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Concern over global proliferation of theater ballistic missiles has prompted calls for limited national and effective theater ballistic missile defense (TBMD) programs. However, the ABM Treaty, a cold war relic, is a major stumbling block to such programs because it prohibits the deployment of ABM defenses, and does not distinguish between prohibited ABM defenses and TBMD systems. Some have argued that proposed TBMD systems are prohibited because they may have strategic capabilities. Others have advocated modifying the Treaty at least to accommodate a viable TBMD. To do so, however, requires Russian agreement. Despite a seeming willingness, discussions have bogged down, primarily over Russian attempts to limit the capabilities of US TBMD programs. Consequently, the Treaty is dangerously inhibiting the deployment of effective missile defenses against the growing ballistic missiles threat. The best solution is to abandon the Treaty altogether and, consistent with an objective cost-benefit analysis, move forward aggressively with BMD deployments.

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AN ELEGANT IRRELEVANCE:
THE ANTI-BALLISTIC MISSILE TREATY IN THE NEW WORLD DISORDER

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AN ELEGANT IRRELEVANCE: THE ANTI-BALLISTIC MISSILE TREATY IN THE NEW WORLD DISORDER

Introduction: The New Vision, and the End of the Cold War

> "One of our most urgent priorities must be attacking the proliferation of weapons of mass destruction--nuclear, chemical and biological weapons--and the ballistic missiles that can rain down on populations hundreds of miles away.... I have made non-proliferation one of our nations highest priorities."
>
> - President Clinton
> United Nations, 27 September 1994

Since its ratification the 1972 Anti-Ballistic Missile (ABM) Treaty[1] has been exalted as the "crown jewel" of effective arms control--to the point where mere criticism of its provisions tends to be equated with an attempt to destroy the Treaty and the desire to start another arms race. Consequently, it was a "call-to-arms" for Treaty advocates when, on March 23, 1983, then President Reagan proffered a vision that was a radical departure in U.S. strategic policy. He suggested that the policy of nuclear deterrence through the threat of strategic nuclear retaliation was inadequate, and called for examining the potential for an effective defense against ballistic missiles.[2] President Reagan's vision unleashed a storm of controversy over the scope and limits of the new Strategic Defense Initiative (SDI)[3] since this grand vision clearly ran counter to the spirit if not the letter of the ABM Treaty's prohibition against a national ballistic missile defense. The well-publicized debate centered primarily around to what extent SDI research programs were covered by or intended to be included in the ambiguous language of the Treaty, resulting in attempts to give a more

"restrictive" versus "broad" interpretation to the Treaty.[4] With the demise of the Soviet Union, however, and the recognition of a growing threat of the proliferation of weapons of mass destruction (WMD) and ballistic missiles, new questions have arisen about the relevance of this twenty-two year-old cold war treaty to the new international environment.

As a result of the 1991 Persian Gulf War and the SCUD missile attacks on Israel and Coalition forces, public and official interest for developing and deploying a national missile defense (NMD), as well as an improved Theater Missile Defense (TMD) to protect U.S. forces and our allies, was rekindled. When, in response, Congress passed the Missile Defense Act of 1991,[5] proponents of the ABM Treaty strenuously objected against any deployment of a NMD and argued for severe limits on TMD. In light of new technological improvements, the end of the cold war, and a new threat environment, it is time to think the unthinkable and question the continuing relevancy of the ABM Treaty. The purpose of this article, then, is to discuss whether or not the ABM Treaty has outlived its usefulness, and whether it should be terminated or modified to allow missile defenses appropriate for today and tomorrow's likely national security threats. The arguments for and against maintaining the Treaty in its present form will be assessed; and, after reviewing the current Administration's efforts to develop a limited ballistic missile program are examined, alternatives will be discussed and evaluated.

Background - Description and Present Status of the ABM Treaty

The ABM Treaty bans the deployment of nation-wide defenses against strategic ballistic missiles by the United States and the Soviet Union. The Treaty's terms permits each side two ABM deployment sites, one protecting the capital and one protecting an intercontinental ballistic missile (ICBM) launch area. In 1974, however, both parties signed a protocol to the Treaty that restricted each side to either the capital or a missile field. The Soviets chose to keep its defense around Moscow (it still functions today and is improved periodically). The United States chose to defend an ICBM field near Grand Forks, North Dakota, but then deactivated the system in 1976. The Treaty also prevents the deployment of a nationwide battle management system, and requires all early warning radars to be sited on the periphery of the country, oriented outward.

Following the break-up of the Soviet Union, some of the successor states (Russian Federation, Ukraine, Kazakhstan, and Belarus), denominated as the Commonwealth of Independent States (CIS), met and declared in a recent resolution[6] their agreement to abide by the terms of the Treaty. The United States has taken the position that the Treaty remains in force,[7] and has invited all former Soviet Union states to accede to the Treaty.

The Old Paradigm: Rationale for Adherence to the ABM Treaty

> "If they know that you have a deterrent force capable of hitting the United States, they would not be able to hit you. If we had possessed . . . missiles that could reach New York - we would have hit at the same moment [of the 1986 U.S. raid on Libya]. Consequently, we

should build this force so that they and others will no longer think about an attack."

- Muammar Qadhafi
18 April 1990[8]

During the debate for ratifying the ABM Treaty (and subsequently) a number of arguments were advanced against creating an ballistic missile defense (BDM) system. While there are variants on each, the main arguments may be distilled down to primarily four:

1. There is no threat, and even if there was, it is years away from posing a legitimate threat to the United States.

2. BMD puts at risk the "balance of terror"; i.e. "reciprocal vulnerability" where "prudent restraint from aggressive violence is based on acknowledgment that the world is too small to support a nuclear war."[9]

3. BMD would not work, and even if it would it is too expensive.

4. BMD would destroy the stability of deterrence (specifically, it would promote an arms race).[10]

Treaty proponents have continued to argue that the threat is overblown and that the Administration is concocting "a highly misleading litany of national security threats."[11] It is argued that these "rogue" states are weak, do not constitute a major threat and even the most paranoid regime would be deterred by the United States overwhelming retaliatory capability. Creating a national or unconstrained theater missile defense is therefore unnecessary, and too expensive given the small likelihood of an attack. However, the evidence is overwhelming that there is a real and growing threat.[12] In addition to ongoing efforts to

acquire WMD, a high percentage of proliferant states use or seek to acquire missiles that might serve as delivery vehicles.[13]

The threat posed by intermediate and long-range missiles comes from two possible sources. One is the former Soviet Union. Despite the collapse of the Soviet empire and the ensuing rapprochement, Russia still has the technical wherewithal to threaten the United States with nuclear annihilation. Even after full implementation of the Strategic Arm Reduction Talks (START) I and START II treaties, Russia will still be allowed to possess (as will the United States) up to 3,500 strategic nuclear warheads.[14] While Russia no longer poses the threat the Soviet Union did, it remains possible that certain criminal elements within the former Soviet Union may sell ballistic missiles, WMD, or related technology increasing the proliferation risks.[15] This possibility could increase if economic and social conditions in those countries continue to deteriorate.

The second source is of greater and more immediate concern, however; it is the threat posed by states and transnational terrorists, hostile to the United States and its interests, that either possess or are developing missile technology and WMD. Presently over 20 countries possess or may be developing such weapons, and "more than 15 nations have ballistic missiles [and] by the year 2000, perhaps 20 nations may have them."[16] Short-range missiles (70-1,000 kilometers range) could threaten U.S. interests in southern Europe, the Middle East, and East Asia. Medium-range missiles (1000-5000 kilometers) from China, North

Korea, Israel, and Saudi Arabia could potentially threaten U.S. interests throughout Europe, the Middle East, North and East Asia. Particularly disturbing is North Korean development of a ballistic missile (the Nodong) capable of hitting targets in Japan to include U.S. bases in Okinawa,[17] and the presently deployed Chinese-made CSS-2 (3,000 kilometer range) which has capabilities equal to or greater than missiles that have been construed to be "strategic" under the ABM Treaty.[18]

Will our retaliatory capability deter outlaw states or other hostile transnational actors? ABM proponents argue that they would be sufficiently deterred because of the "balance of terror" created by possessing such weapons; that is, that the use of a nuclear weapon against the United States or its forces will bring nuclear annihilation. While arguably the old cold war deterrence strategy was successful in deterring the former Soviet Union, the same cannot be said for applying that strategy to the new multipolar, disordered world of today. Even the most ardent ABM proponent would concede that the old strategy could not deter an accidental or unauthorized nuclear strike. Today, it is even more problematic that deterrence would work against "rogue" elements within a Third World nuclear power or the former Soviet Union. For most analysts studying our changing world and the proliferation problem there is clearly a credibility problem with our present deterrence strategy. As one recently observed:

> Little is known about strategic thinking in many proliferating states, and it is quite possible that perceptions may vary greatly there. In any event, many Third World countries presently face a far less

> predictable strategic environment than did the superpowers during most of their years of rivalry. In the developing nations, far less is usually known about enemy intentions or capabilities. In addition, there are fewer resources and less time to invest in the kind of strategic analysis undertaken in the West. Furthermore, in the Third World, where conflicts may be more intense and willingness to suffer casualties may be greater, mutual deterrence could be sorely tested by the proliferation of high-speed delivery capabilities.[19]

Indeed, as Martin van Crevald has written, war, a barracks existence, or dying for a take-your-choice ethnic, religious or cultural cause may be infinitely preferable to a status-quo of ignominy or despair.[20]

One cannot deny that a number of potential proliferators are buying and/or developing missile capabilities, and certainly some of them have evidenced a strong willingness to use missiles as an instrument of terror and warfare.[21] Those undertaking their current clandestine WMD programs are fully cognizant of US nuclear and conventional capabilities. Nevertheless, one can surmise that one reason a nation would risk US ire is to either have the capability to threaten use to deter the US and the international community from taking actions that would be contrary to its interests or, just as likely, obtain concessions. The US-DPRK negotiations over North Korea's nuclear weapons program is one obvious example.[22]

Additionally, the lessons learned from the US performance in the Persian Gulf War by Third World nations might have been different from what we would have supposed. The Indian Defense Minister is reported to have responded on the lessons to be

drawn: "Don't fight the United States unless you have nuclear weapons."[23] And, one might add, the capability to deliver them.

Consequently, given an understanding and appreciation of the threat, it makes little strategic or political sense to argue that the Treaty should stand in the way of protecting American territory and lives. As one Congressman recently noted:

> It [the ABM Treaty] is the modern day equivalent of the Maginot Line with North Korea and other rogue states poised to make it irrelevant much as Adolf Hitler's army did the original a half-century ago. Today's threatening regimes do not regard international law or treaties as any more a restraint on their aggressive actions than did Nazi Germany."[24]

To counter this threat the United States has embarked on a multi-faceted policy to impede and slow the proliferation tide and, where possible, roll it back through a variety of economic and diplomatic incentives. It is recognized, however, that proliferation cannot wholly be stopped. The Department of Defense (DOD), in recognizing and understanding this growing phenomena, announced a "counterproliferation strategy" designed to deter and defend against the possible use of these weapons against the United States and its vital interests.[25] That strategy includes unilateral and multilateral export control initiatives, diplomatic efforts, coercive diplomacy, deterrence actions, and a defense program that includes developing and deploying defenses against ballistic missile attack.[26] Unfortunately, BMD is being hampered by contrary efforts to restrict BMD programs since they may run afoul of a treaty whose

underlying rationale no longer seems relevant in today's national security environment.

While a plausible case could perhaps have been made that a 1969-70 era BMD would not work,[27] the argument is not really tenable today.[28] The technology is certainly within the capability of the United States to field a theater and limited national defense within the next ten years.[29] A related argument is that since any ABM system cannot be 100% effective it shouldn't be deployed. Obviously, there can be no guarantee that any defense will work with absolute and total success.[30] Some defense is always better than none, even a defense that cannot stop everything. Thus, Treaty proponents have tended recently to instead argue the program is a "budget-buster" and "out-of-control," rather than attack the prospective viability of BMD.

If there is one factor that has more than any other sparked debate over BMD, it is the budget implications. The question of national priorities between military and domestic needs has always been an underlying theme in efforts to curtail or cancel BMD programs. The Arms Control Association, for example, has estimated that a limited NMD would cost over $55 billion initially and up to hundreds of billions later on.[31] This estimate, however, appears inflated. The Congressional Budget Office has estimated that the "total expense of developing and deploying [the Bush Administration's] Global Protection Against Limited Strikes (GPALS), coupled with the costs of other research under the SDI program, would amount to about $85 billion" over a

period of twelve years or a little over $7 billion per year.[32] This would have included the costs for theater missile defenses and a limited national defense system. Still others have argued that a limited space-based national defense system could be deployed by the end of the decade for as little as $5 billion.[33] And, while total life-cycle costs have yet to be determined, a stand along deployed TMD is currently estimated to cost about $17 billion through this decade.[34]

From a national security standpoint, however, the total cost of a NMD system in terms of just dollars misses the mark. The choice involved is larger than dollar costs versus benefits. It is whether one is willing to continue to accept vulnerability of attack from a potential foe that may or may not be deterred by U.S. retaliatory capabilities. While it is arguable that the Soviets could have been so restrained, it makes less sense against potential adversaries that have different beliefs, question American resolve, or are inherently unstable. In comparison to an attack on US forces with nuclear-tipped ballistic missiles or a WMD-tipped ballistic missile attack on an American population center, even the potentially high costs touted by the arms controllers seem a small price to pay.

Interestingly, The US plans for conventional contingencies and spends hundreds of billions of dollars every year to defend against the threat of conventional attack even though that attack, if it were to come, would not have nearly the consequences of a ballistic missile attack with weapons of mass

destruction. When the amounts being proposed for a national missile defense and TMD are compared, particularly when given the alternative of continued vulnerability, the "budget-busting" case against a BMD is unpersuasive.

The last and by far most persuasive argument for keeping the ABM Treaty intact has been and continues to be that ABM defenses could destabilize the U.S.-Soviet (now CIS or Russian) military balance in a crisis.[35] Since such defenses would inevitably be more effective against a ragged, disorganized retaliation than they would against a large, carefully planned first strike, they might increase each side's incentive to strike first thus heightening the risk of war. Consequently, to stop the "spiral upward of nuclear arms" there was some logic to limiting defenses as long as both sides bought in to the argument. Indeed, the Treaty codified the central principle of U.S.-Soviet nuclear negotiations; i.e., a co-operative approach in limiting offensive and defensive strategic forces.[36] Abrogating the Treaty now, it is argued, would stop the START reductions and possibly begin anew the cold war.[37]

At the time the Treaty was signed, the United States established a clear linkage between offensive and defensive arms control limitations. Such a linkage made sense; the U.S. could accept severe constraints on BMD, which might defend U.S. ICBMs and strategic bomber bases, <u>if</u> the Soviet offensive threat to U.S. retaliatory forces could be constrained and reduced on a long-term basis through arms control. Unfortunately, until the

dissolution of the Soviet Union (and the subsequent signing of START I Agreement on July 31, 1991), the premise for continued U.S. adherence to the Treaty was never met. The Soviet offensive threat to U.S. retaliatory forces increased despite agreements reached in the Strategic Arms Limitation Talks (SALT) I and II negotiations to limit these forces. Further, Soviet Union arms control behavior over the twenty years prior to 1990 can at best be charitably described as noncompliant.[38] For example, the Soviet Union clearly and admittedly violated the ABM Treaty by building a large phased-array radar near Krasnoyarsk.[39] US reactions to these violations were generally muted, confined primarily to public condemnation and interminable not-very-satisfactory consultations.

Adhering to the ABM Treaty in order to prevent an arms race despite the other party's record of noncompliance was not a very compelling strategy then and is less so today, particularly since the situation has changed so dramatically. No longer is there a superpower standoff. Instead of a cold war in which miscalculation might bring armageddon, there is cooperation and a developing commonality of interests. Additionally, Russia and the other CIS states are today economically incapable of becoming parties to another arms race spiral as evidenced by the current debilitated and bankrupt state of its Strategic Rocket Forces.[40] Further, it defies logic that an initial limited NMD or TMD designed to stop a hundred or so missiles would raise strategic concerns by the Russians when under START limits they are allowed

to possess strategic forces that could easily overwhelm prospective missile defenses. Similarly, a system designed to intercept a limited number of ballistic missiles is extremely unlikely to cause either the US or the Russians to believe either one had gained a first strike advantage that would make a nuclear exchange "winnable." In any event, as one commentator has noted:

> The arms race between us is over. The U.S. and Russia are not even aiming missiles at each other. They are aimed at seas, so that even an accidental launch would destroy only fish.[41]

While the situation could change it will not do so because of an out-of-date arms control agreement. The missiles will be re-aimed and reductions will stop because Russian conduct at home and abroad has changed for the worse, turning its back on democratization, not because the US deploys a ballistic missile defense.[42]

The ABM Treaty and Current Policy on Future BMD Development

With the end of the cold war and the experiences with Iraqi ballistic missiles in mind, the Bush Administration in 1991 refocused the SDI program to developing a comprehensive missile defense system against limited attacks.[43] This new effort, called GPALS, envisioned three components: (1) TMD systems to be developed and deployed concurrently with (2) a national missile defense. These two components would be deployed before (3) a Global Protection System to be later developed and shared globally.

Subsequently, President Bush requested and Congress passed the Missile Defense Act of 1991[44] which authorized and appropriated funds for GPALS. Further, in October 1991, the US proposed to the Soviet Union that negotiations begin to mutually agree on the timing for the deployment of GPALS.[45] Later, in 1992, Russian President Yeltsin agreed to such negotiations stating, "We are ready jointly to work out and subsequently to create and jointly operate a global system of [ballistic missile] defense."[46]

Unfortunately, the Russians expressed little enthusiasm for creating a global BMD, and subsequent versions of the Act, by failing to fund a limited NMD program, and focusing on TMD, have effectively killed GPALS and any further efforts to develop a NMD program.[47] A primary reason for this was the concern that such a program, to include TMD programs, would effectively eviscerate or render obsolete the ABM Treaty. The Clinton Administration did not support the GPALS concept; but, in recognizing the growing dangers of the proliferation of WMD and ballistic missiles, supported a more fiscally-limited ($1.69 billion for fiscal year 1995) TMD.[48] Further, while recognizing the need for BMD, the Clinton Administration has, in effect, restricted development of new ABM systems and technologies by, first, endorsing the restrictive interpretation of the ABM Treaty,[49] and, second, agreeing to negotiate with the Russians a "demarcation line between strategic ABM systems, which are limited by the ABM Treaty, and theater ATBM [Anti-Tactical

Ballistic Missile] systems, which are not."[50] Distinguishing between ABM and TMD systems is required since the Treaty itself contains neither a definition nor any reference to another agreement that might yield a reliable definition as to what is a "strategic" ballistic missile.[51]

Similarly, there is no consensus on what the "tested in the ABM mode" prohibition language of Article VI of the Treaty means. In strictly interpreting the Treaty, some ABM Treaty advocates argued that systems being developed for TMD such as the Army's Theater High-Altitude Area Defense (THAAD) and the Navy's sea-based upper-tier systems violate key parts of the Treaty,[52] and therefore development of these programs should be prohibited. Thus, TMD programs and future deployment of advanced TMD will have to be agreed to by the Russians and meet any requirements that ensure it is not considered in violation of future interpretations of Article VI of the Treaty.

Initial Treaty-modification discussions in 1993 and early 1994 with the Russians were unproductive. The Russians quickly understood that the United States had given them a veto over any of its future planned improvements in TMD.[53] In a poor example of negotiating style, the United States revealed its intentions to seek "clarifications" in the Treaty so that proposed interceptor systems would be allowed to attain speeds of up to 5 kilometers per second. At this speed these systems could have significant capabilities against "strategic" missiles. The 5 kilometer per second requirement was necessary in order to engage

such medium range missiles as China's CSS-2 that travels at about 4.5 kilometers per second, India's Agni, and North Korea's Nodong II and multiple stage follow-on missiles, the Taepo Dong 1 and 2 being developed.[54] The Russians readily understood the "strategic" implications and refused to accept the proposed changes. Under their current economic circumstances the Russians are ill-equipped to compete with the United States in developing sophisticated, technologically advanced ballistic missile defenses, and to quote one expert:

> They are trying to prevent advanced U.S. technology from outperforming existing Russian theater missile defenses. Russia has been upgrading and peddling its own TMDs, the SA-10 and SA-12 SAMs, at air shows around the world, claiming that they have a 'number of undeniable advantages' over the U.S. Patriot. One of Moscow's goals appears to be to limit the U.S. ability to develop better theater missile defenses in order to maximize the sale of their own.[55]

In the face of Russian intransigence, the United States appears to have accepted Russian limits on fly out speed (proposed 3 kilometers per second for land and sea-based TMD systems) which effectively "freezes the capability of U.S. high-speed, anti-missile missiles at current technology levels and blocks development of [future advanced interceptors]."[56] If true, the US will have accepted a Russian-imposed restraint on US TMD systems, primarily out of a concern over running afoul of the ABM Treaty, rather than differentiating between ABM and TMD systems by limiting the type of missile used during testing. It remains to be seen whether the US will compromise further and accept additional constraints on all TMD systems.[57]

Subsequently, as if to drive the advantage home, it was recently disclosed that the Russians have recently negotiated the sale of SA-12s to Kuwait.[58] Thus, while the US limits development and deployment of TMD to accommodate Russian "concerns," potential foreign sales of U.S. ballistic missile technology is being lost to Russian weapons developed and produced with little concern about ABM Treaty compliance.

Finally, in a recent ironic turn of events, the DOD proposed to Japan that it develop a national BMD capable of "defending against North Korea's Nodong ballistic missile and the Chinese CSS-2 and CSS-5 missiles,"[59] something the United States is currently prohibited to do under present interpretations of the ABM Treaty. While the ABM Treaty may remain intact, one wonders at what cost to U.S. national security and interests?

A New Paradigm Unconstrained by Cold War Arms Control

"Arms control theory is now at a dead end...."

- Henry Kissinger, 1984[60]

Today, America has no effective defense against ballistic missiles. There are essentially three alternatives that are available for US policy makers. The first is to continue the administration's approach whereby the United States seeks to obtain agreement with the Russians on a demarcation line between "theater" and "strategic" missiles, agree to a qualitative limit for TMD systems, and honor the ABM Treaty's prohibitions. As discussed above, that alternative is not an attractive one. We will be held hostage to Russian intransigence, and it will

severely limit our ability to meet the present and growing ballistic missile threat. America will remain vulnerable as will our allies and forward deployed forces.

A second alternative is to re-adopt the Bush Administration's GPALS concept. This has merit. It provides for a limited national and theater missile defense as well as endorsing a collective global missile defense security arrangement that provides for the future sharing of BMD technology to other like-minded nations. The difficulty, however, is that NMD would remain constrained to one site in the United States pursuant to ABM Treaty restrictions, and TMD would be limited qualitatively so as to not breach Treaty prohibitions. If the United States wanted to have a truly effective, limited NMD, responsive to a potential missile attack by a hostile state or terrorist groups, a number of sites along the periphery of the United States are required. This also is prohibited by the Treaty. The Treaty would have to be re-negotiated and, given the current Russian negotiating position, any subsequent agreement would in all likelihood continue to limit the technological capability of a BMD. Finally, one must also anticipate that BMD proposals would have to run the gauntlet of opponents to any program perceived to be inconsistent with their interpretation of the ABM Treaty.

A third alternative would be to develop and deploy a limited multi-sited NMD, and a TMD unhampered by ABM Treaty prohibitions. This would require the United States to abrogate the ABM Treaty.

While bound to be a difficult sell politically, particularly since ABM Treaty advocates have convinced many key members of Congress that the Treaty is inviolate, a strong case can be made, as discussed here, that a national security strategy that includes ballistic missile defenses is a logical, rational and much needed response to the new world disorder; a strategy reflecting the end of superpower rivalry and a blind faith in an outmoded treaty.

The benefits of scrapping the Treaty are immediately obvious. It is consistent with our non-proliferation strategy, meets the present and growing threat, eliminates a gap in our defense strategy, provides a hedge for future ballistic missile development by Russia or other proliferant states, and it gives our strategic forces a more balanced offense-defense mix. Politically, at least at the grass roots level, it should be popular and sellable because it eliminates the "balance of terror" strategy--an approach that left anyone who thought about our vulnerability distinctly uneasy. A defensive deterrent in the form of a limited NMD system would present powerful dis-incentives against a possible strike by a "small" nuclear power, while the lack of adequate defense would surely be perceived as a sign of weakness--a characteristic that will no doubt be exploited sooner rather than later. There is no reason to believe that those who seek entry into the "WMD club" by acquiring such weapons will view the situation any differently.

Obviously, there are potential drawbacks. Dollar costs have to be fully assessed. At present, however, the costs for a limited NMD, as well as TMD, appear not to be "budget-busters." Second, the Russians could view US withdrawal from the Treaty as a provocation. Rationally, however, that should depend on the current state of affairs between the United States and Russia, not on an anachronistic arms control treaty. If relations improve the Treaty will become increasingly irrelevant. If they worsen, it is unlikely at this time and for some time to come that Russia will realistically feel threatened by a limited NMD, one that would have small impact on their nuclear retaliatory capability. Conceivably, withdrawing from the Treaty could give the Russians an added incentive to agree to the deployment of a world-wide BMD thus increasing stability and ending a strategy based on the idea that it is somehow safe to be vulnerable.

Conclusion--A Rational Approach to Ballistic Missile Defense

> "Victory smiles upon those who anticipate the changes in the character of war, not upon those who want to adapt themselves after the changes occur."
>
> - Giulio Douhet, 1921[61]

To demonstrate our seriousness about stopping the spread of missiles and weapons of mass destruction, we should proceed aggressively, and unilaterally if necessary, to build the most effective missile defenses technology--not the ABM Treaty--will permit. Without missile defenses, our counter-proliferation strategy is impotent against a determined violator like North

Korea, which has not demonstrated respect for norms of civilized behavior and international diplomacy.

Expediting the development and deployment of effective national and tactical missile defenses would put teeth in our counter-proliferation efforts, and restore our credibility in dealing with outlaw nations. Would be proliferators must know that they will not be able to hold the American people, our allies or our forces hostage to their designs, and that the costs--economically, politically, and militarily--will far outweigh any potential gains. Not only will a BMD reduce the risk of war--through accident, miscalculation, or deliberate design--but it is morally preferable to the current "balance of terror" alternative of holding our populations hostage in the name of ABM Treaty compliance. Realistically, to make this goal an integral part of our future national security strategy, the ABM Treaty must go.

1. 23 UST 3455; TIAS 7503. Entered into force for the United States on 3 October 1972. Also located in Air Force Pamphlet 110-20, Selected International Agreements, 4-29.

2. Address by President Ronald Reagan: Defense Against Strategic Nuclear Weapons [Extract], March 23, 1983, Documents on Disarmament, 1983, (Washington D.C.: U.S. Arms Control and Disarmament Agency, 1986) pp. 199-201. Unprecedented was the fact that a President was actually proposing a policy in front of the technology, policy leading technology rather than the more familiar technology finding a policy to justify weapon system development.

3. See Michael Getler, "Reagan Signs Anti-Missile Research Order," The Washington Post, January 26, 1984, p. A1.

4. See Abraham D. Sofaer, "The ABM Treaty and the Strategic Defense Initiative," Harvard Law Review, June 1986, pp. 1972-1985, for the permissive or broad view. See Matthew Bunn, Foundation for the Future: The ABM Treaty and National Security, (Arms Control Association, 1990) Chapter VI, for the restrictive or narrow view.

5. 10 U.S.C. §2431 et. al.

6. Commonwealth of Independent States (CIS) Resolution on ABM Treaty Succession, 9 October 1992, signed in Bishkek, Belarus.

7. See Press Release, "Fourth Review of the Anti-Ballistic Missile (ABM) Treaty Conducted in Geneva, Switzerland," U.S. Arms Control and Disarmament Agency, Office of Public Information, October 1, 1993; Official Text, Statement of the Honorable John D. Holum, Director U.S. arms Control and Disarmament Agency Before the Committee on Foreign Relations of the United States Senate, March 10, 1994, (Washington D.C.: U.S. Arms Control and Disarmament Agency Office of Public Information).

8. Speech to students of the Higher Institute for Applied Social Studies at the Great al-Fatih University, as translated in: FBIS Daily Reports: Near East and South Asia (FBIS-NES-90-078), April 23, 1990, p. 8.

9. Thomas C. Schelling, "What Went Wrong With Arms Control?" in Essays on Arms Control and National Security, Bernard F. Halloran, ed. (Washington D.C.: U.S. Arms Control and Disarmament Agency, 1986) pp. 349-350.

10. The literature on these arguments are voluminous. See e.g. Abram Chayes and Jerome Wiesner, eds., ABM: An Evaluation of the Decision to Deploy an Antiballistic Missile System (New york: Harper and Row, 1969; Edward R. Jayne II, The ABM Debate: Strategic Defense and National Security (Cambridge, MASS.: MIT

Center for International Studies, 1969); Ernest J. Yanarella, The Missile Defense Controversy: Strategy, Technology, and Politics, 1955-1972 (Lexington: University Press of Kentucky, 1977).

11. Spurgeon M. Keeny Jr., "Inventing an Enemy," The New York Times, June 18, 1994, p. 21

12. Indeed, Congress has recognized the growing dangers. In the 1993 appropriation for missile defense it stated that:

> It is a national security priority of the United States to develop and deploy highly effective theater missile defense systems capable of countering the existing and expanding threats posed by modern theater ballistic missiles as soon as technically possible.

See P.L. 103-160, Section 234 (a)(8); 10 U.S.C. §2431.

13. Charles T. Goodnight, Military Technology Proliferation in the 1990's, Report prepared for Defense Nuclear Agency, Vienna, VA., Orion Research, April 5, 1994, p. 3-11; "The Global Proliferation of Theater Ballistic Missiles," Arms Control Today, April 1994, pp. 24-30.

14. On January 3, 1993, Presidents Bush and Yeltsin signed the Treaty Between the United States of America and the Russian Federation on the Further Reduction and Limitation of Strategic Arms (START II) in which strategic warheads will be limited to between 3000 and 3500 by the year 2003. Further reductions are likely. See Steven Greenhouse, "U.S. Cuts Nuclear Arsenal, Hoping Russia Will Follow," The New York Times, September 23, 1994, p. 8.

15. William Potter, Nuclear Threats from the Former Soviet Union, Center for Security and Technology Studies (CSTS-39-93), Lawrence Livermore National Laboratory, March 16, 1993; Theresa Hitchens, "Smuggling Incidents Stoke Nuclear Fears," Defense News, August 29-September 4, 1994, p. 8.

16. See also Aspin, supra note 11, at 34-35. Indian missile developments are also cause for concern. India recently tested successfully its Agni ballistic missile with a range of 2500 kilometers. See Viver Raghuvanshi, "India Plans Test of Ballistic Missiles," Defense News, September 12-18, 1994, p. 36. See generally Martin Navias, "Ballistic Missile Proliferation in the Third World," Adelphi Paper, No. 25, London: International Institute for Strategic Studies, 1990.

17. North Korea has also initiated development of an intermediate range ballistic missile (the Taepo Dong with a possible range of 3500 kilometers) which will conceivably reach targets throughout the Pacific to include U.S. territories such as Guam.

18. See Congressional Finding in P.L. 103-160, Subtitle C, §234(a)(6); 10 U.S.C. §2431.

19. Navias, supra note 16, at 4. See also Frederick R. Strain, "Nuclear Proliferation and Deterrence: A Policy Conundrum," Parameters, Autumn 1993, pp. 85-86.

20. Martin van Crevald, Transformation of War, 1991. Others have also written eloquently of the desperation of the "have-nots" and the coming "clashes of civilization" that likely make current deterrence theory obsolete. See Robert D. Kaplan, "The Coming Anarchy," The Atlantic Monthly, February 1994, p. 4; Samuel P. Huntington, "The Coming Clash of Civilizations or, The West Against the Rest," The New York Times, Special Features, June 6, 1993.

21. Several regional conflicts illustrate this point: the 1973 Yom Kippur War (both sides attacked each other with missiles); missiles were used indiscriminately by the Soviets in Afghanistan, and there were hundreds of missile and rocket attacks between Iran and Iraq in their war in the 1980's. Israel was also attacked with almost 50 Iraqi Scud missiles during the 1991 Persian Gulf War.

22. In exchange for "eventually" dismantling its nuclear weapons program and becoming a fully compliant member of the Nuclear Non-Proliferation Treaty, a commitment it was already under a legal duty to observe as a state party, the US agreed to put together a $2 billion dollar aid package. See "North Korea to Get $2 Billion in Aid Before Nuclear Inspections, U.S. Reveals," Los Angeles Times, December 2, 1994, p. A4. As James Schlesinger judged: "While it was not an unconditional surrender, it was a negotiated surrender." William Safire, "Pyongyang to Damascus via Delusion," Providence Journal Bulletin, October 31, 1994, p. A8.

23. Reported in Congressman Les Aspin's White Paper, "From Deterrence to Denuking: Dealing with Proliferation in the 1990's," House Armed Services Committee, February 17, 1992, p. 6.

24. Henry Hyde, "Narrowing Nuclear Frontiers," The Washington Times, Aug. 29, 1994, p. A16.

25. "The Defense Counterproliferation Initiative Created," Defense News, Vol. 8 No. 68, 1993.

26. See Report on Nonproliferation and Counterproliferation Activities and Programs, Office of the Deputy Secretary of Defense, May 1994.

27. The point is debatable and beyond the scope of this paper. See for example, Colin S. Gray, "A New Debate on Ballistic Missile Defense," Survival 23, no. 2 (March-April 1981). Early attacks on SDI also focused on its feasibility and practicality. For a response see Kenneth Adelman, "SDI: Setting the Record Straight," U.S. Department of State Current Policy No. 720, (Washington D.C.: Bureau of Public Affairs) August 7, 1985.

28. See Steven A. Hildreth, Congressional Research Service Report to Congress, Theater Ballistic Missile Defense Policy, Missions and Programs: Current Status, June 10, 1993, pp. 23-36;

29. It is beyond the scope of this paper to discuss or examine in detail the program elements of a theater and/or national BMD program. The current effort involves five elements: 1) a lower tier (ground and sea based) intercept capability using upgraded Patriot (or an Extended Range Interceptor-ERINT), Hawk, AEGIS Standard Missile Block IVA, or an as-yet-to-be-developed Corps SAM; 2) an upper tier (also ground and sea based) capability using Theater High Altitude Area Defense (THAAD) missiles with TMD Ground Based Radar, and a sea-based Lightweight Exoatmospheric Projectile (LEAP); 3) a boost phase intercept capability using various platforms and weapons; 4) upgraded warning and surveillance capabilities; and 5) a BMD command, control, communications and intelligence system build on existing weapons systems. See Les Aspin, Secretary of Defense Annual Report to the President and Congress, January 1994, pp. 51-56.

30. Even if not completely effective, an attacker would have no way of knowing which missile would succeed in reaching its target. Therefore, an effective first strike could not be relied upon and given the retaliation possibilities the adversary thus remains deterred. It is even harder to make this argument against BMD when it is designed for a point target like a missile as opposed to a area target such as a city. Consequently, the Treaty recognized this possibility by allowing for the deployment of two sites.

31. Bunn, supra note 4, at 128.

32. Congressional Budget Office, Costs of Alternative Approaches to SDI, (May 1992) p. 20. This does not include costs to operate and support the systems that are deployed.

33. "Republican Takeover Fuels U.S. Missile Defense Debate," Defense News, January 9-15, 1995, p. 12.

34. See Steven A. Hildreth, "Theater Missile Defense: Issues for the 103rd Congress," Congressional Research Service Issue Brief, October 6, 1994, p. 9.

35. Walther Stutzle, et all., The ABM Treaty: To Defend or Not to Defend? (New York: Oxford University Press, 1987), pp. 31-34.

36. Id. However, even at that time there was a recognition and concern over other states that might not have the same vested interest in cooperation.

37. John Pike, "Don't Imperil the Treaty," The New York Times, October 25, 1994, p. A21.

38. Successive Administrations documented Soviet non-compliance with its arms control agreements. See President George Bush, Adherence to and Compliance with Arms Control Agreements and The President's Report to Congress on Soviet Noncompliance with Arms Control, January 19, 1993. For a rationale on why the Soviets cheated see Mikhail Tsypkin, Why Wouldn't the Soviets Cheat in Arms Control?, System Planning Corporation, Final Report SPC 1165, February 1987.

39. Ibid. The Report also details other Soviet violations of the Treaty. The Soviet Union in 1989 admitted the Krasnoyarsk installation was a violation of the ABM treaty. See also Matthew Bunn, Foundation for the Future, The ABM Treaty and National Security, (The Arms Control Association, 1990) pp. 74-76.

40. See Michael Specter, "Russia's Poor Army! Now Power is Cut off to Rocket Forces," New York Times, September 23, 1994, A3.

41. Charles Krauthammer, "Time for a Little Panic," Time, July 25, 1994, p. 52.

42. It is interesting to observe that the anti-BMD/pro-ABM advocates who warn of a "spiraling arms race," a new "cold war," and a dangerous attempt on the part of the US to acquire a "first strike" capability, echo many of the old Soviet arguments and dire predictions that were trotted out during the initial development of SDI and every time the US and/or NATO deployed new weapons systems. See "The Soviet Propaganda Campaign Against the United States Strategic Defense Initiative," U.S. Arms Control and Disarmament Agency, ACDA Pub. 122 (Washington D.C.: Office of Public Affairs) August 1986.

43. See Dick Cheney, Secretary of Defense Annual Report to the President and the Congress, February 1992, pp. 65-67. At the time, Bush Administration plans called for the deployment of near-term TMD systems during the mid-to-late 1990s and advanced TMD capabilities in the latter 1990s. After the year 2000, these and other more advanced TMD systems were to be augmented with space based sensors (called Brilliant Eyes) and integrated with space-based interceptors (called Brilliant Pebbles) to form a broader, global TMD capability as part of the GPALS system.

44. 10 U.S.C. §2431. In the Act Congress recognized the President's call for immediate steps "to permit the deployment of defenses against limited ballistic missile strikes...." Consequently, Congress urged "the President to pursue immediate discussions with the Soviet Union on the feasibility and mutual interests of amendments to the ABM Treaty to permit" among other things, "increased flexibility for technology development of advanced ballistic missile defenses," and "clarification of the distinctions" between theater missile defenses and strategic defenses.

45. White House Press Release, Statement by the Press Secretary, October 15, 1992.

46. Quoted in Les Aspin's White Paper, op. cit., p. 12.

47. The 1992 revisions of the Act directed the Secretary of Defense to develop for deployment "a cost-effective, operationally effective, and ABM Treaty-compliant antiballistic missile system at a single site as the initial step toward deployment of an antiballistic missile system. . . designed to protect the United States against limited ballistic missile threats." However, funding has continued to decline. In 1991 $4.15 billion was authorized for the SDI program, of which $1.52 billion was made available for the Limited Defense System program element. The 1993 act reduced funding for the now re-named Ballistic Missile Defense or BMD program to $2.639 billion, of which $650 million was appropriated for the Limited Defense System program. See P.L. 103-160, 107 Stat. 1592, Subtitle C. There is no appropriation for Fiscal Year 1995 for the Limited Defense System program, and $1.69 billion was approved for TMD. P.L. 103-335, H.R. 4650, signed into law Sept. 30, 1994.

48. Ibid.

49. Press Release, "Traditional Interpretation of ABM Treaty Endorsed by Clinton Administration," U.S. Arms Control and Disarmament Agency, Office of Public Affairs, July 14, 1993.

50. Les Aspin, Annual Report to the President and Congress, January 1994, p. 47. See also President William Clinton, A National Security Strategy of Enlargement and Engagement, July 1994, p. 12; "Senators Appear Skeptical of ABM Treaty Modifications," Arms Control Today, April 1994, p. 17.

51. Discussions between the two parties during the 1980s had failed to resolve the issue. See John B. Rhinelander, "How to Save the ABM Treaty," Arms Control Today, May, 1985, p. 5.

52. Thomas W. Lippman, "Missile Treaty Changes Opposed," The Washington Post, March 11, 1994, p. A8; Jeffrey Smith, Officials Say U.S. Wants to Change ABM Treaty to Buttress Missile Defense,"

The Washington Post, December 4, 1993, p. A20. See Lisbeth Gronlund, et al., "Highly Capable Theater Missile Defenses and the ABM Treaty," Arms Control Today, April 1994, p. 3 (Authors argue that interceptors with speeds up to 2.6 kilometers per second have "strategic" capability and would therefore probably not be ABM Treaty compliant).

53. See James Hackett, "Wobbly on Missile Defenses, The Washington Times, July 12, 1994, p. A13.

54. See Thomas J. Hirschfeld, The Impact of Nuclear Proliferation: Final Report, Center for Naval Analyses (CRM 94-69.09), 18 April 1994, pp. 59-63. The report concluded that even if all proposed TMD systems were deployed on current schedule they would not have any significant impact until 2003 in the most likely engagement scenarios.

55. James Hackett, "Vodka, Caviar, and Missile Defense," The Washington Times, August 29, 1994, p. A16.

56. Bill Gertz, "U.S. Accepts Russian Speed Limits on Missile Defenses," The Washington Times, July 1, 1994, p. 3; Thomas W. Lippman, "U.S. accedes to Russian Demand for Missile Limits," The Washington Post, July 2, 1994, p. 22.

57. The most recent session of the Standing Consultative Commission, created to discuss ABM Treaty issues, began October 10, 1995. Issues proposed for discussion include "establishing top speeds for different types of interceptors (i.e. land, sea and air-based); a role for future negotiations on advanced TMD deployments; and treaty succession (i.e., who will become a formal treaty party).

58. Hackett, supra note 55.

59. Naoaki Usui, "Nissan Motor Co. Nears Missile Defense Fast Lane," Defense News, October 17-23, 1994, p. 12.

60. Henry A. Kissinger, "Should We Try to Defend Against Russia's Missiles?" The Washington Post, September 23, 1984, p. C8.

61. The Command of the Air, Reprinted in U.S. Air Force Warrior Studies, Office of Air Force History, 1983, p. 30.