

# Reflections on the 1972 Antiballistic Missile Treaty and National Missile Defense

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*Editorial Abstract: The United States recently announced its withdrawal from the Antiballistic Missile Treaty. Major Ruse's examination of how the treaty restricted the development of our national missile defense system helps us understand what the withdrawal means for the future.*

**D**ID THE 1972 Antiballistic Missile (ABM) Treaty hinder American military capability, threaten international strategic stability, or endanger the safety and welfare of our nation and its citizens? Clearly, the Cold War strategy of mutual assured destruction (MAD) between the United States and the Soviet Union played a critical role in strategic stability and the prevention of global nuclear war. People saw the ABM Treaty as the cornerstone of MAD, but more than a decade after the fall of the Berlin Wall and the collapse of communism, we find numerous and divergent legal, political, and personal views on the ABM Treaty and its impact on our national security strategy. On 13 December 2001, President George W. Bush announced that the United States would pull out of the treaty. In light of that announcement, it is important to reflect on the various legal, political, economic, and military circumstances surrounding this decision if we are to understand the implications it has for our present situation.

In the context of international law, the 1972 ABM Treaty contributed significantly to the rapidly expanding legal discipline of warfare in space. Support of the treaty rose to national relevance and concern following the re-



lease in January 2001 of the report of the Space Commission, chaired by Donald Rumsfeld prior to his becoming secretary of defense. After its six-month investigation, the commission concluded that “the security and well being of the United States, its allies and friends depend on the nation’s ability to operate in space.”<sup>1</sup> The national security strategy even stated that “the ABM Treaty remains a cornerstone of strategic stability and the U.S. is committed to continued efforts to enhance the Treaty’s viability and effectiveness.”<sup>2</sup>

The ABM Treaty clearly had a prominent influence on the national military strategy and an expanding legal influence on future space warfare. The original treaty, however, focused on a much more limited role. As designed, it severely limited the deployment, testing, and use of national missile systems designed to intercept incoming strategic or long-range missiles. Interestingly, the treaty banned a technology that did not even exist in 1972. Specifically, it outlawed national missile defense (NMD) systems in the United States and Soviet Union but did not limit development and deployment of theater missile defense (TMD) systems. In the midst of the Cold War, with the two superpowers dominating global military might, the bipolar treaty was adopted to avert a possible nuclear war and curb the nuclear arms race. Logic held that if each nation remained defenseless to a nuclear attack and if nuclear retaliation to a first strike were guaranteed, then neither nation would have any motivation to consider launching a nuclear strike. The treaty codified MAD, which prevailed until the fall of communism and dissolution of the Soviet Union in 1991. Today, it seems ironic and contrary to logical thinking that any nation, especially a superpower like the United States, would agree to remain defenseless in hopes of maintaining strategic stability. For whatever reason, the two countries avoided nuclear world war, and MAD prevailed throughout the Cold War. Yet, the idea of developing and fielding antimissile missiles began as early as the 1950s, and President Ronald Reagan formally promoted it in 1983

with his quest for a “peace shield” to render nuclear weapons “impotent and obsolete.”<sup>3</sup>

In an idealistic world, Reagan preferred nuclear disarmament to achieve nuclear stability, but, realistically, he understood that retaliation would continue to influence world relations. From the beginning, he intended his Strategic Defense Initiative, derisively termed “Star Wars” by the media, as a comprehensive defensive capability—possibly including space-based lasers—that would ensure the ineffectiveness of threats or the use of long-range missiles against the United States and its global interests/allies. He rejected the “logic” of MAD, declaring, “Wouldn’t it be better to save lives than to avenge them?”<sup>4</sup>

The Clinton administration’s aversion to NMD was based heavily on international promotion of Cold War-era MAD and support for the ABM Treaty, as well as intelligence estimates that foresaw no missile threat outside of Russia. The national intelligence estimate of 1995 concluded that “there would be no threat from long-range ballistic missiles for at least fifteen years.”<sup>5</sup> This staunch, although outdated, support of Cold War strategy took a sharp blow on 14 July 1998, when a congressionally mandated commission led by Rumsfeld released its final report, unanimously concluding that “concerted efforts by a number of overtly or potentially hostile nations to acquire ballistic missiles with biological or nuclear payloads pose a growing threat to the United States, its deployed forces and its friends and allies. [These nations] would be able to inflict major destruction on the U.S. within about five years of a decision to acquire such a capability. . . . During several of those years, the U.S. might not be aware that such a decision had been made.”<sup>6</sup> If this report were not daunting enough, the decisive wake-up call to US vulnerability came just six weeks later when on 31 August 1998, North Korea launched a long-range Taepo Dong 1 missile over Japan and 1,000 miles out into the Pacific.<sup>7</sup> Most disturbing was the confirmation that this missile actually contained a third stage which would have provided true intercontinental capability had it not mal-

functioned. Despite the undeniable threat, the required technology and associated cost of defending against it remained politically questionable.

On 10 June 1999, an Army theater high altitude area defense (THAAD) missile successfully intercepted and destroyed a ballistic missile launched 120 miles away, thereby validating the “bullet hitting a bullet” technology.<sup>8</sup> By the end of the year, the United States had completed four successful TMD intercept tests and one successful NMD “kinetic kill.”<sup>9</sup> On 23 July 1999, President Bill Clinton signed the National Missile Defense Act of 1999, authored by Sen. Thad Cochran (R-Miss.), which called for deployment of a limited missile defense system “as soon as technologically possible.”<sup>10</sup> Based on estimates that North Korea could have a reliable missile threat to the United States by the year 2005, President Clinton had to make a final decision by the summer of 2000 on whether or not to deploy a limited, land-based NMD system. This decision was based on technology development, affordability, potential threat, international treaty considerations, and competing defense priorities. Three of the 19 planned NMD tests were completed by mid-July 2000. Costing \$100 million per test, only one of the three missile intercepts proved successful.<sup>11</sup> Lt Gen Ronald Kadish, director of the Ballistic Missile Defense Organization, testified before Congress that “93 percent of the system’s critical engagement functions have been proven to work properly.”<sup>12</sup> Despite this testimony, and possibly fearing a negative arms control legacy as he prepared to leave office, President Clinton decided on 1 September 2000 to leave his successor with the decision of whether or not to deploy an ABM system, thereby avoiding the treaty amendment or abrogation issue.

In contrast to the ambiguous statements and halfhearted efforts of the Clinton administration to deal with NMD, President Bush’s position has not wavered. Contrary to information reported in several media summaries, the president is indeed aware of the serious technical, financial, and political challenges associated with NMD, but he isn’t willing to let a 29-year-

old treaty dictate our national defense strategy: “Missile defense is a sensitive issue for some members of Congress. It is a sensitive issue for some of the leaders of countries around the world. But I think we have to protect America and our allies from real threats of the 21st century.”<sup>13</sup> Defense Secretary Rumsfeld also has had no qualms about abrogating the ABM Treaty in the interests of national defense, and, as a strong proponent of NMD, he will likely promote a comprehensive missile defense system, including land-, sea-, and space-based components. The secretary is acutely aware of the technical obstacles (two of the five NMD tests have been unsuccessful), political debates at home and abroad (threats to increase the arms race and pull out of previous treaties, as well as “shield of dreams” accusations), economic reality (estimates run from \$120 to \$240 billion), and legal ramifications of withdrawing from the ABM Treaty. However, he clearly summarized the new US intentions at the Munich Conference on Security Policy in February 2001, when he told other defense ministers that “the United States intends to develop and deploy a missile defense designed to defend our people and forces against a limited ballistic missile attack. That is a fact.”<sup>14</sup> Unquestionably, NMD is on the fast track for development and deployment to protect America and its forces, but secondary concerns remain, such as how America will approach further international arms control, reduction of nuclear warheads, and global strategic security.

Article 15, a very significant element of the ABM Treaty, permitted either party to withdraw from the treaty with six months’ notice if “extraordinary events” jeopardize that party’s “supreme interests.”<sup>15</sup> Clearly, the matter of what constitutes “supreme interests” and “extraordinary events” is a gray area for lawyers and politicians, but it appears reasonable that today’s proliferation of intercontinental ballistic missiles by rogue nations and the demise of the confrontation between the superpowers would justify withdrawal from the treaty in the mutual effort to secure international stability based on modern threats, technology, and resources.

Numerous legal, personal, and political statements, based primarily on the reality of a new international security environment and the dissolving of the Soviet Union, have challenged the validity of the ABM Treaty. Secretary Rumsfeld highlighted the unique international environment by stating, "It was a long time ago that that treaty was fashioned. Technologies were noticeably different. The Soviet Union, our partner in that agreement, doesn't exist any more."<sup>16</sup> He stopped short of endorsing many conservatives' view that the ABM Treaty was no longer in force but opined that "it (the treaty) ought not to inhibit a country, a president, an administration, a nation from fashioning offensive and defensive capabilities that will provide for our security."<sup>17</sup> Perhaps most convincing was the opposition of the original drafters and negotiators of the treaty. Henry Kissinger, former secretary of state, denounced the ABM Treaty, explaining that "the circumstances that existed when the treaty was agreed to were notably different from the situation today."<sup>18</sup> Another original drafter, John Rhinelander, testified before Congress that the drafters assumed the treaty would be updated with technology to support "a live, viable, modern treaty to go with technology as it's changed."<sup>19</sup> He considers the treaty an "antique" since it has failed to evolve with technology over the past 29 years.

Examining the "intent" of the treaty provides interesting insight, but how did the Russian Federation's succession to the former Union of Soviet Socialist Republics affect the obligations and rights of the treaty? Many legal experts claim that as a bilateral, nondispositive document (i.e., it did not irrevocably fix a right to a particular territory), the ABM Treaty lapsed when the Soviet Union ceased to exist.<sup>20</sup> Historic precedent, recognized scholarly writings, international law, and judicial decisions all appeared to strongly support the lapse or abrogation of the treaty: "The United States has officially expressed its view that upon the extinction of a State, its bilateral political treaties automatically lapse, and has acted in accordance with that view in connection with the extinction of the Kingdom of Hawaii in 1898, the

dissolution of the Austro-Hungarian Empire at the end of World War I, and the dissolution of Yugoslavia in 1992."<sup>21</sup> International law and legal scholars have supported the conclusion that upon a state's extinction, its bilateral treaties do not automatically become binding upon the extinct state's successor and the original treaty partner. Hence, the validity of the ABM Treaty since the collapse of the Soviet Union in 1991 became extremely questionable. Thus, the development and deployment of an American NMD system in the interests of national defense and international stability are justified.

Against this brief background of the ABM Treaty, one needs to explore why it became such a hot issue after three decades. The answer lies within a framework of political and technological developments as well as a revised security environment. Most likely, the predominant event was the collapse of the Soviet Union in 1991, which effectively ended the Cold War and the bipolar dominance of military affairs. Nuclear deterrence and MAD/vulnerability waned as dominant theories behind international security strategies. Even Russian opposition to any ABM negotiations or NMD development was largely just a reflection of ideological rigidity and patriotism.<sup>22</sup> Furthermore, the deterrence argument of "Why defend when you can reliably deter?" became less relevant with the advent of modern ballistic missile threats from rogue nations.<sup>23</sup> Several crises in the past decade involving Iraq, North Korea, Serbia, and China have highlighted misplaced overconfidence in deterrence, exposing security threats from regional challengers.<sup>24</sup> Additionally, the current threat of a few dozen ballistic missiles is also much more reasonable to defend against with an NMD system than against thousands of Soviet nuclear and conventional missiles. With obstacles to the ABM Treaty no longer an issue, American leadership will realistically consider international security issues and exploit available technology and resources to protect US interests and citizens.

A precedent exists for US withdrawal from the ABM Treaty. Russia provided notice in

October 1999 of its intent to violate the 1990 Conventional Forces in Europe (CFE) agreement by sending more ground forces to southern Russia in the ongoing battle against Chechen rebels.<sup>25</sup> The CFE Treaty limits the number of nonnuclear arms deployed in Europe, but Moscow invoked the “supreme national interest” provision in the treaty to give international notice prior to its deliberate violation of the treaty. This “withdrawal provision” is similar to Article 15 of the ABM Treaty, which allows for withdrawal under certain circumstances (see above). This bold decision, part of the effort to combat Islamic rebels in southern Russia, casts doubts on that country’s resolution to abide by other international treaties when national interests conflict with treaty limitations. A senior US Senate aide made the obvious observation: “If the Russians can be honest enough to say when they are acting in their own national interest, we can only hope the U.S. administration will learn the lesson and do the same on the ABM Treaty.”<sup>26</sup> Apparently, it did—finally.

During President Clinton’s eight years in office, he promoted the ABM Treaty not only as valid but also as the very “cornerstone” of international stability.<sup>27</sup> Despite the political doublespeak, he did halfheartedly propose amendments to the treaty so that America could deploy a limited NMD system, attempting (unsuccessfully) to convince the Russians that it would not threaten their security. Understandably, this sent confusing messages to Moscow: if America believed so strongly in the ABM Treaty for international stability and security, why did it want to amend the treaty? Wouldn’t America’s desire for an NMD system contradict the very essence of the treaty?

The reality and threat of ballistic missile attacks from rogue or developing nations, whether armed with nuclear or conventional warheads, finally led to initial dialogue with Russia on amending the ABM Treaty. In January 1999, President Clinton petitioned Russian president Boris Yeltsin to renegotiate the treaty to permit a “limited” national defense system.<sup>28</sup> American dialogue centered on the need to update rather than nullify the ABM

Treaty to provide defense against emerging global threats yet avoid a new arms race with Russia and China. Later, in October 1999, the United States offered cash-strapped Russia \$60 million to complete a large missile-tracking radar near Irkutsk, Siberia, in exchange for an agreement to renegotiate the ABM Treaty.<sup>29</sup> (To see this as a sign of changing attitudes, one need only remember that the United States claimed in the 1980s that a similar radar at Krasnoyarsk, Siberia, violated the ABM Treaty and pressed the Soviets to dismantle it.)<sup>30</sup> Senior American negotiator John Holm presented a draft revision of the ABM Treaty to Russian authorities in January 2000.<sup>31</sup> Although that document now appears to have been overtaken by events, it is instructive to examine the legal terms as part of the sensitive political gamesmanship.

The proposal did not entail “amending” the text of the original treaty but simply “revising” it by adding two “protocols.”<sup>32</sup> This “revision” allowed the first phase only of a limited NMD system by 2005, including expanded radars, up to 100 land-based missile interceptors, and extensive verification measures.<sup>33</sup> The protocol permitted the United States to construct a new, sophisticated radar system on Shemya Island in Alaska and to upgrade early warning radars in Alaska, Massachusetts, California, Greenland, and Great Britain.<sup>34</sup> The proposal also allowed for future negotiations to deploy an additional 100 missiles and launchers at a second location by the year 2010.<sup>35</sup> In the summary of the draft revisions, the United States acknowledged that the proposed limited NMD deployments contravened the current ABM Treaty but were necessary to counter emerging threats from rogue nations.<sup>36</sup> If the Russians experienced slight confusion from Washington’s doubletalk and sly “legalese” language before, this proposal probably really sent them into a frustration tailspin. The preamble to the new protocol affirmed America’s commitment to the ABM Treaty but at the same time justified the “adaptation” of the treaty to allow a limited NMD system due to changes in the strategic situation.<sup>37</sup> Specifically, the preamble concluded that a limited NMD system “will neither threaten nor

allow a threat to the strategic deterrent forces of either Party."<sup>38</sup> The prevailing American logic accompanying this proposal held that any "limited" NMD system was not aimed at Russia's strategic capabilities and that such a system would be effective only against a limited attack involving relatively unsophisticated missiles. American officials clearly explained that even with further reductions to 1,500 warheads—as proposed under the next phase of arms reduction, known as the Strategic Arms Reduction Treaty (START) III—Russia would still have more than enough missiles and decoys to easily overwhelm the American defense shield and thus preserve strategic equilibrium.<sup>39</sup>

For neutral outsiders considering the proposed amendment, it is difficult at best and impossible at worst for most of them to understand how permitting a limited NMD does not directly violate a treaty that permitted no NMD in order to ensure mutual vulnerability and the capability to conduct an annihilating counter-attack. Despite a full year of high-level diplomatic maneuvering and discussions, including a personal meeting in June 2000 between President Clinton and Russian president Vladimir Putin, no further proposals or agreements were forthcoming. Many American congressmen and military leaders felt that these proposals were too restrictive for fully exploiting American technology to provide the best national defense possible. By the same token, Russian leaders and those of several other nations believed that the proposals were too extensive and would serve as a stepping stone for compounding the existing problems.

Concern over the ABM Treaty and NMD, however, is not exclusive to the United States and Russia. Diverse opinions, rationales, and recommendations exist among the people and leaders of most foreign nations regarding the ABM Treaty dilemma. The range of support sounds remarkably similar to opinions expressed in the United States among politicians, the media, military leaders, defense "experts," and the general public.

European nations have not actively taken a strong public stance against the United States on NMD, but factions in Germany, France,

and England have historically been critical of breaking or amending the ABM Treaty. European leaders acknowledge their concern over the proliferation of weapons of mass destruction and are actively developing and deploying modern TMD systems.<sup>40</sup> However, European nations do not anticipate using or being the target of long-range ballistic missiles and, therefore, are more "comfortable" with the traditional and proven strategies of classic nuclear deterrence and nonproliferation agreements to provide global security and prevent arms races.<sup>41</sup> British members of Parliament criticized US steps towards an NMD system in August 2001, claiming it would be "highly destabilizing" to international security.<sup>42</sup> Historically, France has denounced a possible American NMD, but in January 2001 Francois Heisbourg, a respected French defense intellectual, encouraged Europeans not to resist the "American missile defense locomotive" because Europe has no compelling interest in "mounting a crusade against U.S. missile defense."<sup>43</sup> On the other hand, France's foreign minister, Hubert Vedrine, stated recently that "NMD can become a problem."<sup>44</sup> According to Germany's defense minister, Rudolf Scharping, "the technical feasibility and the financing of a strategic missile defense are not at all manageable yet."<sup>45</sup>

Concerns to the east of Europe are predominantly against an American NMD system but for varying reasons. South Korea remains "unofficially" concerned, not about an exploding global arms race but about the potential damage to current intra-Korean détente and increased military tensions with North Korea that an NMD deployment might trigger. Few people expect leadership in Seoul to express overt opposition to NMD, considering its strong ties with the United States, but internal opposition is brewing. Representative Chang Sung-min of the Unification, Foreign Affairs, and Trade Committee commented that "peace on the Korean peninsula will be put in jeopardy; the NMD could lead to the withdrawal of U.S. troops from Korea."<sup>46</sup>

As one of five states permitted to have nuclear weapons under the Nuclear Non-Proliferation Treaty, China continues forcefully to oppose any NMD system. Actually, the Chinese are equally or more concerned with the developing US capability and deployment of TMD systems to Japan or Taiwan, but no international law or treaty against TMD exists.<sup>47</sup> China's strategy since the 1960s has been "minimal deterrence," and by maintaining a nuclear capability and a small force of land-based, long-range missiles, the Chinese presented the world with a second strike capability while avoiding the kind of arms race the United States and Soviet Union engaged in. That could be changing, as China continues to rattle sabers and pose increasing strategic instability. As of yet, however, the Chinese are believed to maintain a meager two dozen or fewer long-range, increasingly outdated, and vulnerable nuclear missiles.<sup>48</sup> Hence, China's current deterrent capability and long-range missile threat appear questionable. Although China may primarily fear a future independent Taiwan with TMD capability, publicly it also has come out against the potential American dominance that abrogation of the ABM Treaty could lead to. Chinese ambassador Hu Xiaodi recently accused Washington of seeking "unilateral absolute superiority" in strategic arms to enable it to engage in "nuclear blackmail" against other nuclear powers.<sup>49</sup>

The review of Russia's adamant and universal support of the ABM Treaty has been extremely interesting over the past 18 months. Historically, the Soviet Union/Russia has repeatedly proclaimed the ABM Treaty as the bedrock of strategic stability without even considering the recommended amendments of the Clinton era. In fact, no major disarmament treaty has been successfully negotiated between Russia and the United States over the past eight years.<sup>50</sup> In October 1999, Russian Foreign Ministry spokesman Vladimir Rakhmanin observed that "Russia doggedly insists on the preservation and increased effectiveness of the ABM Treaty as the most important element for securing strategic stability in the world and for continuing the process of nuclear disarma-

ment."<sup>51</sup> Russia's first deputy chief of the General Staff, Col Gen Valeri Manilov, warned that "an attempt to withdraw from the 1972 ABM Treaty would destroy the entire system of treaties dealing with the restriction and reduction of weapons of mass destruction. There can be no compromise on this issue."<sup>52</sup> And President Putin stated that NMD deployment would "irreparably damage global stability"<sup>53</sup> and would "pose the most grave adverse consequences."<sup>54</sup> Russia's patriotic defense of ABM was paramount to that country's perceived protection of its last claim to great-power status and arose out of fear of losing influence and military respect in international relations.

On the other hand, Russia's sharp, belligerent defense of the ABM Treaty has begun to "melt" since about June 2000, and statements by Russian officials have indicated an understanding that American NMD is inevitable under President Bush. Following Bush's inauguration, President Putin advocated broader Russian-American cooperation and "a joint search for responses to 21st-century challenges both to Russia and to the international community."<sup>55</sup> This apparent "let's work together" rhetoric confirmed the opinion of Russian military expert Dmitri Trenin, who believes Putin knows that Bush is not bluffing about NMD and therefore will find ways to negotiate with the United States.<sup>56</sup> US experts calculate that Russia may have only 500–800 warheads by the year 2010, so any threat to radically modernize and expand Russian missile assets seems antagonistic to other pressing national requirements relating to economic and industrial survival.<sup>57</sup>

The future of NMD for the United States is now crystal clear. America will develop and deploy NMD. Allies and foes have grudgingly accepted that NMD is a fact, and the focus is shifting to how America can cooperate with its allies to improve global security and maintain positive relations with Russia. Even though, for all practical purposes, the 1972 ABM Treaty is now shelved, the United States must pursue arms control that considers offensive and defensive capabilities to further reduce nuclear arsenals yet maintain strategic

stability. Our approach must be firm but considerate of international opinions as we seek allied support and Russian cooperation to deter attacks from rogue nations and avoid any perception of isolationism or strategic threat. The Cold War is over, and America must develop new legal, strategic, political,

and technological means appropriate for today's global security environment. An NMD system does not yet exist, but, hopefully, its inevitable deployment will spark fresh thinking about the strategic shape of our future world and contribute to a secure environment for future generations. □

#### Notes

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