



The Heritage Foundation

Background

Executive Summary

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August 3, 1998

THE CLINTON ADMINISTRATION'S DANGEROUS ABM AGREEMENTS

BAKER SPRING

The 1972 Anti-Ballistic Missile (ABM) Treaty between the United States and the Soviet Union has hampered the ability of the U.S. to defend itself against ballistic missile attack ever since its ratification. Under the terms of international law, the ABM Treaty expired when the Soviet Union collapsed in 1991. The Clinton Administration, however, continues to observe the requirements of the Treaty as a matter of policy. More disturbing, it is seeking to breathe life into it through a series of sweeping new agreements.

A delegation from the United States, led by Secretary of State Madeleine Albright, signed three agreements related to the ABM Treaty on September 26, 1997, at the United Nations in New York. These agreements could threaten U.S. national security interests by re-imposing the restrictions found in the now-defunct ABM Treaty and perpetuating the policy of vulnerability.

Further, they apply the restrictions found in the ABM Treaty—originally a bilateral treaty—in a new multilateral setting. This imbalance could force the U.S. to face being outvoted by four treaty partners during the implementation process. Finally, the agreements broaden the scope and increase the reach of the restrictions on the devel-

opment and deployment of missile defenses found in the original ABM Treaty.

That the Clinton Administration would agree to these arms control agreements and leave the American people undefended against missile attack at a time when the missile threat is growing is shocking. It is up to the Senate, therefore, to examine them with great care, using the security of the United States as its primary criterion. The agreements must be approved by the Senate before ratification and implementation, but the Administration has yet to submit them.

PROBLEMS WITH THE NEW ABM TREATY

One of the agreements reached in New York is a memorandum of understanding (MOU) that effec-

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tively revives the ABM Treaty by establishing a new treaty with Belarus, Kazakhstan, Russia, and Ukraine, four of the 15 independent states born out of the former Soviet Union. The MOU, however, contains several flaws. For example, it:

- **Applies** ABM Treaty-style restrictions to just four of the 15 states now occupying the territory of the former Soviet Union. The remaining 11 countries would be free to develop, test, or deploy ABM systems; the United States would not.
- **Leaves** the U.S. open to being outvoted by the other four treaty partners during the process of interpretation and implementation.
- **Sends** a message to Russian leaders that they have a free hand to establish hegemony over the neighboring countries that they call the “near abroad.”

PROBLEMS WITH THE AGREEMENTS ON THEATER DEFENSES

The two other agreements reached in New York are called “demarcation agreements” because they seek to establish the division between those missile defense systems that are subject to restrictions under the MOU and those that are not. Both agreements are seriously flawed.

The agreement on lower-velocity theater defense systems (those with a maximum speed of 3 kilometers per second):

- **Imposes** restrictions, unknown in the original ABM Treaty, on theater defense systems and

thereby denies U.S. forces a potentially powerful defense against missiles like the Scuds launched by Iraq during the Persian Gulf War.

- **Ignores** the intent of Congress, established in U.S. law, that these restrictions not extend to theater defense systems.

The agreement on higher-velocity theater defense systems (those with a speed greater than 3 kilometers per second), moreover:

- **Imposes** restrictions that will make these systems less capable.
- **Imposes** restrictions that will make these systems more expensive.

CONCLUSION

In a world where missile technology is proliferating and the risk of missile attack is increasing, the United States should be eliminating, not perpetuating, restrictions on the development and deployment of a missile defense system. The Clinton Administration, however, not only refuses to eliminate the restrictions imposed on U.S. missile defense programs, but actually seeks to expand them.

The three agreements signed in New York last September are vehicles for sustaining the policy of vulnerability. This policy—and these agreements—are very dangerous.

—*Baker Spring is a Senior Policy Analyst in The Kathryn and Shelby Cullom Davis International Studies Center at The Heritage Foundation.*



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A delegation from the United States, led by Secretary of State Madeleine Albright, signed three agreements related to the ABM Treaty on September 26, 1997, at the United Nations in New York.² If ratified by the Senate, these agreements would:

- **Establish** a new treaty with Belarus, Kazakhstan, Russia, and Ukraine that imposes restrictions similar to those of the ABM Treaty;
- **Restrict** interceptor missiles, under narrow circumstances, to countering shorter-range missiles (theater defenses) that fly at speeds up to 3 kilometers per second; and

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1. See David B. Rivkin, Jr., Lee A. Casey, and Darin Bartram, Hunton & Williams, "The Collapse of the Soviet Union and the End of the 1972 Anti-Ballistic Missile Treaty: A Memorandum of Law Prepared for The Heritage Foundation," June 15, 1998.
 2. The meeting in New York also produced two additional agreements, a joint statement, and a series of individual statements from each of the five participating states. The first additional agreement establishes new regulations governing an implementing body, the Standing Consultative Commission (SCC). The second establishes "confidence-building measures" to reassure all parties that the provisions of the agreements are being observed. The joint statement commits the parties to exchange information on their missile defense programs on an annual basis. The individual statements declare the intent of each state not to test its missile defense systems against shorter-range (theater) missiles in ways that exceed certain parameters. None of these agreements and statements is subject to Senate consideration.

- **Establish** an incomplete definition of when ABM Treaty-like restrictions will apply to interceptor missiles for theater defense that fly faster than 3 kilometers per second.

These agreements could threaten U.S. national security interests by re-imposing the restrictions found in the now-defunct ABM Treaty and perpetuating the policy of vulnerability. Further, they apply the restrictions found in the ABM Treaty—originally a bilateral treaty—in a new multilateral setting. This imbalance could force the U.S. to face being outvoted by four treaty partners during the implementation process.

Finally, the new agreements broaden the scope and increase the reach of the restrictions on the development and deployment of missile defenses found in the original ABM Treaty. Specifically, they would impose a wide variety of restrictions on the development and deployment of theater defense systems that heretofore were not restricted.

That the Clinton Administration would agree to these arms control agreements that would leave the American people undefended against missile attack at a time when the missile threat is growing is shocking.³ It is up to the Senate, therefore, to examine them with great care, using the security of the United States as its primary criterion. By law, the agreements must be approved by the Senate before ratification and implementation, but the Administration has yet to submit them.

PROBLEMS WITH THE NEW ABM TREATY

The most significant of the September agreements would effectively revive the ABM Treaty by establishing a new treaty with Belarus, Kazakhstan, Russia, and Ukraine, four of the 15 independent states born out of the former Soviet Union. This new treaty substituting four countries for the Soviet Union takes the form of a memorandum of

understanding (MOU). By enshrining ABM Treaty restrictions in a new, legally binding agreement, the MOU serves as the foundation for the other two agreements. If the Senate fails to approve the MOU, the entire package concluded in New York also fails.

In its rush to revive the ABM Treaty, the Clinton Administration seems prepared to pay a very steep price. As the vehicle for re-imposing ABM Treaty restrictions, the MOU works against U.S. interests in several important ways. Most critically, the American people will remain vulnerable to missile attacks if the MOU is ratified. This hazard is a result of flaws in the original ABM Treaty rather than the specific terms of the MOU, and is best addressed in the context of a debate over whether the ABM Treaty served U.S. interests.

But even those who support re-imposing the restrictions of the ABM Treaty and its policy of vulnerability should be alarmed at specific provisions of the MOU that endanger U.S. interests. These provisions would:

- **Apply ABM Treaty-style restrictions to just four of the 15 states now occupying the territory of the former Soviet Union.** The purpose of the 1972 ABM Treaty was to limit both the type of ABM systems possessed by the United States and the Soviet Union and the number of ground-based ABM system sites located on the territories of both states.

Specifically, neither side was allowed to develop, test, or deploy ABM systems that were “sea-based, air-based, space-based or mobile land-based.” The number of fixed, land-based ABM systems was limited to two such systems on the territory of each state. This number was reduced to one site per state by a protocol to the treaty that was signed in 1974 and ratified in 1976.

3. For example, the bipartisan Commission to Assess the Ballistic Missile Threat to the United States (known as the Rumsfeld Commission for its chairman, former Secretary of Defense Donald Rumsfeld), reported to Congress on July 15, 1998, that the United States “might have little or no warning before operational deployment” of a ballistic missile by a hostile Third World country. See Baker Spring, “The Rumsfeld Commission Corrects a Faulty Assessment of the Missile Threat,” Heritage Foundation *Executive Memorandum* No. 543, July 24, 1998.

The MOU eliminates the symmetry found in the ABM Treaty. Where the Soviet Union, like the United States, was prohibited from developing, testing, or deploying ABM systems other than fixed, land-based systems, 11 states emerging from the former Soviet Union would be free to obtain any sort of ABM systems they wish. Nevertheless, the U.S. still would be prohibited from developing, testing, or deploying ABM systems other than those with fixed, ground-based interceptors.

The same unequal outcome pertains to the number of ABM systems that may be deployed on the territories of the U.S. and the former Soviet Union. Under the MOU, the U.S. is still limited to one ABM site. But the 11 former Soviet states not party to the MOU could deploy an unlimited number of ABM sites.

- **Leave the U.S. open to being overruled by the other four partners during the interpretation and implementation process.** The responsibility for interpreting and implementing the ABM Treaty was lodged with a joint commission, established in the Treaty, called the Standing Consultative Commission (SCC). The SCC was designed to operate on the basis of a consensus between two treaty partners of equal status. The MOU, however, alters the central operating principle of the SCC by replacing two treaty partners of equal status with five treaty partners.

The United States could well find itself isolated under this system: The SCC's new multi-lateral nature, by forcing the U.S. to obtain agreement from four states rather than one, would make it much more difficult for the U.S. either to resolve conflicts to its advantage or to propose viable amendments to the MOU.

- **Subordinate the interests of Belarus, Kazakhstan, and Ukraine to those of Russia in the sensitive area of security.** The Clinton Administration has tended to skew its policies

in favor of Russia and to treat the other newly independent countries of the former Soviet Union as second-class states. Nowhere is this more evident than in the MOU.

As drafted, the MOU allows only Russia, of the four states participating in the agreement with the U.S., to take advantage of the privilege extended from the ABM Treaty to deploy a single ABM system. This means that Belarus, Kazakhstan, and Ukraine would not be entitled to all of the privileges found in the ABM Treaty. The MOU, moreover, essentially defines the territories of the three non-Russian states as extensions of Russian territory for the purposes of enforcing the MOU. The MOU even goes so far as to state that where the ABM Treaty used the term "capital," it shall mean the Russian capital of Moscow.

In endorsing the MOU, the Clinton Administration sends Russia the message that it has a free hand to establish hegemony over what Russian leaders chauvinistically call the "near abroad." For all intents and purposes, Belarus ceased to be an independent state when it signed an April 2, 1997, treaty of union with Russia.⁴ The Administration's ABM Treaty succession agreement can only encourage the Russian government to be more aggressive in its attempts to bring states such as Estonia, Latvia, Lithuania, and Ukraine to heel and re-create the old Soviet empire.

PROBLEMS WITH THE AGREEMENT ON LOWER-VELOCITY THEATER DEFENSES

The second agreement of the three signed in September concerns discriminating between defenses against long-range (strategic) missiles, which had been subject to ABM Treaty restrictions from the beginning, and defenses against shorter-range (theater) missiles, which were never intended to be subject to ABM Treaty restrictions. Thus, it is referred to as a demarcation agreement:

4. For a description of this treaty, see Ariel Cohen and Evguenii Volk, "Russia's Union with Belarus: Expensive and Troubling," Heritage Foundation *Executive Memorandum* No. 476, April 21, 1997.

It establishes the division between those missile defense systems that are subject to the restrictions on ABMs imposed by the MOU and those systems that are free from these restrictions. This is the first of two demarcation agreements and deals with lower-velocity theater defenses.

The lower-velocity demarcation agreement states that any theater defense system with a maximum speed that does not exceed 3 kilometers per second shall not be subject to ABM-type restrictions under the MOU as long as two conditions are met: (1) that such a system not be tested against a target missile with speeds in excess of 5 kilometers per second or ranges in excess of 3,500 kilometers, and (2) that such a system not be deployed in space. The U.S. and the four other states that signed the MOU will apply the restrictions set out in the demarcation agreement, which is to take effect simultaneously with the MOU.

The demarcation agreement on lower-velocity theater defense systems is the most narrowly drawn of the three agreements signed last September, but it contains two major shortcomings:

- **The agreement broadens the scope of restrictions found in the original ABM Treaty to cover theater defense systems.** The original ABM Treaty did not impose any restrictions on theater defense systems. The demarcation agreement on lower-velocity theater defenses imposes a limitation on the speed of the interceptor in order to continue to qualify for an exemption from the more general restrictions imposed by the MOU. This limitation is imposed through the definition of “lower-velocity” systems, which are classified

as those interceptors that fly at speeds up to and including 3 kilometers per second.

This definition leaves the single most promising missile defense system under development by the United States—the Navy Theater-Wide (Upper Tier) system—subject to restrictions under the MOU. The agreement also bars the development, testing, and deployment of space-based theater defense interceptors by deeming that such interceptors fly at speeds in excess of 3 kilometers per second and therefore do not qualify for the exemption. This will deny U.S. forces a potentially powerful defense against shorter-range missiles. For example, space-based interceptors could have engaged the modified Scud missiles launched by Iraq during the Persian Gulf War.⁵

- **The agreement ignores Congress’s intention that restrictions like those found in the ABM Treaty and, in the future, in the MOU not extend to theater defense systems.** The agreement on lower-velocity theater defense systems ignores a policy position, established by law, which states that any agreement to resolve the ambiguity in the original ABM Treaty—and, in the future, in the MOU—regarding which systems are ABM systems should reflect a single standard.⁶

The single standard established by the law defines ABM systems as those that have been tested against target missiles that fly at speeds in excess of 5 kilometers per second or have ranges in excess of 3,500 kilometers. Although the lower-velocity agreement includes this standard, it also includes the additional stan-

5. An August 1990 study released by the Los Alamos National Laboratory and Lawrence Livermore National Laboratory found that Brilliant Pebbles space-based interceptors would be effective against ballistic missiles with ranges as short as 100 kilometers (62 miles). Further, a July 1992 letter to the Strategic Defense Initiative Organization (SDIO) by Michael D. Miller of the RAND Corporation states that a constellation of 1,000 Brilliant Pebbles interceptors would have engaged the vast majority of the modified Scud missiles launched by Iraq during the Gulf War.

6. Section 235 of the National Defense Authorization Act for Fiscal Year 1996 (P.L. 104–106).

dards, described above, limiting the speed of the interceptor and prohibiting space-based interceptors. Thus, the agreement is at odds with U.S. law.

PROBLEMS WITH THE AGREEMENT ON HIGHER-VELOCITY THEATER DEFENSES

The second demarcation agreement concerns interceptor missiles for theater defense that have speeds in excess of 3 kilometers per second. Under the agreement, these faster theater defense interceptors are not assumed to be exempt from the ABM-type restrictions found in the MOU. Rather, the agreement requires the U.S. and its four MOU partners to enforce the restrictions found in the MOU against providing non-ABM systems with ABM capabilities. This agreement also would enter into force simultaneously with the MOU.

The second demarcation agreement, along with a unilateral statement issued by the U.S. delegation at the signing ceremony in New York, would impose a wide array of restrictions on these faster systems.⁷ As with the slower systems covered in the first demarcation agreement, these faster systems may not be tested against target missiles with speeds in excess of 5 kilometers per second or ranges in excess of 3,500 kilometers, and may not be deployed in space without being deemed to be MOU-limited ABM systems.

But these systems would also be subject to a host of other restrictions:

1. They may not pose a “realistic threat” to strategic nuclear forces and may not be tested to give these theater defense systems

such a capability.⁸ This restriction is meant to ensure that theater defenses are not capable of countering the longer-range missiles capable of striking U.S. territory.

- 2. They may not be deployed in a way appropriate for use against the theater missiles deployed by the other parties to this agreement.** For example, the U.S. would be barred from deploying a defense against the Russian SS-21 Scarab short-range missile.
- 3. The number and geographic scope of the deployment of such systems will be limited.**⁹
- 4. They may not be tested against a target missile before April 1999.** This restriction is designed to slow the pace of development of high-velocity theater defense systems.
- 5. They may not have interceptor missiles with speeds in excess of 5.5 kilometers per second for land-based and air-based systems and 4.5 kilometers per second for sea-based systems.** This restriction imposes a direct limitation on the speed of theater defense interceptors to reduce their effectiveness.
- 6. They may not be tested against multiple warhead missiles and reentry vehicles deployed on strategic ballistic missiles.**

The second demarcation agreement, therefore, is both broader and more ambiguous than the first regarding lower-velocity systems. It also adds three fatal flaws to the two found in the first demarcation agreement:¹⁰

- **The restrictions the second demarcation agreement imposes on higher-velocity the-**

7. The unilateral statement takes the form of a pledge that the United States has no plans to taken certain steps as it implements the second demarcation agreement.
8. The agreement does not provide a definition of the term “realistic threat.”
9. The exact limitations on the number of high-velocity theater defense systems that may be deployed and the geographic scope of their deployment are not defined.
10. The agreement on higher-velocity theater defenses, as with the lower-velocity agreement, would broaden the restrictions on the development and deployment of missile defense systems compared with those imposed by the ABM Treaty and would ignore congressional intent regarding the need for unfettered development and deployment of theater defense systems.

ater defense systems will make them less capable. To a large extent, the capabilities of sophisticated defense systems depend on allowing the unfettered development, testing, and deployment of the technologies that go into these systems—precisely what the second agreement seeks to deny to the affected theater defense programs.

An example of the impact of such restrictions is the use of external sensor data by theater defense systems, which may be provided by ground-based radar, airborne sensors, or satellites. One such system under development is the Theater High Altitude Area Defense (THAAD) system. Providing the THAAD system with access to external sensor data will increase by a factor of four the area of protection it can provide in countering a 3,000-kilometer-range missile.¹¹ Because THAAD, as currently envisioned, will be a lower-velocity system, it will be given access to such sensor data.

The Navy Upper Tier system, by contrast, is subject to the agreement on higher-velocity systems. As a result, the agreement will lock in place an earlier determination by the Clinton Administration that providing external sensor data to the Navy Upper Tier system would violate the ABM Treaty restrictions that the MOU would re-establish.¹² As a result, the Navy Upper Tier system will have to be “dumbed down” so that its area of coverage is reduced dramatically from what would be provided if it could use external sensor data. This is only one example of the kind of impact the restric-

tions imposed by the agreement on higher-velocity systems will have on the capabilities of U.S. missile defense systems.¹³

- **The restrictions imposed on higher-velocity theater defense systems will make them more expensive.** The inevitable result of the reduced capabilities of theater defense systems is increased overall cost. The preceding example of access to external sensor data makes this point.

Using THAAD to defend an area with a radius of 500 kilometers against a missile with a range of 3,500 kilometers would cost roughly \$10 billion (in 1991 dollars), assuming the system does not have access to external sensor data. With the sensor data available to allow earlier intercepts farther away from the target, THAAD could defend the same area with fewer launchers and interceptors, and the costs would be reduced to roughly \$4 billion (in 1991 dollars).¹⁴ Again, THAAD, as a lower-velocity system, will be allowed to use external sensor data. The Navy Upper Tier system will not be allowed to use such data under the agreement on higher-velocity systems. This is only one example of how costs would increase under this agreement.¹⁵

- **The second agreement fails to resolve the problem it was designed to address.** It is ironic that the agreement on higher-velocity theater defense systems fails to eliminate the ambiguity found in the ABM Treaty, and in fact will continue it under the MOU. The ABM Treaty failed to define the difference between the strategic defense systems subject to its

11. For a detailed description of these coverage comparisons, see Missile Defense Study Team, *Defending America: A Near- and Long-Term Plan to Deploy Missile Defenses* (Washington, D.C.: The Heritage Foundation, 1995), pp. 17–21.

12. The Clinton Administration made this determination in 1995. See Bill Gertz, “Navy Missile Defense Shouldn’t Be Issue in Talks, Deutch Asserts: Upper Tier Legal Under ABM Treaty,” *The Washington Times*, April 14, 1995, p. A3.

13. For a detailed description of the reduced capabilities of missile defense systems resulting from arms control restrictions, see Ambassador Henry F. Cooper, “ABM Treaty Costs: Testimony to the Senate Foreign Relations Committee,” September 26, 1996.

14. For a detailed description of these cost comparisons, see Missile Defense Study Team, *Defending America*, pp. 21–23.

15. For a detailed description of the increased costs of missile defense systems resulting from arms control restrictions, see Cooper, “ABM Treaty Costs.”

restrictions and theater defense systems, which were not be subject to its restrictions.

While the agreement is clear that any higher-velocity missile defense system tested against a target missile with speeds in excess of 5 kilometers per second or ranges in excess of 3,500 kilometers would be defined as an ABM system, and therefore subject to restrictions, it is not clear regarding the categorization of a higher-velocity system that has not been tested against such a target missile. This demarcation agreement only refers back to the same ambiguous language found in the ABM Treaty, which would remain in place under the MOU. On the basis of the continuing ambiguity, it can be expected that Russia, perhaps accompanied by Belarus, Kazakhstan, and Ukraine, will object to every American theater defense system with interceptors that fly faster than 3 kilometers per second. Because the ambiguity in the original ABM Treaty remains, the U.S. would have no basis for rebuffing these objections.

CONCLUSION

The three agreements signed by Clinton Administration representatives in New York last September, if ratified, will ensure that the American people are left undefended against missile attack. The first of the three agreements, the MOU, recodifies this policy of vulnerability in place of the old ABM Treaty. Further, it does so in a multilateral

setting that will make it all but impossible to amend the MOU and ease the restrictions on developing and deploying such defenses.

The other two agreements broaden the scope of the policy of vulnerability by extending some of the restrictions found in the original ABM Treaty to systems for defending U.S. troops and U.S. allies against shorter-range missiles. Even the ABM Treaty did not impose restrictions on the development and deployment of these theater defense systems.

In a world where missile technology is proliferating and the risk of missile attack is increasing, the United States should be eliminating, not perpetuating, restrictions on the development and deployment of a missile defense system. The Clinton Administration, however, is oblivious to the facts of proliferation. It not only refuses to eliminate the restrictions imposed on U.S. missile defense programs, but actually seeks to expand them.

The three agreements signed in New York last September are vehicles for expanding these restrictions, and are therefore vehicles for sustaining the policy of vulnerability. This policy—and these agreements—are very dangerous.

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