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CLINTON'S ABM TREATY MUDDLE

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The Anti-Ballistic Missile Treaty is at the heart of the debate on ballistic missile defense. Whether to proceed more quickly or more slowly to deploy missile defenses, and in what way, or whether to proceed at all, is determined by how the ABM Treaty is viewed. The strategic assumptions underlying the treaty, forged during the Cold War, are very much alive in the Clinton Administration. They drive the Administration's approach not only to missile defense policy, but also to arms control and even U.S. policy toward Russia. In short, the Clinton Administration's policy toward the ABM Treaty has larger significance than the treaty itself. Maintaining the treaty, in fact, is a major force driving overall U.S. strategic policy.

The ABM Treaty is indeed important to the Clinton Administration, but its approach has been inconsistent and confusing. These inconsistencies raise questions about the ultimate purpose of the Administration's strategic policy. Why does the Administration believe that America should be vulnerable to ballistic missile attack, even though countering nuclear proliferation is a top Administration policy? Why does this Administration want to defend U.S. allies and forces overseas but leave American citizens and territory vulnerable to nuclear attack? And why is the Administration expanding the scope of the ABM Treaty to limit theater missile defenses, even though this was never intended by the original architects of the Treaty or called for in its text?

These questions show that the Clinton Administration's approach to the ABM Treaty is filled with contradictions. A coherent strategic policy cannot be developed until these contradictions and inconsistencies are resolved. These inconsistencies are:

- ❶ The Administration has declared the ABM Treaty to be "a cornerstone of strategic stability," while disowning the mutual assured destruction (MAD) doctrine that serves as the underlying premise of the ABM Treaty.

¹ This report is based on a speech to the Institute for Foreign Policy Analysis Security Strategy and Missile Defense Symposium, June 20, 1995.

The Clinton Administration declared the central importance of the ABM Treaty to U.S. strategic policy in a May 10 joint declaration issued during the President's meeting in Moscow with Russian President Boris Yeltsin: "The United States and Russia are each committed to the ABM Treaty, a cornerstone of strategic stability." Yet Secretary of Defense William Perry during a September 20, 1994, speech before the Henry L. Stimson Center declared: "We now have the opportunity to create a new relationship, based not on MAD, not on Mutual Assured Destruction, but rather on another acronym, MAS, or Mutual Assured Safety."

For many years, the basic assumption behind the ABM Treaty was that the ability of the Soviet Union (and later Russia) and the United States to destroy each other was the central factor in maintaining strategic stability. The ABM Treaty was designed to ensure that this vulnerability continued. It was believed that this mutual vulnerability also was the key to maintaining and even enhancing arms control, which was the most important policy priority for defenders of the ABM Treaty.

While this assumption was questionable, it was at least backed by a clear and consistent policy. But if MAD is no longer the guiding principle of U.S. doctrine, then the ABM Treaty can no longer serve as a cornerstone of strategic stability. Either President Clinton is wrong in the May 10 joint declaration or Secretary Perry is wrong in his September 20 statement that MAD is no longer U.S. policy. Both cannot be right.

Some will argue that MAD and the ABM Treaty were never meant to constitute a nuclear strategy. Rather, they argue, MAD and the ABM Treaty were only tools for achieving limitations on offensive arms. The goal supposedly was arms control, not mutual vulnerability. The intention supposedly was strategic stability, not to enshrine MAD as America's main strategic doctrine.

This line of argument suggests that we should ignore the effects of the policy and focus only on the declared intention: arms control. But while the intention was supposed to be strategic stability, the effect was necessarily strategic vulnerability. In fact, vulnerability was considered to be the key to stability. This is the central premise of the ABM Treaty. Call it MAD or merely offensive deterrence, this strategy absolutely required mutual vulnerability as a fundamental strategic premise. It cannot logically be argued otherwise. It is myopic to claim that the effect—mutual vulnerability—has nothing whatsoever to do with the intention—maintaining a strategic balance of offensive forces. The former is a direct consequence of the latter.

Moreover, if the purpose of MAD and the ABM Treaty was merely to limit offensive nuclear arms during the Cold War, then they were colossal failures. The Soviets increased the number of deliverable strategic nuclear warheads in their arsenal from just over 2,000 in 1972, the year the ABM Treaty was ratified, to over 12,000 by 1990.

But that is not all. A strong U.S. strategic defense program is far more conducive to offensive reductions than the ABM Treaty ever was or ever will be. During the 1980s progress toward offensive reductions occurred only after the U.S. made it clear to the Soviets that the Strategic Defense Initiative would proceed. The Intermediate-range Nuclear Force agreement, the START I Treaty, and the Conventional Forces in Europe Treaty were reached during a time when the U.S. was committed to moving forward on strategic defenses. It is ironic that no major arms control agreement with the Russians has been initiated by the Clinton Administration, which has scaled back America's missile defense programs.² It is, in fact, no accident; the Russians are quicker to reach arms control agreements with the U.S. when they face a determined U.S. missile defense program than when they face a weak one.

2 The START II Treaty was signed by President Bush. President Clinton merely is finishing what Bush had started.

② **President Clinton has stated that it is not his intention to apply ABM Treaty-related restrictions to theater missile defense systems, but his actions indicate otherwise.**

The ABM Treaty was never intended to impose any restrictions on theater missile defense systems. In a January 26, 1995, letter to congressional leaders, President Clinton stated that he understood this and was not seeking a policy of "expanding the ABM Treaty's limitations." The Moscow joint declaration, however, either states explicitly or implies that the U.S. is prepared to impose a whole host of restrictions on U.S. theater missile defense systems. Specifically, the joint declaration states explicitly that the U.S. will accept limits not only on the number of theater missile defense systems it may deploy, but also on where they may be deployed. Further, since the Administration seems to assume that negotiations that are the subject of the joint declaration are about interpreting, not amending, the ABM Treaty, its policy presumes that these limitations are required by the ABM Treaty.

We have been a students of the ABM Treaty for a number of years now, and we cannot find any provisions that impose limits on the number and location of theater missile defense system deployments. The Clinton Administration, ignoring its own assertions to the contrary, is in fact seeking to expand the scope of the ABM Treaty.

Some in the Clinton Administration have argued that there is no need to be concerned about the Moscow joint declaration because it is not binding and therefore does not represent a legal expansion of the ABM Treaty. Technically, this is true. Nevertheless, the joint declaration presumably reflects the true intentions and policy preferences of the Clinton Administration. In fact, it establishes the goal for the Administration in these negotiations. Surely the Clinton Administration would not want to argue that its intentions are meaningless or that they are not to be taken seriously. On the contrary, these intentions represent the desired outcome of policy. In this respect, they should be taken seriously, especially by the Senate, which has a constitutional interest in substantive changes to treaties. The Moscow joint declaration represents a declaration of policy that the Clinton Administration intends to expand the scope of the ABM Treaty.

③ **While the Clinton Administration is seeking to expand both the scope and the membership of the ABM Treaty, which would require legally binding protocols, it appears to oppose taking the required procedural steps.**

Expanding the scope of the ABM Treaty and establishing new ABM Treaty partners to replace the Soviet Union are not mere interpretations of ABM Treaty requirements, as argued by the Clinton Administration. They are substantive changes in the treaty. They require formal protocols, similar to the 1974 protocol to the ABM Treaty reducing the number of allowed ABM sites from two to one and the 1992 Lisbon Protocol to the START Treaty that established successors to the Soviet Union. The Administration, however, has studiously avoided making any commitments about the legal form of any ABM Treaty agreements. Indeed, it behaves as if the discussions are only about interpreting the ABM Treaty.

While it has received less attention in the press than the question of restrictions on theater defenses, this procedural issue is particularly important with regard to the question of successorship. The Clinton Administration states that the ABM Treaty is a cornerstone of strategic stability but cannot say which countries, other than the United States, are parties to the treaty. As such, the ABM Treaty is now a unilateral obligation that imposes restrictions only on the United States. This is both unjust and contrary to customary international practice. A treaty is similar to a contract. The parties must be clearly identified and legally bound. No country can be bound by treaty obligations unilaterally. The ABM Treaty will remain in legal limbo unless and until a legally binding protocol identifying the successors to the Soviet Union under the treaty is ratified. The Clinton Administration, while stating it wants to preserve the ABM Treaty, has made no commitment to taking the legally required steps to preserve it.

Some in the Clinton Administration argue that this concern about successorship is a whole lot about nothing, or as Standing Consultative Commission representative Stanley Riveles recently said, "a political argument posing as a legal one."³ Riveles and others maintain that since other treaties, like the INF agreement, lack protocols and yet remain in force, there is no need to negotiate and ratify protocols for the ABM Treaty.

This argument is not convincing. The successorship of the INF Treaty has not been resolved and that treaty, too, remains in legal limbo. Pointing to the legal problems of the INF Treaty hardly strengthens the case against ignoring the successorship issue in the ABM Treaty. Both the INF Treaty and the ABM Treaty need successorship protocols.

Moreover, the ABM Treaty presents far more successorship problems than does the INF Treaty. The Clinton Administration apparently is offering successorship of the ABM Treaty to all countries of the former Soviet Union. That is, the Administration desires to "multilateralize" the ABM Treaty by naming at least several of the former republics of the Soviet Union as the legal successors to the Soviet Union. However, doing this creates a thorny legal problem: it changes the substance of the Treaty in a way that requires the advice and consent of the U.S. Senate. If all 15 former Soviet republics were designated as legal successors to the Soviet Union, it would imply that as many as 15 ABM sites (one for each designated successor republic) could be legally permitted, whereas formerly only two (and later one) were allowed in all the Soviet Union. Moreover, multilateralizing the ABM Treaty would substantively change the procedures of the Standing Consultative Commission. The procedures established for resolving issues between two partners would have to give way to voting procedures to accommodate as many as 16 partners.

Another approach—of designating Russia instead of several republics as successors to the Soviet Union—presents a host of other problems. The ABM Treaty says that certain radars must be located on the periphery of national territory. It also requires designating test facilities. Since the borders of Russia are different from the borders of the Soviet Union, the location of radar facilities must change. Further, the Sary Shagan test facility designated by the Soviet Union is located outside of Russia.

Whatever the approach, the Senate must and probably will demand that the successorship issue be resolved through a protocol that would require its advice and consent. In fact, the Senate is already moving in this direction. On May 2, 1995, 50 members of the Senate sent a letter to President Clinton stating that any agreement to "increase the number of signatories" to the ABM Treaty should be subject to advice and consent under the law. The law in question: Section 232 of last year's Defense Authorization Bill, which says, "The United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered pursuant to the treaty making power of the President under the Constitution."⁴

- ④ **The Clinton Administration states that its counterproliferation policy includes robust missile defenses, but it is seeking to use the ABM Treaty to make such defenses less capable than the technology otherwise would allow.**

The Administration's Bottom-Up Review states that the dangers posed by nuclear weapons and other weapons of mass destruction, particularly those resulting from proliferation, is a new danger U.S. security policy must address. The recognition of this danger caused the late Les Aspin to announce the creation of the Counterproliferation Initiative on December 7, 1993. In his speech before

3 Remarks at Institute for Foreign Policy Analysis Security Strategy and Missile Defense Symposium, June 20, 1995.

4 The INF Treaty is not subject to the restrictions of this law.

the National Academy of Sciences that day, he stated: "the one [danger] that most urgently and directly threatens Americans at home and American interests abroad is the new nuclear danger." The description of the Counterproliferation Initiative in this year's annual report from the Secretary of Defense states that missile defense is one of seven areas for technological and programmatic emphasis that have the most potential for making contributions to U.S. nonproliferation and counterproliferation capabilities.

The Administration's counterproliferation policy would make sense if it were not for its policy toward the ABM Treaty. If the new nuclear danger is among the most important security threats facing this country, then why would the Administration point to the ABM Treaty, which ensures that the U.S. remains vulnerable to nuclear missile attacks, as a cornerstone of strategic stability? It is interesting to note that the section of the report of the Secretary of Defense that explains the Counterproliferation Initiative mentions a number of arms control agreements that serve the cause of nonproliferation. The ABM Treaty is not among them.

If the proliferation threat poses a danger to Americans at home, as Les Aspin stated, why adopt a policy that all but eliminates the national missile defense program? If robust missile defenses are among the most important capabilities to obtain in order to address the new nuclear danger, then why adopt policies, including those regarding the ABM Treaty, that ensure such defenses will be less capable than the technology otherwise would allow?

This last point is the one we find most disturbing. As this Administration pays homage to the ABM Treaty, it is asking the American taxpayer to shell out billions of dollars to deploy theater missile defense systems that will not be as capable as they could be. Radar capabilities will be limited; interceptor velocities will be limited; external sensor data will not be used. In short, missile defense systems will be "dumbed down" to fit what the Administration imagines are requirements of the ABM Treaty.

⑤ President Clinton states that he wants to work with Congress on resolving ABM Treaty-related problems, while taking actions that either ignore or circumvent Congress.

In his January 26 letter to congressional leaders, President Clinton stated: "I look forward to working closely with Congress as we pursue our common objectives in this [missile defense/ABM Treaty] area." But his actions since then do not reflect a cooperative attitude. Two examples demonstrate why.

First, on May 2, 50 members of the United States Senate wrote President Clinton regarding the then-upcoming Moscow summit. The Senators stated: "We are writing in advance of your summit meeting in Moscow to reiterate our strenuous objections to any action which would politically strengthen the 1972 Anti-Ballistic Missile (ABM) Treaty...." Despite this warning, the first substantive declaration in the May 10 joint statement released at the summit was: "The United States and Russia are each committed to the ABM Treaty, a cornerstone of strategic stability." In this case, the evidence is clear: President Clinton ignored the expressed wishes of 50 United States Senators.

Section 232 of last year's Defense Authorization Bill requires the President to submit ABM Treaty-related agreements to the Senate for advice and consent. This is the law of the land. President Clinton signed the bill with this provision in it. As far as we know, President Clinton has yet to make a commitment to submit such agreements to the Senate for its consideration. While he may yet do so, President Clinton thus far has appeared prepared to circumvent the Senate on this issue. This is not cooperation.

OVERCOMING THE CONFUSION

To overcome the inconsistencies and confusion in the Clinton Administration's policy toward the ABM Treaty requires starting over. Above all, it requires jettisoning the fundamental contradiction of insisting that the strategic vulnerability of U.S. territory is the keystone of strategic security. It means that, particularly in the multipolar threat environment that will emerge in the near future, maintaining strategic stability through offense deterrence and arms control alone will be too risky. In short, as countries like North Korea and Iran acquire a long-range nuclear ballistic missile capability, there will be less safety and more risk in trying to deter rogue states with the threat of nuclear retaliation. To overcome the contradictions and inconsistencies in U.S. policy, the following steps should be taken:

- ① **Recognize that maintaining the ability to confront, and if need be destroy, the means of attack that may be used against the American people, their territory, their forces deployed overseas, and their vital interests will be the cornerstone of strategic stability in the post-Cold War world.**

Secretary Perry is right and President Clinton is wrong. The U.S. needs to move beyond MAD. It must be replaced with a policy that: 1) seeks to prevent potentially hostile forces from obtaining missiles and weapons of mass destruction; 2) deters such forces from using such weapons if they obtain them; 3) provides a capability for defending against attacks with such weapons; and 4) provides a capability to destroy the means of attack with offensive weapons in a timely (preemptive) fashion. This policy, whether it is called mutual assured safety or something else, should serve as the cornerstone of strategic stability in the future. As the U.S. moves toward this policy, the ABM Treaty will not just become irrelevant; it will be antithetical to the new policy. This is because the purpose of the ABM Treaty is to enshrine American vulnerability to attack.

Some will argue that moving beyond the ABM Treaty will undermine both deterrence and the policy behind maintaining a capable offensive nuclear force. This need not be the case. First, a policy of deterrence need not be the exclusive province of the offensive nuclear arsenal. Defenses can make their own unique contributions to deterrence. An obvious example of this is that effective defenses will cause an enemy to think long and hard about launching an attack, lest it become an exercise in self-disarmament. Second, offensive forces and defensive forces can complement each other in fulfilling certain military requirements. An obvious example of this is in the area of targeting requirements. Offensive forces are best suited to destroying fixed command and control centers used to launch attacks. Defensive forces are best suited to destroying missiles deployed on mobile platforms or bombers.⁵

- ② **Recognize that the distinction between strategic and theater defenses is an arbitrary one.**

Since the day it came to office, the Clinton Administration has been wrestling with the problem of distinguishing between defenses against strategic missiles and defenses against theater missiles. The direct cause of this problem is the failure of the ABM Treaty to provide a clear definition of the difference between the two. But the Administration needs to recognize that any definition that distinguishes between the two will be arbitrary and, more important, not reflective of strategic and technological realities. The entire problem arises solely because the ABM Treaty implies there is a difference. The fact is that the U.S. faces a global threat from missile attack and it needs a global defense. At the technological level, a system like the *Brilliant Eyes* sensor satellite, for example, will support interceptors capable of destroying missiles of all ranges.

5 For a detailed explanation of how offensive and defensive strategic forces can complement each other in the service of a broadly defined deterrence policy, see Baker Spring, "What the Pentagon's Nuclear Doctrine Review Should Say," Heritage Foundation *Backgrounder* No. 987, May 26, 1994.

