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## PRESIDENT CLINTON'S CONTRADICTIONARY POLICY ON THE ABM TREATY

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Almost seven years ago, America's Cold War nemesis, the Soviet Union, collapsed. Yet the Clinton Administration continues to adhere to the terms of a treaty between the United States and the now-defunct Soviet Union that are based on a policy of mutual assured destruction (MAD). Despite the growing threat of nuclear proliferation, this policy deliberately leaves America vulnerable to missile attack. Why? Because the terms of the 1972 Anti-Ballistic Missile (ABM) Treaty prohibit the United States from building an effective nationwide defense against ballistic missiles.

The obvious question many in Congress are asking is, "Should the United States be bound by a treaty when its treaty partner, the Soviet Union, has disappeared?" To answer this question, Senator Jesse Helms (R-NC) and Representative Benjamin Gilman (R-NY) wrote to President Bill Clinton on March 3, 1998, asking him to identify the country or countries that today are ABM Treaty partners of the United States in lieu of the former Soviet Union. In a letter dated May 21, President Clinton responded that, even though an argument can be made that Belarus, Kazakhstan, Russia, and Ukraine are ABM Treaty partners of the United States, the Treaty remains in force today on the basis that Russia alone is "clearly" party to the Treaty. In other words, even though the Administration has sought to multilateralize the Treaty, it is today a bilateral arrangement with Russia alone.

### THREE CONTRADICTIONS

Rather than clear up the confusion over the ABM Treaty's status, the President's response has added to

it. His letter is riddled with statements that contradict his previous assertions and cast serious doubt on the claim that the ABM Treaty is legally binding. The three most significant contradictions include:

**Contradiction #1.** In his letter to Helms and Gil-

man, the President states that Russia is now a Treaty partner. But no such agreement has been concluded with Russia. Furthermore, no negotiations to this effect have taken place. President Clinton is merely claiming that such an agreement exists as a matter of succession. But he cannot simply manufacture a bilateral agreement with Russia. Nor can he argue that Russia simply inherits the Soviet Union's treaty obligations as a matter of succession, because Russia is unable to fulfill all of the obligations the ABM Treaty imposed on the Soviet Union.

**Contradiction #2.** In a November 21, 1997, letter to Representative Gilman, the President described the status of the ABM Treaty as "unsettled." Now, in the new letter, he asserts

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that Russia is (and has been) the legal Treaty partner. How can this be the case? How can the President claim that the status of the Treaty is unsettled and then, six months later, say that the status of the Treaty is settled with Russia as partner? The record shows that Russia cannot be the successor to the Soviet Union. The reason the President said in November that the Treaty's status is unsettled is because that is where the process stood in the Administration's efforts to multilateralize the Treaty.

These efforts started when the Administration announced at a November/December 1993 session of the Standing Consultative Commission (SCC), the ABM Treaty's implementing body, that it would seek a multilateral arrangement for the ABM Treaty. Acting U.S. SCC Commissioner Stanley Riveles publicly declared this commitment on June 21, 1994, before the Seventh Multilateral Conference on Theater Missile Defense. It continued when the Administration announced on several occasions that any of the former Soviet states that wanted to participate in the ABM Treaty regime has the legal right to do so. The process resulted in an agreement with Belarus, Kazakhstan, Russia, and Ukraine, signed in New York on September 26, 1997, to multilateralize the Treaty. This agreement, however, remains unratified. The President's assertion that the status is unsettled is supported by the fact that the Department of State continues to list the Soviet Union as the ABM Treaty partner of the United States in its current version of *Treaties in Force*.

**Contradiction #3.** Furthermore, only last November, President Clinton argued in his letter that making Russia the legal partner of the ABM Treaty would require fundamental changes in the Treaty. Yet in his new letter, he claims that Russia is a legal partner, despite the fact that no such changes have been made or suggested. If the President wants the Senate to recognize Russia as America's legal partner in the ABM Treaty, he will have to change the Treaty's provisions substantively. Otherwise, by his own admission, Russia cannot be recognized as a

bilateral partner of the United States in the ABM Treaty.

## THE ROLE OF THE SENATE

In his November letter, President Clinton stated correctly that a bilateral arrangement with Russia cannot be achieved without substantive changes in the ABM Treaty, and that these changes would require the Senate's consent. This last point is a crucial one for the Senate. Article II, Section 2 of the U.S. Constitution requires that modifications to an existing treaty be concluded as treaties and then submitted to the Senate for its advice and consent. This, in fact, is how a 1974 amendment to the ABM Treaty was handled. At no time since the collapse of the Soviet Union, however, has any agreement establishing Russia as the ABM Treaty partner of the United States been submitted to the Senate. This would suggest either that no such agreement exists (as, indeed, none has been concluded), or that the President's actions are in violation of the Constitution. Moreover, under international law, without an identified treaty partner, the ABM Treaty would be deemed to have lapsed, and therefore no longer would be binding on the United States. Clearly, Senator Helms and Representative Gilman have reason to ask the President to clarify this issue.

## CONCLUSION

Senator Helms and Representative Gilman would be justified in expressing outrage over the President's response to their query. His assertions in his May 21 letter lack credibility and raise constitutional and legal questions. If the Administration's efforts deny the Senate its proper role in the treaty-making process, the constitutional balance of power is threatened. The President's attempts to evade his constitutional responsibilities, mislead Congress on the status of the ABM Treaty, and preserve the Treaty in this manner will have dire consequences. Most important, they will allow millions of Americans to remain vulnerable to missile attack.

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