

INTERNATIONAL AGREEMENTS OF UNLIMITED DURATION:

THE 1972 ABM TREATY\*

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Abstract

The 1972 ABM Treaty between the United States and the former Soviet Union is, pursuant to Article XV, of unlimited duration. However, this Article allows a party to withdraw if "extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests." A withdrawing party must give six months advance notice in which it recites what are the extraordinary events causing the notice of withdrawal.

Notice was given to Russia on December 13, 2001 in the form of a presidential statement relying on the basic fact, as recited in the treaty, of a fundamental change in circumstances, namely "that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests." Withdrawal became effective on June 12, 2002.

Cited as meeting this condition was the attack on the United States of September 11, 2001 and the ending of the Cold War.

This required the creation of a national "limited missile defense of our territory." With the termination of the agreement the United States would be allowed to cooperate with friends and allies in developing missile defenses against long-range threats.

The termination of the agreement and the change in policy have produced expected criticism. On the one hand it has been suggested that an effective national missile defense system (NMD) is beyond scientific and technical know-how, that its enormous costs could be applied better to a variety of human wants and needs, that the NMD project is destabilizing and that it might contribute to an arms race on the part of America's enemies. On the other side, it is argued that the dangers presented to the United States, particularly by terrorists and rogue States, are so vast that the United States would be derelict in not moving beyond the ABM Treaty.

All things considered, the change in the status quo produced by the termination of the 1972 Treaty, and the manner in which the change was brought about, have added to the debate concerning unilateralism and multilateralism.

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## 1. The Anti-Ballistic Missile Systems Treaty (ABM) Terminated

On May 26, 1972 the United States and the Soviet Union signed the ABM Treaty.<sup>1</sup> It was accompanied by an Interim Agreement and a Protocol. All entered into force on October 3, 1972. At the time of the signature the United States made several unilateral statements. One was entitled "Withdrawal from the ABM Treaty." It referred to the fact that both sides wished to limit strategic defensive arms within five years. If such an expectation were not achieved the United States stated that this would jeopardize U.S. supreme interests and would "constitute a basis for withdrawal from the agreement."

Article XV of the Treaty provided that it "shall be of unlimited duration." It then stated the conditions under which a party would no longer be bound. Derived from a party's national sovereignty, withdrawal would depend on a party's unilateral decision "that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests."

## 2. Reasons Advanced by the United States for Withdrawal

In providing reasons for withdrawals from international agreements States normally urged that there has been a "fundamental change in circumstances" since the date of the original agreement. This was used by the United States in the instant case by referring to the terrorist attack of September 11, 2001. Reference to the Cold War's ending resulted in the conclusion that "our security environment is profoundly different."<sup>2</sup>

The security theory of mutually assured destruction (MAD) was no longer

considered to be valid in light of the new cooperative relations between the two States. This theory was to be replaced by one allowing for a "limited missile defense of our territory." Such an approach, it was asserted, was needed to counteract the military potential of "terrorists and rogue states" equipped with weapons of mass destruction and their delivery."<sup>3</sup>

The United States referred to two specific prohibitions in the 1972 agreement. First, the defense of the homeland against ballistic missile attack; second, from cooperating in developing missile defenses against long-range threats with friends and allies.

On June 13, 2002, six months after the announced withdrawal, President Bush repeated as a reason the need for the United States to "develop and deploy effective defenses against limited missile attacks [resulting from] growing missile threats we face."<sup>4</sup> He reemphasized that the withdrawal would now allow the United States to work with "our allies and friends around the world" without breaching the terms of the 1972 agreement. Such activities, he said, would include participation on the part of Russia.<sup>5</sup>

Russia's initial response to the U.S. policy change was disapproval. However, the Bush administration put forward a new State-Strategic Relationship for Russian acceptance. It was urged that the NMD could benefit Russia from possible harm from terrorists and rogue States, and it would be desirable for the United States and the Soviet Union, over time, to reduce the number of their nuclear warheads. This was coupled with the understanding that the United States would continue to pay Russia at least \$4 million annually for the decommissioning and safeguarding of its nuclear

warheads. Referred to as the Cooperative Non-Proliferation and Threat Reduction Program, it was initiated in 1991. Further cooperation in this area was to be the purchase by the United States from Russia of "Material blended down from Russian highly enriched uranium from dismantled nuclear warheads, for use in civilian nuclear reactor fuel."<sup>6</sup>

A formal product of these bilateral negotiations was the U.S.-Russian Nuclear Warheads Reduction and Limitation Treaty of May 24, 2002. Article I captured the statements of President Bush on November 13, 2001 and those of President Putin on November 13, 2001 and on December 13, 2001, whereby each party to the agreement promised that it "shall reduce and limit strategic nuclear warheads" so that by December 31, 2012, "the aggregated number of such warheads does not exceed 1,700 to 2,200 for each party." Pursuant to Article II: "The parties agreed that the START treaty remains in force in accordance with its terms."

Article III dealt with the implementation of the agreement. The parties agreed that a newly constituted "Bilateral Implementation Commission" would facilitate mutually beneficial cooperative measures.

### 3. Appraisals of the American NMD Policy

Assessments of NMD are varied. They focus on the security needs of the United States and whether the proposed NMD can meet those needs. From the point of view of continuing to rely on the ABM system, there is agreement that the United States had the legal right to give notice to Russia of termination. With the United States and Russia enjoying amicable

relations and with new security challenges arising from terrorism and the capability of lesser States to manufacture and launch nuclear warheads, there is such a change of circumstances.

While it remains to be fully proven that the rogue States do have this technical capacity and the political will to undertake such devastating action, America's response must be based on the policy of caution. With this in mind, and assuming the potential employment of nuclear weapons by a hostile country, one can be sympathetic to the fears reflected by a former U.S. Senator, Jesse Helms.

He stated: "But deterrence alone is no longer an effective strategy when the world is tainted by unpredictable tyrants and terrorists who are difficult to target and have little concern for human life, or when an unauthorized or accidental launch of a missile occurs."<sup>7</sup>

Further, the U.S.-Russian Treaty of May 24, 2002, with its progressive elimination of nuclear warheads, and the substitution of a NMD system for the ABM approach, has not guaranteed that on a worldwide basis there will be "progress in disarmament, and possibly a new arms race."<sup>8</sup>

The wisdom of abandoning the ABM treaty will depend not only on the view that the United States needs a new form of protection against rogue States and terrorists but also on the premise that science and technology, present and future, will be able to fashion equipment needed for an effective new NMD policy.<sup>9</sup>

Missile tests conducted up to the end of December 2001, were far from conclusive. It was considered that it was

highly speculative if the tested defense equipment could be more reliable. According to an editorial "A national missile defense system would be enormously expensive, and there are no indications it's feasible. The ABM Treaty shouldn't be junked for a 'maybe' defense."<sup>10</sup>

Mr. G.T. Allison, a former U.S. Assistant Secretary of Defense, has asked a number of questions and provided answers respecting the utility of a NMD system. He offered no assurance that the NMD would be ready at any further date. He acknowledged that from the technical point of view it was very ambitious. He observed that over time there could be a feasible system that "has some degree of effectiveness."<sup>11</sup>

Within the American Congress there have been substantial concerns. For example, Senator Joseph R. Biden, Jr., of Delaware, a democrat has attacked the NMD system. His charges included a waste of governmental resources, an increase in world instability, since China would be drawn into an arms race, and that simpler means were sufficient for the delivery of hostile warheads.<sup>12</sup>

Senator Carl Levin of Michigan, also a democrat, as chairman of the Armed Services Committee, stated that the Bush decision was likely to lead to a cycle of development of costly offensive and defensive weapons, "and that kind of arms race would not make us more secure."<sup>13</sup>

When President Clinton first proposed a NMD system he received in January 1999 an estimate from Secretary of Defense William Cohen, that initial costs over a five year period would be \$6.6 billion. Late in June, 2002, the Senate agreed to a \$7.6

billion budget for missile defense in 2003.<sup>14</sup> This sum took into account the programs being developed in North Korea, Iraq, and Iran. These defense costs are in addition to the \$620 million granted to Russia in February 2002 to assist in defraying costs for destruction of the Russian nuclear stockpile, which included different kinds of gases. This was in addition to the annual subvention of \$400 million to Russia for the decommissioning and safeguarding of its nuclear warheads.

The cost for maintaining the United States as the world's policeman is very high and growing higher as a result of the war on terrorism. Without taking such costs into account, the Stockholm International Peace Research Institute, which records annual military budgets, has reported the following figures for 2001, in billions of U.S. dollars: United States, \$281.4; Russia, \$43.9; France, \$40; Japan, \$38.5; United Kingdom, \$37.0; Germany, \$32.4; China, \$27.0; Saudi Arabia, \$26.6; Italy, \$24.7; Brazil, \$14.1.<sup>15</sup>

## 5. Conclusion

The jury still has not rendered its decision whether the termination of the 1972 ABM agreement has resulted in a stabilization or destabilization of the security relationship between the United States and Russia and other countries of the world, and in particular with such so-called rogue States as North Korea, Iran, and Iraq.

The United States and Russia have somewhat ameliorated potential tension through their Nuclear Warheads Reduction and Limitation Treaty of May 24, 2002, which was accompanied, albeit reluctantly, by Russia because of U.S. plans for a NMD system.

The Bush administration has emphasized the need for a NMD system to cope with international terrorism. Interestingly, the Clinton administration which can claim pride of authorship for the NMD system, did not refer to terrorism as a basis for this new security theory.

Whether an NMD system meets the test of wisdom, as well as technical feasibility, its ultimate practicability, its huge and almost excessive costs, whether there are other justifiable needs having a greater societal value, such as replacement of the country's aging infrastructure, outer space activities, support for human resources, medicine, and educational needs, the special needs of Afghanistan following the antiterrorism activities of the United States, and the general needs of the developing countries, remain to be seen.

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#### NOTES

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