

**RUSH!**

Number

479

5/12/97

## THE SENATE'S RIGHT TO APPROVE ABM TREATY CHANGES MUST BE UPHELD

The Clinton Administration recently proposed a new agreement to replace the original partner (the defunct Soviet Union) of the United States in the original Anti-Ballistic Missile (ABM) Treaty with four successor countries: Belarus, Kazakhstan, Russia, and Ukraine. This agreement would “multilateralize” the ABM Treaty—a substantive change that would require the United States to negotiate implementation of the treaty with four partners instead of just one. In addition, it would leave 11 other countries of the former Soviet Union out of the agreement.

Last week, in considering the Flank Amendment to the Conventional Forces in Europe (CFE) Treaty, the Senate Foreign Relations Committee attached a provision to the CFE Treaty resolution of ratification that would require the President to submit the ABM Treaty successor state agreement to the Senate. The Flank Amendment comes up for a vote in the Senate this week. The committee demonstrated its belief that the Clinton Administration has changed the substance of the ABM Treaty and thus must submit the U.S.–Russian agreement to the Senate for its advice and consent as required under Article II, Section 2, of the U.S. Constitution.

The Clinton Administration wants to strip this provision from the CFE resolution. It asserts that the tentative agreement to establish new parties to the ABM Treaty does not modify the treaty. This assertion is incorrect. By its very nature, the act of converting a unilateral treaty between the United States and the former Soviet Union into a multilateral treaty between the United States and four new countries essentially creates a new treaty. Whether Senators favor arms control or agree with individual changes in the treaty is not the issue. The Senate must uphold its constitutional responsibility and affirm its treaty-making prerogative, and this means retaining the requirement that the ABM Treaty be submitted for approval as a condition of approving the CFE Treaty amendment. If it does not do this, the Senate risks changing the very balance of power in government by forfeiting its role in reviewing and approving treaties; it risks becoming simply a rubber stamp for decisions made by the executive branch.

**The Proposed Modifications.** The Administration’s tentative agreement to establish new successor states as parties to the original ABM Treaty modifies the treaty in five substantive ways:

- **The Administration’s changes would alter how the ABM Treaty’s implementing body functions.** Article XIII of the ABM Treaty established the Standing Consultative Commission (SCC) to handle implementation of the treaty’s provisions. The SCC operated on the basis of consensus between two treaty partners of equal status. Multilateralization of the SCC alters that central operating principle. In place of two equal partners to the terms of the treaty, the Administration’s tentative agreement creates

five partners of unequal status. The United States could become isolated and ineffective through the concerted opposition of the other four members. The SCC's multilateral nature under the tentative successor state agreement would make it much more difficult for the United States to resolve ambiguities in the treaty or propose viable amendments because the United States would have to obtain agreement from four states, not one. This is an important change, and its implications should concern the Senate.

- **The Administration's changes would allow ABM sites to be deployed throughout the territory of the former Soviet Union.** As amended by a 1974 protocol, the ABM Treaty allowed each party to the agreement to deploy 100 ABM interceptors at one single site. The Soviet deployment around Moscow is now maintained by Russia. The Administration's ABM Treaty modification would bind only 4 of the 15 states that emerged from the collapse of the Soviet Union to its terms. Therefore, as a legal matter, the remaining 11 states would be free to deploy an unlimited number of ABM interceptors at an unlimited number of sites.
- **The Administration's changes would establish a group of second-class states as parties to the ABM Treaty.** Because the original ABM Treaty allowed the United States and the Soviet Union each to deploy a system of ABM interceptors, the new agreement—to qualify as unchanged in intent—should allow each of the three new successor states to have a deployment site as well. The tentative agreement, however, would bar such deployment by Belarus, Kazakhstan, and Ukraine. These states, therefore, would not be entitled to the privileges enjoyed by the other two parties to the new treaty. This also constitutes a substantive modification of the ABM Treaty.
- **The Administration's changes alter the geographic boundaries established in the language of the ABM Treaty.** Article VI of the ABM Treaty bars the original members (the Soviet Union and the United States) from deploying early warning radar in locations other than on the periphery of their own territory. The Soviet Union deployed one such radar in Latvia. Under the Administration's tentative agreement, Latvia would remain outside the periphery of the territory of all four states designated as successor states. This is a substantive change in the ABM Treaty.
- **The Administration's changes would allow the deployment of early warning radar in locations that undermine the original object and purpose of the ABM Treaty.** Article VI of the ABM Treaty limiting the location and orientation of early warning radar was designed to reduce the utility of such radar in managing ABM systems. Under the Administration's successor state agreement, Kazakhstan, for example, presumably would be able to deploy such a radar on the periphery of its territory that is oriented toward Russia. Russian access to such a radar would defeat the purpose of the related provision of Article VI.

**The Bottom Line: The Senate's Prerogative.** The Clinton Administration is beginning to manufacture arguments that are designed to confuse the Senate on the significance of these modifications. These arguments could distract the Senate from asking the essential question: Does the tentative agreement to add new treaty partners to replace the Soviet Union under the ABM Treaty substantively modify the treaty? If so, the Senate must be able to give its advice and consent.

Even a cursory review of the facts demonstrates that the Administration's proposed agreement modifies the ABM Treaty. The Senate does not need permission from the executive branch to exercise powers granted to it by the U.S. Constitution: Put another way, it does not have to accept the quibbling, sophistry, and equivocations of the Clinton Administration before it can take up the issue of ABM Treaty multilateralization. The Senate is its own judge of when and how to exercise its constitutional prerogatives. If the President attempts to make a new treaty without the advice and consent of the Senate, he will risk provoking an unnecessary constitutional crisis. The Senate can prevent this by demanding, firmly and steadfastly, that the President submit this agreement in the proper manner for its advice and consent.

Thomas Moore  
Deputy Director  
Foreign Policy and Defense Studies

Baker Spring  
Senior Policy Analyst