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Statement of Arjun Makhijani on Rule of Power or Rule of Law?

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The drift of U.S. policy away from meeting its treaty obligations when there are constraints has been obvious for some time. Our study reveals how deep, wide, and dangerous this shift has already become. In my remarks today, I will address the four treaties that I wrote about in this report - the Comprehensive Test Ban Treaty (CTBT), the ABM Treaty, and two treaties relating to climate change, the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.

The achievement of a comprehensive test ban for the purpose of promoting nuclear nonproliferation and nuclear disarmament has been a long-held goal of the global community and an explicit commitment of the nuclear weapons states for decades. The world seemed to make a great leap toward that goal in 1996 when the CTBT was signed by scores of countries and all five nuclear weapons states parties to the Nuclear Nonproliferation Treaty (NPT).

Yet, five of the signatories to the CTBT - the United States, France, Britain, Japan, and Germany - appear to be violating it. Four of them have ratified the treaty. While the United States Senate has rejected ratification of the CTBT, remains bound by it for two reasons. First, it has not made a formal notification to the parties to the treaty of its intent not to ratify. Second, it has made repeated and formal commitments to a comprehensive test ban under the NPT.

Moreover, while the Bush administration has stated that it might resume nuclear testing, it claims, like the Clinton administration before it, that, to date, it is in compliance with the terms of the CTBT. Specifically, Appendix B of the report contains a letter from the U.S. Department of Energy (DOE) claiming that all planned laser fusion experiments in the National Ignition Facility (NIF), now being built in Livermore, California, are allowed. France is building a similar the Laser Mégajoule (LMJ).

We disagree with the U.S. government's interpretation, which is shared by the other four countries named here. Certain of the experiments in NIF and LMJ are intended to create thermonuclear explosions of ten pounds of TNT equivalent. Experiments involving nuclear explosions are not allowed under the CTBT.

The first paragraph of Article I of the CTBT unequivocally bans all nuclear explosions, even if the devices in which they are carried out cannot be weaponized. The CTBT makes no distinctions between fission and fusion nuclear explosions. The second paragraph of Article I bans all activities that are designed to encourage or cause nuclear explosions. The explanations that the United States Department of Energy has offered regarding the legality of the planned explosions in NIF simply do not stand up to scrutiny.

While the CTBT does not explicitly define a nuclear explosion, the public negotiating history unequivocally shows that any explosive nuclear yield must be much less than four pounds of TNT equivalent. Moreover, it must not cross the threshold of the fusion equivalent of criticality, which is often considered to be the achievement of ignition.

The United States and France are preparing to violate the first paragraph of Article I of the CTBT, which bans nuclear explosions. They also appear to be currently violating the second paragraph of that article which prohibits activities that would cause or encourage nuclear explosions because they are building devices that are designed and intended to cause nuclear explosions. Britain is helping fund the U.S. laser project and intends to participate in the experiments there. Therefore it also appears to be in violation of the second paragraph of Article I. Subsidiaries of a Japanese company Hoya, and a German company, Schott, are supplying the highly specialized glass that would be used to make the lasers and they are thereby encouraging nuclear explosions. These activities also appear to be in violation of the second paragraph of Article I. We believe that the parties to the CTBT should take up this question to ensure that the integrity of the CTBT as an instrument to ban all nuclear explosions is maintained.

The Bush administration's hostility to the test ban treaty has begun to undermine the treaty. China and Iran have announced a reduction of cooperation with the nascent CTBT Organization, which was created to gather seismic and other data to monitor the test ban. Similarly, the unilateral U.S. withdrawal from the ABM Treaty sets a poor precedent for other countries. The NPT, for instance, also allows withdrawal with three months notice if a country believes its security is threatened. The lack of U.S. commitment to carry out its obligations under the test ban and ABM treaties, along with the new Nuclear Posture Review, which undermines the NPT, as will be discussed by Dr. Burroughs, could together create serious problems for global and U.S. security.

We have included climate change in this report because the vast security implications of climate change are seriously under-appreciated today. For instance, if food production conditions change and vast areas of the world are flooded, climate change could create millions or tens of millions of refugees. This would pose serious economic and security concerns, in addition to environmental ones. Security issues around the connections between food, water, wars, borders, and refugees are already serious and could become greatly intensified by climate change.

Much attention has been focused on the U.S. failure to ratify the Kyoto Protocol, which requires the United States to reduce its greenhouse gas emissions by 7 percent (relative to 1990) by the end of this decade. But there is another treaty on climate change that the United States ratified in 1992, which has been in force since 1994. This is the United Nations Framework Convention on Climate Change (UNFCCC). The UNFCCC is the basic treaty relating to climate change and

underlies the next step in climate protection agreements, namely the Kyoto Protocol. We have concluded that the United States is violating the UNFCCC, which requires that "the developed country Parties should take the lead in combating climate change and the adverse effects thereof." because they have been responsible for "the largest share of historical and current global emissions of greenhouse gases."

The Bush administration has not only rejected the Kyoto Protocol, but its alternative plan to reduce "greenhouse gas intensity" does not come close to complying with the Convention on Climate Change by a long shot. It is simply a projection of modest increases in energy efficiency that have been occurring in the last decade. The increase in efficiency is too slow to lead to an actual reduction of greenhouse gas emissions, which will admittedly continue to grow for the next decade under the plan. No specific steps to actually achieve reductions beyond that time have been announced.

This policy failure on the part of the United States comes at a time when evidence of global climate change is mounting and the possibility that the world may face some of the more catastrophic results has been rising. It is a failure at least as important as any in the areas directly and more traditionally connected with the military aspects of security. We believe that the United States can and should take the lead in creating ambitious targets to reduce greenhouse gas emissions by far larger amounts over the long terms (the next few decades) and re-engage in the process of negotiations with the parties to the Kyoto Protocol to strengthen it on that basis.