



The  
Heritage Foundation  
**Executive Memorandum**

No. 612

July 19, 1999

## THE WHITE HOUSE END RUN (AGAIN) AROUND THE SENATE ON THE ABM TREATY

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Senate Foreign Relations Committee Chairman Jesse Helms (R-NC) set a June 1 deadline for President Bill Clinton to transmit three arms control treaties signed in September 1997 to the Senate for advice and consent in accordance with the treaty process specified in the U.S. Constitution. If ratified, these treaties would revive and strengthen the 1972 Anti-Ballistic Missile (ABM) Treaty with the former Soviet Union and impose severe restrictions on America's ability to develop and deploy a missile defense system.

As recent hearings chaired by Senator Helms made clear, the ABM Treaty barred the United States from deploying any system to protect its national territory against ballistic missile attacks. Testimony also detailed the legal reasons why the ABM Treaty is no longer valid.

Senator Helms' insistence on a deadline is reasonable; the treaties were signed almost two years ago. He has indicated that he will consider attaching a condition to other treaties—both those before the Senate and those that will come before it—that would bar the President from ratifying these agreements until he transmits the September 1997 agreements to the Senate.

This condition is necessary to protect the Senate's proper role in the treaty-making process. The President several times has formally declared his intention to transmit the treaties to the Senate; this condition would pressure him to honor that commitment.

### THE THREE TREATIES

The three new missile defense treaties were signed on September 26, 1997, in New York by representatives of the United States, Belarus, Kazakhstan, Russia, and Ukraine. The first agreement, if ratified, would replace the ABM Treaty with a new U.S. treaty obligation to four of the 15 states that emerged from the Soviet Union after its collapse in 1991. This new treaty would bar the deployment of a missile defense system for the protection of U.S. territory. The others would broaden its reach by imposing restrictions on defenses against intermediate-range missiles. The ABM Treaty restricted defenses only against long-range missiles.

At a time when missile technology is spreading rapidly to rogue states such as Iran, Iraq, and North Korea, these new treaties would heighten America's vulnerability by limiting the military's capacity to counter ballistic missiles in flight. Formal Senate scrutiny would allow the American people to see how dangerous these new agreements would be.

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Produced by  
The Kathryn and Shelby  
Cullom Davis International  
Studies Center

Published by  
The Heritage Foundation  
214 Massachusetts Ave., N.E.  
Washington, D.C.  
20002-4999  
(202) 546-4400  
<http://www.heritage.org>



## **PAST ATTEMPTS TO CIRCUMVENT THE SENATE**

Senator Helms' impatience with the Administration's delay in transmitting these treaties is understandable. The Administration earlier had tried to circumvent the Senate altogether, and only strong demands from Senate leaders in late 1996 and early 1997—after determining the likely content of the agreements—forced the Administration to agree to submit the two treaties that discuss theater missile defenses. The Senate had to take extraordinary preemptive action to compel the Administration to submit the multilateral treaty with four former Soviet states—by attaching a condition to ratification of another treaty, the Conventional Forces in Europe (CFE) Flank Document. This condition required presidential certification that any treaty which would multilateralize the ABM Treaty or change its geographic scope would be submitted for the Senate's advice and consent. President Clinton issued that certification on May 15, 1997.

Although President Clinton is legally bound to transmit all three treaties to the Senate, there are suspicions that he is delaying transmittal to find a way, once again, to circumvent the Senate. In May 1998, for example, he sent a letter to Senator Helms and the chairman of the House International Relations Committee, Representative Benjamin Gilman (R-NY), stating that Russia is a party to the ABM Treaty. Clearly, the Administration believed that Senate rejection of the new multilateral treaty could be trumped by the argument that the ABM Treaty remains in force with Russia.

Suspicions were heightened by a joint declaration issued by President Clinton and Russian President Boris Yeltsin in Cologne, Germany, on June 20, 1999, which commits both the United States and Russia to negotiate "changes in the ABM Treaty" as if Russia were a party to it. In addition, the Administration's nominee for Under Secretary of State for Arms Control and International Security, John Holum, told the Senate Foreign Relations Commit-

tee at his June 28 confirmation hearing that the new agreements will not soon be transmitted to the Senate.

The Administration's behavior is unacceptable. The condition attached to the CFE Flank Document requires the Administration to submit to the Senate an agreement to make Russia a party to the ABM Treaty, just as it requires transmission of the new treaty with the four states. Moreover, the Administration has acknowledged that the two theater defense treaties would alter the ABM Treaty and would require Senate review even if the ABM Treaty were still in force. In missing the June 1 deadline, the President is toying with the Senate's solemn constitutional obligation to advise and consent to the ratification of treaties.

## **CONCLUSION**

Senator Helms' decision to set a deadline for submission of the three September 1997 missile defense treaties to the Senate involves far more than just the future of these treaties. If the President were allowed to bypass the Senate, the United States would be permanently barred from developing and deploying an effective missile defense system. Millions of Americans would remain at risk of being killed by ballistic missiles carrying nuclear, biological, or chemical weapons when the government otherwise could have provided for their protection.

Further, the Senate's constitutional prerogative to review treaties is endangered. If President Clinton proved able to circumvent the Senate regarding these three missile defense treaties, future Presidents would be able to produce equally specious reasons for circumventing the Senate on other treaties. Senate leaders have a responsibility, both to the American people and to the Senate as an institution, to stand firm with Senator Helms on this issue.

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