
CTBT Entry into Force Taken Hostage by Regional Conflicts.

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It took almost 50 years for the idea of the Comprehensive Test Ban Treaty to ripe. Two and a half years more for tough negotiations. However, even 15 years after the opening for signatures there is still no entry into force in sight. The Comprehensive Test Ban Treaty aimed at curtailing vertical nuclear proliferation and in some degree halting the horizontal spread of nuclear weapons is in limbo. China, Egypt, India, Indonesia, Iran, Israel, North Korea, Pakistan and the United States “put a hold” on the treaty. The study reveals that regional security issues hinder global efforts in nuclear nonproliferation. It shows complex interrelation of political obstacles facing the treaty and outlines necessary conditions for its success. It also suggests that the regional character of those problems might be turn into an asset when trying to get the Comprehensive Test Ban Treaty come into effect

Conditioning CTBT ratification

Serving whole humankind the CTBT is as a global public good, but has one major implication – sovereignty. Sovereignty that essentially implies that it must be supplied voluntarily (Barret 2010). As for today nine of the 44 “key states” mentioned in the Annex 2 to the treaty (China, Egypt, India, Indonesia, Iran, Israel, North Korea, Pakistan and the United States) did not yet decide to ratify the treaty and thus prevent its entry into force. Favorable identification of most holdout states with the test ban norm is visible in political statements, self-imposed moratoria on nuclear testing or membership in nuclear weapons free zones. There are different reasons constraining ratification (to refer for a brief list please see Appendix 1), but one seems to influence most of the Annex 2 states – searching for regional reciprocity. Interestingly, exactly this reason has been one of the foundations for the CTBTs entry into force clause. Secretary-General Ban Ki-moon concluded “We can no longer wait for the perfect international environment before taking advantage of existing — and potentially short-lived — opportunities” (Statement 2010). As the paper will argue, there is no legal explanations for holding the treaty hostage on other states ratification - it is mainly of a political character. The research object of this paper thus focuses on working out regional conflict constellations that influence the CTBT entry into force process. It also reconsiders the entry into force clause and puts it into the context of this conditionality.

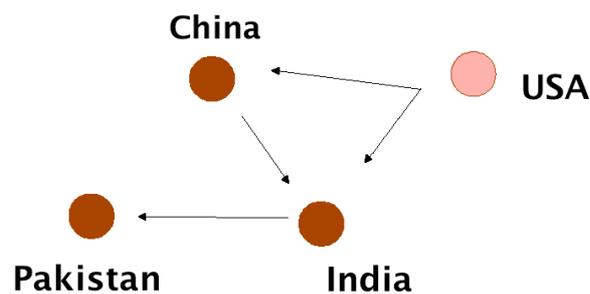
Regional Problem Constellations

For purposes of this study the United States and Indonesia will be excluded from the research, as domestic-policy constraints play a major role in the debate there. Additionally, North Korea is another exemption. It does not consider the CTBT in official statements and does not take part in the Article XIV Conferences. The CTBTO officials tried several times to approach Pyongyang, but have always been refused. From these reasons the study focuses on China, India, Pakistan, Israel, Egypt and Iran, and considers their mutual constellations. Two major configurations, conditioning CTBT on neighbor reciprocity, can be identified – the Asian and the Middle East trio.

Holding nuclear moratoria - The Asian Trio

The Asian trio consists of China, India and Pakistan. That the treaty became hostage to South Asian policy has been clear from approaching the end of negotiations (Johnson 2009:138). All three states hold unilateral moratoria on nuclear testing, but even those are conditioned on reciprocity. The trio can develop into a quartet when considering the role of the CTBT ratification by the United States. It is believed to have a trigger effect on other holdouts, mostly on China. After Beijing, New Delhi and Islamabad are believed to follow easier.

Picture. 1 Conditioning CTBT Entry into Force within the Asian Trio



Source: Katarzyna Kubiak

Although in official statements China (PRC) does not directly refer to any lasting regional issue hindering the CTBT ratification, it probably waits for the United States to move forward. Beijing, which already signed the treaty, claims to be the treaties ‘constant supporter’ abiding by its commitment to the unilateral moratorium on nuclear testing that went into effect in 1996 (Statement 1996, Statement 2007, Statement 2009). Since then, PRC continuously reiterates its support for the CTBT principles and objectives (China’s National Defense 2008 and 2010). According to predictions, Beijing already ratified the CTBT and only waits for the United States to do the same before submitting ratification instruments to the depositary (Interview with a MIT Scientist 2010, cf. Zhang 2010: 148, Carnegie 2011: 5). In January 2011 President Obama and President Hu Jintao together stated their countries support for an “early entry into force of the Comprehensive Nuclear Test Ban Treaty” (China-US Statement 2011, cf. Statement 2009), a possible indication that China closely monitors for the moment the United States will ratify the treaty. The document has been submitted to the Standing Committee of the National People’s Congress (Statement 2005 and 2007) for ratification in early 2000 (Gill 2010: 11, Reuters 2000). To deal with further ratification, a preparatory office has been established at the People’s Liberation Army General Armaments Department (China’s National Defense in 2006). The treaty is seen as having high practical significance to the advancement of the nuclear disarmament’ (Statement 2009) – a point underlined by the Chinese delegation throughout the whole negotiations process. At this time already Foreign Minister Qian Qichen claimed that a CTBT was “only a first step in the entire process of comprehensive nuclear disarmament” (Johnson 2009:142).

India - the “father” state of the CTBT did not yet even sign the treaty. It strikes an ambiguous attitude towards the agreement – supporting the plain idea, but blaming other negotiating parties to fail in designing time-bound disarmament goals. Its favorable position is indicated through its moratorium on nuclear testing from 1998, which it systematically reaffirms (cf. Statement 2007a, Statement 2010a). The ambiguity came into shining already during negotiations when “even the G-21 became skeptical of India’s motives when the Indian delegation refused to engage with G-21 initiatives to insert disarmament language into the

treaty's preamble" (Johnson 2009: 122). New Delhi's sustained regional security considerations are clearly reflected in official statements: "Our capability is demonstrated but, as a matter of policy, we exercise restraint. Countries around us continue their weapon program, either openly or in a clandestine manner. In such environment, India cannot accept any restraint on its capability, if other countries remain unwilling to accept the obligation to eliminate their nuclear weapons" (Statement 1996a). New Delhi visibly underlines both its long-term condition for nuclear disarmament with considering CTBT in reciprocity to its neighbors. Nevertheless, India also seems to be concerned over its international status in case it will be the last holdout preventing the treaties ratification. As stated by the Foreign Secretary Shivshankar Menon in 2009, New Delhi "won't stand in the way". A possible change in the position has been articulated by Manmohan Singh, Indian Prime Minister, who stated in 2009 that "[s]hould the US and China ratify the CTBT, a new situation will emerge" (Statement 2009a). It thus seems, that in order to maintain a good image, India would reconsider its rigid position on the treaty after both remaining nuclear weapons states ratify it.

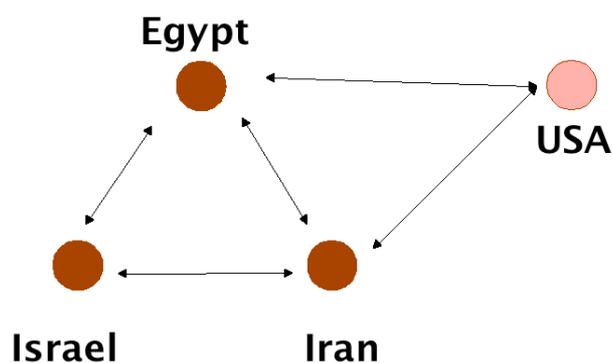
Although it enthusiastically signed the Partial Test Ban Treaty in 1963, Pakistan does not currently consider signing the CTBT (Spokesman Briefing 2009). This reliance is India-reactive and an outcome of a long lasting territorial dispute with India as well as anxiety of losing its sovereignty. "When the CTBT was adopted by the UN General Assembly on 10 September 1996, Ambassador Munir Akram stated that Pakistan supported the resolution to adopt the CTBT but would not sign the treaty until its regional situation warranted, understood to mean when India signed" (Johnson 2009:124). However, according to Ambassador Shahbaz, who served as Permanent Representative of Pakistan to the International Organizations in Vienna, Islamabad is not "opposed to the objectives and purposes of the treaty [and] will not be the first to resume nuclear testing" (Statement 2007b). Pakistan was already very close to signing the CTBT in September 1999 and March 2001. It failed due to the CTBT rejection in Washington, which gave Pakistani government justification to take over a "wait and see" policy (Chakma 2009: 98), and due to India conducting "a successful test-firing of its Prithvi medium range surface-to-surface ballistic missile, capable of carrying a nuclear warhead" (The Acronym Institute 2001). Pakistan unilaterally restrained itself from further testing, as long as India refrains from testing (Ministry of Foreign Affairs Pakistan 2006, Statement 2007b). Conditions under which Pakistan would consider signing and ratifying the treaty evolved from waiting for India to do so, towards the demand of a durable security structure in the region. Islamabad is convinced that the world community does not put enough focus on the region and downgrades the importance and urgency of the conflicts' resolution. The most prominent argument is that "the signing of the CTBT in its present form means that conflicts in South Asia could be ignored as regional in nature since they would be confined to limited conventional war. This would allow the industrialized countries to forget about outstanding issues in that area. Interest in a solution of the Kashmir dispute was aroused as a consequence of nuclear potential of South Asia" (Chakma 2009: 96). On behalf of

the government, Ambassador Shahbaz proposed a plan to the Article XIV Conference that supported this view and included: “(i) resolution of all outstanding disputes; (ii) promotion of nuclear and missile restraint; and (iii) maintenance of conventional forces balance” (Statement 2007b). These demands directly address India, but also indicate that Islamabad does not see any legal or technical obstacles within the CTBT.

Search for reciprocity - The Middle East Trio

Within the Middle East trio there are foremost concerns regarding the Israeli clandestine nuclear weapons that hinder progress in the CTBT entry into force. The attitude of Egypt and Iran is officially connected with the bargaining option for a Middle East Nuclear Weapons Free Zone (ME NWFZ), which will imply Israeli denuclearization and, hopefully, NPT accession as a non nuclear weapons state. The 2010 NPT Review Conference adopted a final document calling for convening a “conference in 2012, to be attended by all States of the Middle East, on the establishment of a Middle East zone free of nuclear weapons and all other weapons of mass destruction, on the basis of arrangements freely arrived at by the States of the region“ (Final Document 2010: IV 7a). The prospects of its success are, however, moderate and rather far from materializing in the nearest future. Nuclear weapons states are also seen as holding the major responsibility for the ratification process and are expected to lead by example, thus USA again might play a trigger role for further ratifications in the Middle East. Israel officially demands regional adherence to the CTBT before it might consider ratifying the treaty.

Picture 2. Conditioning CTBT Entry into Force within the Middle East Trio



Source: Katarzyna Kubiak

As a signatory of the Partial Test Ban Treaty and of the CTBT, Israel steadily reiterates its “firm” and “unequivocal” support and commitment to the treaties objectives (Statement 1999, 2003, 2005a, 2007c, 2009b). It also considers the prohibition of nuclear testing as part of its national approach to nuclear security and stability (Statement 2005a, 2007c). The

reluctance to ratify the CTBT by Israel has deep roots in regional security concerns. Paradoxically, the non-NPT Israel addresses its long term survival objections in official statements reminding that “[i]n recent years, the international community has witnessed growing threats and challenges to the non-proliferation regime from within the Middle East region besides alarming calls by some in the region against the very existence of the State of Israel” (Statement 2009b). Israel is not a member in any treaty considering ABC weapons (CWC, BWC, NPT) and is opposing even the idea of negotiating the FMCT. It thus seems that Israel wants to have all security options open, unless its sovereignty is fully accepted by all members of the world community. There are two main factors influenced by regional concerns that Israel repeats at every Conference on Facilitating the Entry into Force of the CTBT as necessary prerequisites for the treaties ratification. First, it demands “sovereign equality status” in the decision making bodies of the CTBTO (Statement 1999, 2003, 2005a, 2007c, 2009b) – within the Executive Council geographical region of the Middle East and South Asia (MESA). This argument refers to Iran making the work of the MESA group impossible for “reasons completely alien to the purposes of the Treaty” (Statement 2005a, 2007c). This is why Israel calls for a depoliticized organizational infrastructure of the CTBTO. However, it does not seem to be a plausible argument for it to remain outside of the CTBT (cf. Horowitz et.al. 2010: 10). The second factor is the adherence and compliance to the treaty by other states within the Middle East (Statement 2005a, 2007c). Thus, again, it is about CTBT regional ratification reciprocity, mainly referring to Iran. Unfortunately, all those preconditions are being called by Israel as “longer term considerations” (Statement 2005a, 2007c). This might indicate that Israel sees no rush in the CTBT entering into force or that it does not expect the regional situation to change much or enough in the near future.

Cairo signed the CTBT, but did not ratify it yet. As an NPT non-nuclear weapons state, Egypt supports the principles and objectives of the CTBT (Statement 2005b). As a signatory state of the Pelindaba Treaty and within its Article 5 it already refrains, in good will, from testing of nuclear explosive devices. One can also find a norm forbidding nuclear testing within its national legislation in the Presidential Decree No 152 (2006) - a precondition for a CTBT ratification anyway. Influenced by the unstable security situation in the Middle East, Cairo uses the treaty as a bargaining chip to achieve the long promised ME NWFZ “as one of the main components of the lasting and comprehensive peace in the region” (Statement 2005b). The Implementation of the 1995 Resolution on the Middle East would “open the doors for a new horizon to the CTBT” (Statement 2009a). The ME NWFZ idea was mentioned by Egypt in the 1970s already. It is driven by two perceived threats to regional stability: Israel and Iran. According to James Leonard, a former American Deputy Special Representative for Middle East peace negotiations, in terms of security concerns Cairo mostly struggles with Israel’s clandestine nuclear weapons, claiming their destructive influence on the regional security environment and creating global inequality within the non-proliferation regime (Leonard 1995: 2). On one hand, any war in the region with Israeli nuclear stockpiles in use

would not skip to affect Egypt. On the other hand, Israeli ambiguity might lead other countries in the region to concern nuclear weapons program, that will directly effect Egypt's security environment (cf. CD Statement 2007, 2009). Cairo's primary policy aim is to eliminate all security asymmetry, "gradually conditioning all progress on Israel's accession to the NPT" (Horovitz 2010: 11). As long as Israel will not enter into internationally binding obligations concerning nuclear weapons, Egypt will also restrain itself from doing so. This measure serves as a precaution for what Egypt has already anticipated in the past not to happen again. The Egyptian NPT ratification in 1981 has been foremost possible due to the finished territorial conflict with Israel and was a step aimed at better international relations with the United States in particular, shedding a light onto Israel's refusal, and the desire to develop civil nuclear energy, which would be difficult to achieve indigenously. Apparently a "U.S. promise that Israel would sign it as well" (Khan 2002: 257) was also in the game. As Israel still did not join the NPT regime, as a precaution Cairo will probably wait for Israel to ratify the CTBT first. According to Mahmoud Karem, former Egyptian Ambassador to the EU, "[p]eace has to be through equality. Peace should not allow any party to practice hegemony. [...] Any security with weapons of mass destruction is not acceptable" (Khan 2002: 256) – clear reference to Israel and the demand for its accession to the NPT regime. Cairo leads a coherent and consequent policy in that matter and rejects membership in other treaties, like the Biological Weapons Convention or the Chemical Weapons Convention. This is also due to balancing Israeli power by keeping chemical stockpiles. In principle, the former Egyptian government presented a favorable position towards the CTBT, but conditioning it upon a NWFZ. After the 2011 Egyptian uprising the Supreme Council of the Armed Forces forms an interim government in Cairo. The new parliament will be elected in October 2011, followed by the presidential elections in October or November 2011. Due to these domestic challenges it is hard to predict Egypt's future position on the issue. It is, however, very probable that it will stick to its previous policy line in terms of CTBT.

Iran's prolonged CTBT-ratification process lies in its regional security perception and the "unfair structure" of the international nuclear regime in general. According to Ambassador Soltanieh, who represents Iran in Vienna, "several negative developments jeopardize the treaties entry into force" (Statement 2007d). Due to the Iranian believe that the Middle East is threatened and intimidated by the Israeli clandestine nuclear program, it calls Jerusalem to reveal its nuclear capabilities and join the NPT (Statement 2001, 2007d). "Acknowledgement of the possession of nuclear weapons by Israeli regime [is] a clear violation of the spirit and letter of the CTBT, which [is] faced with the condemnation by a majority of the countries which are Non-aligned Movement, and regretfully, the silence of the western countries" (Statement 2007d). Iran's former deputy president Ayatollah Mohajerani stated in 1991 that, if Israel "has the right to possess nuclear weapons, then all Muslim countries have this right as well" (Feldman 1997: 137) – an indication for Iran's mistrust in international nonproliferation efforts. Iran particularly states that the "policy of terror" – a clear reference to

Israel – is why regional countries do not fully support the CTBT. Teheran claims that another obstacle on the way towards the CTBT ratification is the presence of Israel within the geographical region of the Middle East and South Asia, delegating seven states to the future Executive Council. It even goes further by stating that including “Israel in the Middle East and South Asia Group [...] has caused a deadlock and consequently deprived an important group of countries from active participation in some aspects of the work of CTBTO” (Statement 2001). However, like for the Israeli case, here as well it does not seem to be a reasonable argument preventing Iran to sign the treaty. Both states already participate in various other organisations. According to a Pugwash consultancy group report on the CTBT, “[i]n Iran the issue of the CTBT is not considered separate from nuclear negotiations” (Cotta-Ramusino et.al 2010: 7). While signing the CTBT, Teheran made an additional declaration on this matter stating that “the Islamic Republic of Iran considers that the Treaty does not meet nuclear disarmament criteria as originally intended. We had not perceived a CTBT only as non-proliferation instrument. The Treaty must have terminated fully and comprehensively further development of nuclear weapons. [...] We see no other way for the CTBT to be meaningful, however, unless it is considered as a step towards a phased program for nuclear disarmament with specific time frames through negotiations on a consecutive series of subsequent treaties” (Declaration 1996). As for Teheran “the NWSs bear the main responsibility for the entry into force of the CTBT” (Statement 2007d). Thus, although it has never been explicitly mentioned, Iran may not ratify the CTBT unless Washington and China do. Moreover, according to an official statement “some of the Annex II States are not even a party to the NPT and have un-safeguarded nuclear material and facilities. Their promptly acceding to the NPT would be another significant element in facilitating early entry into force of the CTBT” (Statement 2007d). Another necessary condition would be the improvement of security in the Middle East region. This has been voiced during a passionate speech by President Ahmadinejad at the 2010 NPT Review Conference. In a proposal “to realize the humane aspiration for nuclear disarmament and nonproliferation” he called for “immediate and unconditional implementation of the resolution adopted by 1995 Review Conference on the establishment of a nuclear free zone in the Middle East” (Statement 2010b). National legislation also prohibits persons or entities to engage in manufacturing, producing and acquiring nuclear weapons. Its enforcement is indicated within the Law on Enhancing Penalties for the Smuggling of Weapons and Ammunition and Armed Smugglers from 1971 and within article 688 of the 1997 Islamic Penal Code (Note verbale 2006, cf. BWC NID Report).

Questioning conditionality in light of the CTBT Article XIV

As seen from the above, the CTBT restraint argumentation that prevail the discussion contains a regional component. Hold out states described use the regional reciprocity argument to wait for their neighbors or key nuclear weapon states to sign the treaty first. They, nevertheless, often abide by the nuclear test ban in national or other international commitments. China, India and Pakistan abide by their moratoria on nuclear testing. The

drawback of this instrument lies in its unilateral voluntary character. In practice it means that a moratorium can be cancelled if appropriate state institutions decide so and testing might follow suit without any legal repercussions. They might also fall victim of internal political conundrums. Egypt is a member to the NPT and a signatory state to the Pelindaba treaty and its article 5 forbidding nuclear testing. Iran, which does not have any moratorium on nuclear testing, nor is a part to a NWFZ, is a member state to the NPT, which prohibits manufacturing of nuclear weapons, thus implicitly also testing. This commitments only underline that Annex 2 states do see a value added in the test ban norm (cf. Bunn 1999). The only state which is not bound by any international treaty is Israel.

Conditioning CTBT on solving regional disputes is not only unwise, but also unnecessary. The treaty has been drafted in a way to address any insecurity and suspiciousness. It has not been designed to solve any regional conflict, but it might relax regional tensions by enhancing cooperation and transparency, and thus serve as a confidence building measure.

Why does China wait for the United States? Why does India wait for China and Pakistan waits for India? Why Iran, Israel and Egypt wait for each other to sign first? Official statements gave us already some answers. The way in which article XIV has been designed might give a solution. Already the treaty negotiations presented a challenge in terms of finding an agreement over the entry into force clause that would satisfy all negotiating parties. As Ambassador Jaap Ramaker of the Netherlands, who served as Chairman of the CTBT talks, recollects “some of the eight nuclear weapons and nuclear weapon capable states conditioned their own adherence to the CTBT by the adherence to the treaty of some of the other eight” (Ramarker 2011). This considerations laid down the foundation for article XIV of the treaty. Two forms of commitment to the treaty have to be distinguished - the political and the legal one. Political commitment is governed by the general principle of good faith without inducing any legal obligations on the state party (Bunn 1999: 22). Signing and ratifying the CTBT before its entry into force does not deprive any state of its sovereignty or makes it vulnerable to the decision of other states not to sign and/or ratify the treaty. Unless the treaty enters into force it puts no legal obligations on states that signed and/or ratified the CTBT. Becoming a signatory to the CTBT equals intending to make the terms of the agreement legally binding on itself, but the signing does not make the act binding. Ratifying the treaty makes the terms of the CTBT legally binding, but only after the requirements for its entry into force are met. Thus only after all Annex 2 states ratify the treaty. The entry into force clause shall be interpreted as a security guarantee for all state parties, as brought up by a German Diplomat - a parallel to the “escrow” principle. This theory is build upon the premise that states do not trust each other and are afraid of the consequences of their ratification in case other states will not join the CTBT club. According to Annex 2, 44 explicitly named states have to deposit their ratification instruments at the “depository” in order for the treaty to enter

into force. State parties can be understood as being the “buyers” and “sellers”, while the “depository” plays the role of the “escrow”. Thus, e.g. Pakistan - looking for India doing the first move - would not weaken its position or take any risk by signing and ratifying the treaty, as it still would not be bound by the treaties legal obligations until India and other hold-outs ratify it. However, with Pakistani and Chinese ratification, India might follow suit. In the event of both India and Pakistan signing and ratifying the treaty, a better environment for serious cooperation on solving the outstanding conflict will emerge. Both states will be ensured that the other seriously refrains from nuclear tests, can invest potential nuclear testing budgets for development and ease rising national discontent on devoting too much money for military purposes. As mentioned, the legal commitment will be fulfilled only after all Annex 2 states ratify the treaty, so only when all hold-out states sign and ratify the treaty. Egypt, Israel and Iran would have no legal obligations resulting from the treaty unless it enters into force. If finally it really enters into force, it will have an advantageous effect on all sides. It will ensure all state-parties that any law-breaker will be legally taken responsible. The CTBT would not solve the regional security unrest; however, it could be a step into a cooperative peace process bringing the Middle East closer to the ME NWFZ. From the non-proliferation perspective, nuclear weapon states should be interested in non nuclear weapon states or states that are not part to the NPT, to ratify the treaty. A CTBT will be the next insurance of nonproliferation. On the other side, non nuclear weapons states and states outside the NPT regime shall have a strong interest in making the CTBT entry into force as it will be the first legally binding agreement that prevents nuclear weapon states from testing. Rather than putting the CTBT as a prize at the ‘winners’ rostrum, it shall be seen as a step to achieve the finishing line - nuclear disarmament. As a piece of the puzzle, not the final picture at the end. A step that does not directly solve regional problems between states considered, but a step that increases mutual trust acting as a confidence-building measure.

Appendix 1. Main arguments against CTBT

Technical reasons	<p><u>Referring to CTBT:</u> Loopholes within the test-ban-regime (e.g. definition of a „nuclear test“) Struggles within the MESA Group in the Executive Council Questionable effective verification through the IMS On-site inspections being too intrusive Lack of full readiness of the verification regime</p> <p><u>Referring to nuclear weapons:</u> Maintenance of existing nuclear weapons without testing Concerns over credibility of previous nuclear explosions Development of new nuclear weapons</p>
Security-related arguments	<p>Nuclear testing as effective deterrent Wish to keep the nuclear option open Signature/ratification relies upon another countries' steps Bargaining for the Middle East Nuclear Weapons Free Zone (ME NWFZ) Bargaining for a better relationship with other countries Bargaining for improved regional security</p>
Arms-control-related reasons	<p>Inequality of the international non-proliferation regime Non adherence to international treaties by other states Lack of universality of the NPT Lack of reference towards complete disarmament within the CTBT</p>
Domestic-policy issues	<p>Political transition correlated with other priorities Divided political scene Majority of political hard-liners Securing internal power/ securing internal power transition Testing used to show dissatisfaction with other states behaviour</p>

Source: Kubiak, Katarzyna; CTBT Hold-out States. Why did „the longest sought, hardest fought prize in arms control history” still not enter into force?; Institute for Peace Research and Security Policy at the University of Hamburg; Working Paper #16; March 2011

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