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S. 1565

Relating to United States adherence to the ABM Treaty.

IN THE SENATE OF THE UNITED STATES

OCTOBER, 18, 2001

Mrs. FEINSTEIN (for herself, Mr. WYDEN, Mr. FEINGOLD, Mr. CORZINE, Mr. HARKIN, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

Relating to United States adherence to the ABM Treaty.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 The Senate makes the following findings:

5 (1) On May 26, 1972, President Nixon and
6 General Secretary Brezhnev signed the Treaty Be-
7 tween the United States of America and the Union
8 of Soviet Socialist Republics on the Limitation of
9 Anti-Ballistic Missile Systems. The ABM Treaty was
10 ratified by the Senate on August 3, 1972, by a vote
11 of 88–2, and entered into force on October 3, 1972.

1 (2) The ABM Treaty sought to end an emerg-
2 ing competition in defensive systems between the
3 United States and the Soviet Union that threatened
4 to spur an offensive nuclear arms race, and to create
5 more favorable conditions to further limit strategic
6 nuclear weapons.

7 (3) The ABM Treaty was designed to address
8 the major threat to the United States at that time,
9 the threat of a nuclear arms race with the Soviet
10 Union, and did not contemplate the potential emer-
11 gence of other strategic missile threats.

12 (4) The ABM Treaty remains important to
13 arms control, nuclear nonproliferation, and United
14 States national security because it promotes stra-
15 tegic stability, facilitates reductions in offensive nu-
16 clear weapons, and encourages movement toward
17 more secure and stable nuclear alert postures.

18 (5) The ABM Treaty is of unlimited duration,
19 but each party to the treaty has the right to with-
20 draw on six months notice if the party decides that
21 its supreme interests are jeopardized by “extraor-
22 dinary events related to the subject matter of this
23 Treaty”.

24 (6) The mid-course hit-to-kill national missile
25 defense system is currently in the early stages of re-

1 search and development. The fourth research and
2 development intercept test of the system was con-
3 ducted on July 14, 2001. A total of twenty-one de-
4 velopmental intercept tests are planned, and subse-
5 quent operational testing of the system is not sched-
6 uled to begin until fiscal year 2005.

7 (7) On July 12, 2001, Secretary of Defense
8 Rumsfeld stated that “[t]he United States is not
9 going to violate the [ABM] Treaty. If we get to the
10 point where we need to get beyond the treaty and
11 we haven’t been able to negotiate something, obvi-
12 ously, there’s a provision you can withdraw in six
13 months and that’s what you’d have to do.”.

14 (8) Unilateral abrogation or withdrawal from
15 the ABM Treaty by the United States will have pro-
16 found implications for global security and stability
17 and for United States national security interests,
18 and is viewed with apprehension by United States
19 allies as well as other states.

20 (9) While unilateral abrogation or withdrawal
21 from the ABM Treaty would have negative con-
22 sequences for United States security, negotiated
23 modest modifications of the Treaty could preserve
24 the essential effectiveness of the Treaty with respect
25 to Russia, and allow the United States to address

1 threats that have emerged since the ABM Treaty
 2 was drafted in 1972.

3 (10) At their July 22, 2001 meeting in Geneva,
 4 Presidents Bush and Putin agreed “that major
 5 changes in the world require concrete discussion of
 6 both offensive and defensive systems. We already
 7 have some strong and tangible points of agreement.
 8 We will shortly begin intensive consultations on the
 9 interrelated subjects of offensive and defensive sys-
 10 tems.”.

11 **SEC. 2. SENSE OF SENATE ON UNITED STATES ADHERENCE**
 12 **TO THE ABM TREATY.**

13 It is the sense of the Senate that—

14 (1) all research, development, test, and evalua-
 15 tion programs and activities of the United States for
 16 missile defense purposes should remain consistent
 17 with United States commitments to and obligations
 18 under the ABM Treaty;

19 (2) the United States should pursue good faith
 20 consultations with Russia to address such modest
 21 modifications of the ABM Treaty as may be nec-
 22 essary to address threats which have emerged since
 23 the Treaty was signed and lead to an agreement on
 24 appropriate limits on strategic nuclear offensive and

1 defensive systems that is in the national security in-
2 terest of the United States;

3 (3) the United States should not unilaterally
4 abrogate or withdraw from the ABM Treaty; and

5 (4) the United States should not deploy a na-
6 tional missile defense system until—

7 (A) operational tests of a fully integrated
8 version of the system have been conducted uti-
9 lizing realistic test parameters; and

10 (B) the operational tests have dem-
11 onstrated, in a manner consistent with the pro-
12 visions of section 2399 of title 10, United
13 States Code, that the system, whether part of
14 a fully integrated system or an emergency de-
15 ployment, is operationally effective and suitable
16 for use in combat.

17 **SEC. 3. LIMITATION ON USE OF FUNDS FOR MISSILE DE-**
18 **FENSE PROGRAMS AND ACTIVITIES.**

19 (a) LIMITATION ON USE TO ABROGATE ABM TREA-
20 TY.—Notwithstanding any other provision of law, no
21 funds may be obligated or expended for any test, evalua-
22 tion, or deployment of a National Missile Defense system,
23 or any program or activity relating to a National Missile
24 Defense system, that would result in the abrogation of or
25 withdrawal from the ABM Treaty.

1 (b) LIMITATION ON USE INCONSISTENT WITH FU-
 2 TURE AGREEMENTS.—Notwithstanding any other provi-
 3 sion of law, if an agreement with Russia to amend the
 4 ABM Treaty, or an agreement with Russia governing stra-
 5 tegic nuclear offensive and defensive systems, comes into
 6 force after the date of the enactment of this Act, no funds
 7 may be obligated or expended after the date such agree-
 8 ment comes into force for any test, evaluation, or deploy-
 9 ment of a National Missile Defense system, or any pro-
 10 gram or activity relating to a National Missile Defense
 11 system, that would be inconsistent with such agreement.

12 (c) SCOPE OF LIMITATION.—For purposes of this
 13 section, a test, evaluation, or deployment of a system shall
 14 include any construction required to carry out the test,
 15 evaluation, or deployment of the system.

16 **SEC. 4. REPORTS ON DECISIONS RELATING TO DEPLOY-**
 17 **MENT OF A NATIONAL MISSILE DEFENSE SYS-**
 18 **TEM.**

19 (a) REPORT BY SECRETARY OF STATE BEFORE DE-
 20 CISIONS.—Not later than 120 days before any decision by
 21 the President described in subsection (c), the Secretary
 22 of State shall submit to Congress a report, in writing, con-
 23 taining the following:

24 (1) A description of the specific national secu-
 25 rity threat that justifies such decision.

1 (2) An assessment of the extent to which test-
2 ing not compliant with the ABM Treaty, and the de-
3 ployment of an integrated missile defense system or
4 emergency capability using test assets, will enhance
5 overall United States national security, which assess-
6 ment shall take into account—

7 (A) the likelihood of the missile threat that
8 the testing or deployment, as the case may be,
9 is designed to counter;

10 (B) the impact of the testing or deploy-
11 ment, as the case may be, on United States re-
12 lations with our allies, and with Russia and
13 China; and

14 (C) the impact of the testing or deploy-
15 ment, as the case may be, on existing nuclear
16 arms control agreements, nuclear risk reduction
17 objectives, and United States nonproliferation
18 goals and treaty commitments.

19 (b) CERTIFICATION BY SECRETARY OF DEFENSE BE-
20 FORE DECISIONS.—(1) Not later than 120 days before a
21 decision by the President described in subsection (c)(1),
22 the Secretary of Defense shall certify to Congress, in writ-
23 ing, that—

24 (A) operational tests of a fully integrated
25 version of the missile system or emergency capability

1 concerned have been conducted utilizing realistic test
2 parameters, including countermeasures and decoys;
3 and

4 (B) such operational tests have demonstrated,
5 in a manner consistent with the provisions of section
6 2399 of title 10, United States Code, that the mis-
7 sile system or emergency capability, as the case may
8 be, whether part of a fully integrated system or an
9 emergency deployment, is operationally effective and
10 suitable for use in combat.

11 (2) A certification under this subsection shall be sub-
12 mitted in both classified and unclassified form.

13 (c) COVERED DECISIONS.—The decisions described
14 in this subsection are as follows:

15 (1) A decision to deploy a missile system des-
16 igned to defend the territory of the United States
17 against ballistic missile attack, including the deploy-
18 ment of an emergency capability utilizing missile de-
19 fense assets.

20 (2) A decision to notify Russia of the intention
21 of the United States to withdraw from the ABM
22 Treaty.

1 **SEC. 5. ANNUAL ASSESSMENTS ON THREAT OF ATTACK ON**
2 **THE UNITED STATES USING WEAPONS OF**
3 **MASS DESTRUCTION.**

4 Not later than six months after the date of the enact-
5 ment of this Act, and annually thereafter, the President
6 shall submit to Congress a report containing the following:

7 (1) An assessment, current as of the date of
8 such report, of the threat posed to the United States
9 and its allies by the use of a weapon of mass de-
10 struction by both foreign states and transnational
11 groups, including—

12 (A) an assessment of the scope and nature
13 of the threat of delivery of such a weapon of
14 mass destruction by a variety of means of deliv-
15 ery; and

16 (B) a comparison of the threat posed by
17 delivery of such a weapon of mass destruction
18 by ballistic missile with the threat posed by de-
19 livery of such a weapon of mass destruction by
20 another delivery system, whether conventional
21 or unconventional, including by cruise missile,
22 truck, suitcase, boat, or airplane.

23 (2) The total estimated cost, current as of the
24 fiscal year ending in the year preceding the year in
25 which such report is submitted, of all research, de-
26 velopment, test, and evaluation, deployment, and op-

1 eration and maintenance activities with respect to
2 the national missile defense system during the pe-
3 riod beginning on January 1, 2002, and ending on
4 December 31, 2020.

5 (3) A determination whether or not, during the
6 fiscal year in which such report is submitted, the al-
7 location of funds for the national missile defense
8 system will impair the allocation of funds for pri-
9 ority programs of the Department of Defense (as de-
10 termined by the Secretary of Defense), including
11 programs relating to force structure, force readiness,
12 force training, force modernization, homeland de-
13 fense, and research, development, test, and evalua-
14 tion.

15 **SEC. 6. ABM TREATY DEFINED.**

16 In this Act, the term “ABM Treaty” means the Trea-
17 ty Between the United States of America and the Union
18 of Soviet Socialist Republics on the Limitation of Anti-
19 Ballistic Missile Systems, signed at Moscow on May 26,
20 1972, and includes the Protocol to that treaty, signed at
21 Moscow on July 3, 1974.

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