMES, Oct. 8, 1999, at 14.

The fact of the matter is that without the CTBT, the U.S. is less likely to detect “cheaters” than it would with its current limited detection means.¹⁴⁶

The argument that “cheaters” could develop new weapons from low yield, undetectable tests is also only a narrow view of the merits of the verification system. Low yield tests that are presumably undetectable are not the kinds of tests that are going to make any country’s programs dramatically different from where they are now.¹⁴⁷ Treaty proponents are confident that the U.S. can detect what it needs to be able to detect.¹⁴⁸ Low yield tests would not undercut the U.S. nuclear deterrent because they would be so small that they would not affect the U.S. nuclear capacity.¹⁴⁹

Further, the view that the detection systems may not be able to pick up low yield explosions is based on presumption. Just recently a bomb of 0.1 kiloton, only a tenth of what the system has to detect under the CTBT, was set off in Kazakhstan and picked up in nine stations around the world.¹⁵⁰ The system can only get more reliable with the CTBT’s additional 200 sensors that will go into effect once the treaty goes into effect.¹⁵¹

Concerning the opponents’ argument that there is no certainty that the U.S. will have the ability to conduct on-site inspections, the CTBT has been under construction for the ultimate goal of no nuclear testing in the world.¹⁵² Signatories to this treaty are not advocating for it because they want to test or to let others get away with testing when they are abstaining.¹⁵³

2. *The Second Major U.S. Argument Against Ratifying the CTBT is Whether the U.S. Will Be Able to Maintain Its Nuclear Deterrent Under the Terms of the CTBT.*¹⁵⁴—Senators, experts and scientists alike argue that the U.S. nuclear arsenal may not be able to sufficiently withstand time without conducting

146. Test Anxiety, *supra* note 21.

147. *Id.*

148. *This Week*, *supra* note 111.

149. *Id.*

150. McNeil, Jr., *supra* note 145.

151. *Indian, Pakistani Nuclear Tests Show Importance of Test Ban Treaty*, 3 (June 15, 1998) (unpublished article, on file with the Union of Concerned Scientists, Cambridge, MA).

152. *Id.*

153. *Id.*

154. White House, Office of the Press Secretary, Fact Sheet on the CTBT Facts and Fiction, Oct. 8, 1999.

deployment testing.¹⁵⁵ The directors of three of the U.S. nuclear weapons labs have testified publicly that they could not be absolutely certain in the future that the stockpile will not degrade without explosive testing.¹⁵⁶

The ability to ascertain the reliability of the U.S. nuclear weapons is decreasing because the size of its stockpile is declining, as is the mix of weapons designs within it.¹⁵⁷ There were only nine types of warheads in the U.S.' stockpile in 2000, compared to thirty in 1985.¹⁵⁸ As noted by Jonathon Medalia of the Congressional Research Service, "A problem with one warhead type can affect hundreds or thousands of individual deployed warheads . . . a single problem could affect a large fraction of the U.S. nuclear force."¹⁵⁹ Scientists also argue that there is no present available method to simulate nuclear detonation of the high-performance, complex designs in the U.S. stockpile.¹⁶⁰

On the other hand of the stockpile argument, and again looking at the bigger picture, there are valid reasons to believe that the Stewardship Stockpile Program implemented by the Clinton administration and currently being funded for a proposed \$45 billion over the next ten years will properly maintain the U.S. nuclear arsenal and therefore sustain the nuclear deterrent.¹⁶¹ The same directors of the three nuclear labs that said they could not be absolutely certain the stockpile would not degrade over time without testing, also said that there is a near certainty that the stockpile could safely be maintained as long as the program is fully funded.¹⁶² That, of course, would require no budget cutbacks from the Senate. The directors certify year after year that the stockpile is safely maintained.¹⁶³

155. *Comprehensive Test Ban Treaty Briefing Book: What the Critics are Saying*, Council For A Livable World, at <http://www.clw.org/ef/ctbtbook/critics.html> (last modified Sept. 30, 1999).

156. *This Week*, *supra* note 111.

157. Bailey, *supra* note 137.

158. Jonathon Medalia, *Nuclear Weapons Production Capability Issues* (Washington: Congressional Research Service, June 8, 1998), p. 34.

159. *Id.*

160. Bailey, *supra* note 137.

161. President's Remarks at Press Conference on the Comprehensive Test Ban Treaty, 35 WEEKLY COMP. PRES. DOC. 2035 (Oct. 14, 1999).

162. *This Week*, *supra* note 111. Interestingly, 83.5% of the total U.S.' nuclear weapons tests were conducted not to maintain the safety of the nuclear arsenal, but to develop new weapons. Test Anxiety, *supra* note 21.

163. TOM Z. COLLINA, ET AL., FOR A SAFER AMERICA: THE CASE FOR A COMPREHENSIVE TEST BAN TREATY 8 (Coalition to Reduce Nuclear Dangers 2d

Those supporters for the CTBT address their opposition's argument that the nuclear arsenal will deteriorate and be unsafe over time in a very straightforward manner. They respond that the U.S. is not currently conducting any nuclear tests and has been voluntarily abstaining from testing for eight years.¹⁶⁴ If the CTBT went into force, all significant testing would stop and the U.S. would stay in the superior position it is in currently.¹⁶⁵ This will not remain so if countries are allowed to further develop new weapons and catch up with the U.S. nuclear arsenal.¹⁶⁶

Under the CTBT as submitted to the Senate with the six national security safeguards, there would be a way out for the U.S. if the President, the Senate and the Secretaries of Defense and Energy all agreed it was necessary to resume testing to preserve national security through the nuclear arsenal.¹⁶⁷ As Senator Dorgan of North Dakota so acutely put it, the claim is that "the bombs in storage are unsafe. We have been storing nuclear weapons for over 40 years in this country. All of a sudden they are unsafe, on the eve of the Comprehensive Nuclear Test-Ban Treaty."¹⁶⁸

3. *The Benefits of the CTBT Outweigh the Concerns of the Risks.*—The argument is easily made that the U.S. would not be giving up anything if it ratifies the CTBT.¹⁶⁹ The U.S. would be gaining a wealth of power and further reassurance that it would maintain its nuclear deterrent and superiority under the CTBT.¹⁷⁰ Because of the voluntary moratorium on testing, the U.S. would be in the same non-testing position that it is currently in, only with the CTBT, other nations would have the same constraint that is strictly in the U.S. interest.¹⁷¹ Without conducting nuclear explosions, other nuclear weapon states will not be able to develop new advanced types of weapons with confidence and those nations which are not nuclear capable yet, will have a very difficult time proliferating

ed. 1999).

164. Test Anxiety, *supra* note 21.

165. *Id.*

166. *Id.*

167. President's Remarks at Press Conference on the Comprehensive Test Ban Treaty, 35 WEEKLY COMP. PRES. DOC. 2035 (Oct. 14, 1999).

168. 145 CONG. REC. S12467 (daily ed. Oct. 13, 1999) (Senate Vote of Ratification of the Comprehensive Nuclear Test Ban Treaty).

169. *This Week, supra* note 111.

170. U.S. Dep't St., CTBT: Regional Issues and U.S. Interests (1999).

171. *Supra* note 151.

nuclear weapons.¹⁷² The CTBT is a tool with which the U.S. can prevent other countries from testing.¹⁷³

An extremely substantial reason to support the CTBT is if the U.S. leads, other nations will follow.¹⁷⁴ This most certainly concerns India and Pakistan, the newest members of the nuclear club. India and Pakistan made great strides when they promised to sign the CTBT by September 1999.¹⁷⁵ Pakistan is waiting for India to sign and India was waiting for the U.S. to lead by example.¹⁷⁶

Undoubtedly, all eyes were on the U.S. Senate to see what kind of pressure would be put on holdout countries who had not yet signed or ratified the CTBT.¹⁷⁷ U.S. ratification of the CTBT is the equivalent of saying "Gentlemen, start your engines."¹⁷⁸ Every other parliament in the world that is considering the treaty will race to get their ratification in on time and to be able to join the international body that is set up to enforce this treaty.¹⁷⁹ As in the case of the Chemical Weapons Convention, if the U.S. ratifies, China and Russia would surely ratify very soon after and the union would create enormous pressures on the international community, especially rogue states such as India, Pakistan and North Korea.¹⁸⁰

The U.S. is the first country to specifically reject the CTBT.¹⁸¹ The vote was the first time since the Treaty of Versailles that the U.S. Senate has rejected a major international agreement.¹⁸² President Clinton called the partisan vote a "new isolationism", referring to the Treaty of Versailles vote that arguably sparked the advent of World War II.¹⁸³ President Clinton's Special Assistant for Nation Security Affairs stated that "Our intelligence community is going to have to put priority over monitoring the

172. U.S. Dep't St., *CTBT: Regional Issues and U.S. Interests* (1999); see TOM Z. COLLINA, ET AL., *FOR A SAFER AMERICA: THE CASE FOR A COMPREHENSIVE TEST BAN TREATY 3* (Coalition to Reduce Nuclear Dangers 2d ed. 1999).

173. *This Week*, *supra* note 111.

174. Jordan, *supra* note 76.

175. Dorgan & Specter, *supra* note 24.

176. *Id.*

177. Richard J. Newman, *A Mutually Assured Destruction: The Defeat of the Nuclear-Test-Ban Treaty Had All the Logic and Elegance of a Campus Food Fight*, U.S. NEWS & WORLD REP., Oct. 25, 1999, at 19.

178. Test Anxiety, *supra* note 21.

179. *Id.*

180. COLLINA, *supra* note 163.

181. Kelley, *supra* note 4.

182. Newman, *supra* note 177.

183. John Cloud, *Is It Trick or Treaty? The Critics Have Blasted the Senate for Rejecting a Nuclear Test-Ban Pact. Big Deal*, TIME, Oct. 25, 1999, at 26.

nuclear test activities or the nuclear programs activities of proliferate state or rogue states whether or not there is a CTB [sic]. So, defeating the CTB [sic] might make some opponents feel better the next day, but in the long run we pay a price."¹⁸⁴

III. The Aftermath of the Vote

A. *Will the CTBT Survive?*

Many people around the world are predicting the death of the CTBT as a result of the U.S. Senate's rejection. Others are predicting a turn of political leadership in the U.S. Congress after the 2000 election. Will one bring about the other?

1. *The Fate of the CTBT Lies Within the U.S. Political Structure.*— In the future, another president, and a new senate, may be able to dust off the treaty and push it along.¹⁸⁵ The remainder of Clinton's administration had to awkwardly try to convince the world that the U.S. would honor the terms of an agreement it had just spurned—and hope that others will follow.¹⁸⁶ Change within the Senate is not likely to be substantial until the next Congressional elections.¹⁸⁷ This is at least until the Republicans remain in control of Congress.¹⁸⁸ The GOP may make itself more vulnerable to a Democratic takeover of the House and Senate if the CTBT does not return to the Senate floor early on in the Bush administration.¹⁸⁹

The question remains, however, whether the CTBT is over for good, or was this just a Bill Clinton problem?¹⁹⁰ Many people think that if the administration had had the opportunity to have an extensive set of hearings in the Foreign Relations, Armed Services and Intelligence Committees, extending over several months, then, yes, there might have been a chance to gain ratification.¹⁹¹ But that possibility was foreclosed by the way the Senate handled the treaty.¹⁹²

184. Test Anxiety, *supra* note 21.

185. Cloud, *supra* note 183.

186. *Id.*

187. *Clinton Will Stick By Test Ban; President Decries a 'New Isolationism' as World Scolds U.S. Treaty Vote*, CHATTANOOGA TIMES, Oct. 15, 1999, at A1.

188. *Id.*

189. Jordan, *supra* note 76.

190. Walsh, *supra* note 80.

191. Videotape: A DAMAGE ASSESSMENT, *supra* note 9.

192. *Id.*

There are, however, those who think the CTBT is effectively dead.¹⁹³ Technically, the test ban treaty remains at the desk of the Senate and could be brought back at any time.¹⁹⁴ But in reality, it was going to take a new president to resurrect the treaty in 2001.¹⁹⁵ And in fact, since George W. Bush's election, the treaty, if he is so inclined, could easily sail through the U.S. Senate.¹⁹⁶

2. *The Fate of the GOP's Leadership Depends on the American Public.*—A June 1999 bipartisan poll by the Mellman Group revealed that 82% of all Americans supported Senate approval of the CTBT, with only 14% opposing it.¹⁹⁷ Supporters of the treaty can only hope the American public's memories serve them well when electing their Congress. Now that the treaty went to the Senate for a vote, the Senate has to be the body to bring it up again, if ever.¹⁹⁸ Senator Lott gave no indication he wants to see the treaty brought back to the floor, with or without new conditions.¹⁹⁹

Former President Clinton doubted that a new Republican president will stay committed to the treaty.²⁰⁰ Mr. Clinton predicted that if the U.S. backs off from the CTBT altogether when a new president comes into office, "Russia will test, China will test and India and Pakistan will test."²⁰¹ New President George W. Bush, opposes the treaty but supports a continued testing moratorium, taking a carefully balanced position.²⁰² Former Vice President Al Gore, the defeated Democratic candidate for the presidency, had vowed to seek ratification again if elected.²⁰³ It is now probable, however, now that Clinton is no longer in office, that the CTBT will see another day.

B. *Will the United States Survive as a Moral Leader?*

The United States may have suffered a substantial blow throughout the international community concerning its role as a moral leader. The answer depends on how quickly it can bring

193. Crossette, *supra* note 6.

194. Videotape: A DAMAGE ASSESSMENT, *supra* note 9.

195. *Id.*

196. *Id.*

197. COLLINA, *supra* note 163.

198. Diamond, *supra* note 22.

199. *Id.*

200. Diamond, *supra* note 22.

201. *Id.*

202. G. Robert Hillman, *Clinton Vents Anger Toward 'Reckless' GOP: Flaws Doomed Nuclear Treaty Republicans Say*, DALLAS MORNING NEWS, Oct. 15, 1999, at 1A.

203. *Id.*

the CTBT back to life and if it can effectively reassure the world community that it is not only looking out for itself.²⁰⁴ The world reaction to the Senate vote was swift and left a feeling of bitter disappointment.²⁰⁵

Japan predicted the adverse effects of the vote would be inestimable, while Russia pronounced it was disillusioned by the U.S. attempt to destabilize the foundation of international relations.²⁰⁶ Russia also stated a bit dramatically, that the vote dealt a serious blow to the whole system of agreements in the field of nuclear disarmament and nonproliferation.²⁰⁷ China expressed profound regret because the U.S. had great influence in bringing the CTBT into effect, although vowing to honor the terms of the agreement and work for speedy ratification.²⁰⁸

There is a sense that the CTBT can be resurrected by the U.S., but that this time around American leadership to reduce the threat of nuclear weapons is undermined because the vote set back efforts to control the spread of terrorist weapons worldwide, endangering American security for years to come.²⁰⁹ The status of America as a world leader may have been weakened with far-reaching implications.²¹⁰ If the central world power begins to question the validity of the treaty, everything shakes up, undermining U.S. credibility in diplomatic circles, leaving nations wondering how much faith they can put in the pledges of a country that initiated an agreement, but won't ratify it.²¹¹ The world seems to feel deserted by the U.S. and all it can do is wait for the effect of the partisan politics of the Clinton administration and Congress to subside.

C. Will the World Survive Without a CTBT?

India and Pakistan have become the center of the South Asian arms race. Their positions are very important regarding the proliferation or non-proliferation of nuclear weapons in that region and the potential for their use during times of friction. There is a strongly held belief that one nuclear bombing will set off a spiraling effect and almost as quickly as they start, the bombings will end.

204. A Damage Assessment, *supra* note 9.

205. Diamond, *supra* note 22.

206. Newman, *supra* note 177.

207. Jordan, *supra* note 76.

208. *Id.*

209. COLLINA, *supra* note 163.

210. *Id.*

211. Cloud, *supra* note 183.

1. *It Is Unlikely That Pakistan's Coup Will Facilitate an Expeditious Signing of the CTBT.*—Unfortunately, the military coup did not put Pakistan in a position to accelerate the signing of the CTBT. The coup overthrew Prime Minister Sharif, with whom the U.S. and India had been having talks concerning the signing of the CTBT.²¹² Prime Minister Atal Behari Vajpayee was expected to resume peace talks with Sharif in November 2000, but the coup made that unlikely.²¹³ The Pakistani General leading the coup made it clear that he did not intend to use any of his own political capital to sign the treaty, but that he would encourage a national debate, noting that the CTBT is a contentious issue in Pakistan.²¹⁴

2. *It Is Unlikely That India Will Sign the CTBT Until the U.S. Ratifies It.*—The day after the U.S. Senate vote, India had already hinted that it might take its time before signing the treaty after the U.S. rejected it.²¹⁵ India and Pakistan, by wide agreement, are not now under as much pressure to sign the treaty, even though experts believe that the tensions between these two countries have made their region a potential ground for nuclear conflict.²¹⁶ Pressures in India for further testing are present and will be likely to increase over time becoming difficult to resist now that the U.S. rejected the CTBT.²¹⁷ The current events in Indian and Pakistani governments and the U.S. vote not to ratify the CTBT, leads the CTBT and the Arms Control effort back several steps.

3. *There Is a Dangerous Line On Which the World Walks Until the Nuclear Arms Race Comes to an End.*—In a few more years, the nuclear powers will exceed a dozen and some say that if that happens, no one should have any doubt that the decision of the U.S. Senate was a direct cause.²¹⁸ India and Pakistan, as well as other nations, can now continue their testing and implicit threats to each other, without any justifiable moral admonition from the U.S..²¹⁹ It is difficult to dissuade India and Pakistan from testing nuclear weapons in each other's backyards if the U.S. will

212. Blank & Bruner, *supra* note 18.

213. Ratnesar, *supra* note 19.

214. Dugger, *supra* note 16.

215. Diamond, *supra* note 22.

216. Crossette, *supra* note 6.

217. A Damage Assessment, *supra* note 9.

218. Maura Reynolds, *World Condemns U.S. Vote to Reject Test-Ban Treaty; Governments Express Dismay and Contend that Spread of Nuclear Weapons Will Be More Difficult to Stop*, L.A. TIMES, Oct. 15, 1999, at A1.

219. Jordan, *supra* note 76.

not promise to end testing through the CTBT.²²⁰ The first nuclear tests are most likely to come from India and Pakistan or some not-yet-nuclear country. The fragile structure of arms control may fail and the Senate failure to ratify could launch a nuclear weapons race where there is no longer a tremendous worry of U.S. pressure to abstain from testing, making the U.S. and the rest of the world a little more vulnerable to nuclear terrorism.²²¹

Pakistan is developing links with North Korea.²²² Iran has approached Pakistan about acquiring missile weapon technology.²²³ They have relationships with Afghanistan's Taliban.²²⁴ Pakistan's coup leader still considers the Kashmir conflict with rival India a predominant issue with his country.²²⁵ Given that the Pakistani army has tendencies to misconstrue Indian strategic thinking,²²⁶ the risk of war is ever a concern and the risk of it spiraling out of control is ever present until we attain a comprehensive nuclear test ban.

IV. Conclusion

In America today, it is disheartening enough when the public is cavalier about world issues, that we hope our statesmen act in our best interests. Clearly, a world without nuclear weapons is a safer world for us all. All in the world would be that much safer and more secure if only 67 total men and women could have performed the duties for which they were elected. President Eisenhower once said, that "[Not achieving a nuclear test ban] would have to be classed as the greatest disappointment of any administration, of any decade, of any time and of any party."²²⁷

The defeat of the CTBT would certainly be one of the greatest disappointments of Clinton's administration, for the United States and for the world as a whole. It is now in the hands of President George W. Bush and the still-republican controlled Congress. Tensions between India and Pakistan have only increased and the world only awaits nuclear detonation in

220. Cloud, *supra* note 22.

221. See Reynolds, *supra* note 218.

222. Videotape: A DAMAGE ASSESSMENT, *supra* note 9.

223. *Id.*

224. *Id.*

225. Dugger, *supra* note 16.

226. Ratnesar, *supra* note 19.

227. COLLINA, *supra* note 163.

South Asia and the possible spiraling effect of nuclear detonation throughout the world.

It is clearly the time for our statesmen to regain the integrity of our country and the world's trust in the U.S. as a moral leader. Partisan politics must come to an end respecting foreign policy and nuclear non-proliferation. Now that the Clinton administration has come to a close, it is the time for the hard feelings between republicans and democrats to subside and for America's best-interests to come to the front.

Angelique R. Kuchta

