

## THE ABM TREATY

Mr. LEVIN. Mr. President, until recently, the Bush administration appeared to be engaged in a headlong rush to unilaterally withdraw from the Anti-Ballistic Missile Treaty—the ABM Treaty—and deploy a national missile defense system. That headlong rush had some serious negative implications for the security of the United States and for our relations with other nations.

If the United States decided to unilaterally withdraw from the ABM Treaty, it could:

First, lead Russia to stop dismantling nuclear weapons, and to retain or eventually increase its multiple warheads on long-range missiles;

Second, lead other nations, such as China, to speed the deployment, or increase the number, of their long-range nuclear missiles; and

Third, strain our relations with allies and friends in Europe and Asia who recognize that the ABM Treaty has allowed nuclear arms reductions and has promoted stability for many decades.

Those reactions to a unilateral withdrawal from the treaty on our part would be serious because they could result in more nuclear warheads on the territory of other nations and could lead to an increased risk of the theft or proliferation of such warheads or their materials to rogue states or terrorists.

In addition, Russia and China could respond to unilateral United States withdrawal from the ABM Treaty by producing, deploying, and possibly even selling missile defense countermeasures and decoys to our potential adversaries. A spiraling competition of countermeasures and counter-countermeasures could then ensue.

I have believed for some time that these serious negative consequences for our national security argued against our unilateral withdrawal from the ABM Treaty, and I have long been concerned by the Bush administration's unilateralist approach to this question.

As recently as August 23 of this year, for instance, President Bush declared, "We will withdraw from the ABM Treaty on our timetable, at a time convenient to America."

Then came the horrific attacks of September 11. To its credit, the administration then set out to build and sustain a broad international coalition, which includes Russia, to fight terrorism. Despite its unilateralist go-it-alone approach so prevalent before those September 11 attacks, the administration appears to have recognized that in a world of terrorism and weapons of mass destruction, the United States is more secure when we work cooperatively with allies and with nations with whom we have common interests than we are if we go it alone.

We have already witnessed that welcome new approach to foreign policy in areas as diverse as the newfound support for South Korea's effort to improve relations with North Korea, and in the administration's recent reversal

and decision to join the international effort to improve the worldwide Biological Weapons Convention. This new approach has already influenced the administration's approach to national missile defense, the ABM Treaty, and our relationship with Russia, with whom the President seeks a "new strategic framework."

At his October 11 press conference, the President twice avoided giving direct answers to questions about whether he would unilaterally withdraw from the ABM Treaty. The discussions between Presidents Bush and Putin in Shanghai gave some hope that the United States and Russia can reach agreement on missile defense and reductions in offensive nuclear weapons.

Then, on October 25, Secretary of Defense Donald Rumsfeld announced that the administration had "decided not to go forward" with missile defense tests in late October and early November that might have violated the ABM Treaty. That is a significant change because the administration had said previously that we would not be constrained by the ABM Treaty but, rather, we would withdraw from it.

Last week, we read in the newspapers that the United States and Russia are near agreement on an interim arrangement that would achieve three things: No. 1, allow the administration to continue with its robust program of missile defense research, development, and testing; No. 2, preserve the ABM Treaty; and No. 3, set goals for reducing by some two-thirds the number of each nation's strategic nuclear warheads. The story quoted one unnamed official as saying: "Testing will go on, but there will be no announcement of a U.S. withdrawal from the ABM Treaty."

If the administration has, in fact, now decided not to unilaterally dismantle a mutual security structure before a new structure is put in place, it would represent a wise shift in U.S. policy.

Presidents Bush and Putin would then have a genuine opportunity at their summit next week to make real progress towards a new security arrangement that permits both missile defense testing and significant nuclear arms reductions, and that would have strong bipartisan support in Congress.

As I mentioned, on October 25, Defense Secretary Donald Rumsfeld announced that the Pentagon had decided not to proceed with four planned missile defense test activities because they might conflict with the ABM Treaty. But, in fact, prior to Secretary Rumsfeld's announcement, the Pentagon had already decided to delay three of the test activities for technical reasons wholly unrelated to the ABM Treaty. In addition, the fourth test planned for November 14 was not a missile defense test, but a Navy radar tracking of a satellite launch vehicle, which is not covered by the ABM Treaty.

Confusing this history even further, back on June 13, LTG Ronald Kadish,

the Director of the Ballistic Missile Defense Organization, briefed the Armed Services Committee on the Defense Department's missile defense plans and informed the committee that, to the best of his knowledge, there were no ballistic missile defense activities planned for fiscal year 2002 that would be in conflict with the ABM Treaty.

Then, on July 17, Deputy Secretary of Defense, Paul Wolfowitz, testified before our Armed Services Committee that three missile defense activities could "bump up" against the ABM Treaty, in his words, "in months rather than in years." One of the examples was the use of a Navy Aegis SPY-1 radar to track a strategic ballistic missile. However, his written explanation of that possibility said plainly:

Plans to use an Aegis SPY-1 radar to track long-range ballistic missiles are currently under development and are only at a preliminary stage.

So after saying there were no tests planned that would violate the ABM Treaty, the administration then planned a series of tests that might violate the treaty. Then they changed direction for a second time on October 25 and said they would not proceed with tests that would violate the ABM Treaty. So why did the administration first strain to put these tests on the calendar and then strain to remove them from the calendar?

My analysis is shaped by my firm belief that the administration has decided it would be unwise to withdraw from the ABM Treaty anytime soon. In a number of ways, this double reversal in its course may help the President at the upcoming summit, while simultaneously avoiding criticism from those who have forcefully pressed for withdrawal from the ABM Treaty.

First, the administration looks more reasonable to the American people, the Russians, and the rest of the world, compared to their numerous declarations that they plan to unilaterally withdraw from the ABM Treaty. When the Secretary of Defense announced unilateral restraint on October 25—that is, announcing that we would forego missile defense testing in order to avoid violating the ABM Treaty—he made us look more reasonable and that may help pave the way to reach an agreement with Russia on missile defense issues.

Second, the administration has simultaneously made the case that the U.S. missile defense testing program is already now being constrained by the ABM Treaty. This could make it easier to justify a decision to withdraw from the treaty at a later time; in effect, to serve as a prelude to withdrawal in case there is no agreement with Russia.

Third, if, as expected, the administration reaches an agreement with Russia at the Crawford Summit that will permit its missile defense testing program to proceed, the Rumsfeld announcement would allow the administration to argue that the Crawford

agreement removed the ABM obstacle to the administration's missile defense testing plans. That would appear to be a victory, showing the critics of the treaty that the administration succeeded in clearing away the testing constraints in the ABM Treaty. That, in turn, would make it easier politically for the administration to agree with Russia to maintain a treaty so loathed by those same critics and from which those critics are pressing the President to withdraw.

If this tactic of straining to create premature conflict with the ABM Treaty and then straining to remove the conflict by deferring the tests helps the administration reach an agreement with Russia and helps assure them of political support for the agreement from the critics of the ABM Treaty, more power to them. If that is what it takes to do the right thing, so be it.

The important point is to work cooperatively with Russia to seek an agreement that will enhance our mutual security. It looks as if that is the path we are on. I hope so, and I hope we can stay on it.

Also hopefully, any new arrangement that emerges from the upcoming summit will be based on more than just the handshake of a gentleman's agreement. I hope the two leaders can agree on a new strategic framework that will include the following specific elements.

First, any agreement should include a reduction of strategic nuclear weapons—as the President has said—“to the lowest possible number consistent with our national security.” I agree with his assessment that “the premises of Cold War nuclear targeting should no longer dictate the size of our arsenals.”

I would also hope that any agreement on nuclear reductions would be transparent, predictable and difficult to reverse. There is no benefit in creating a situation where we worry that it would be easy and quick for either nation to increase its nuclear forces significantly. We would be better served with an agreement that gives each side confidence that its terms are being met by the other side, and cannot easily be reversed.

Congress should permit the President the flexibility to make these reductions. Current law prevents any reductions in our nuclear delivery systems below the needlessly high START I level. President Bush and President Putin are essentially moving toward a START IV, but Congress is keeping us at a START I, Cold War level of nuclear forces. Our senior uniformed military and civilian defense leaders have wanted Congress to remove these unnecessary restrictions for years. The Senate has already acted in this year's Defense Authorization bill to remove these restrictions, and I hope the House will accept the Senate position in the conference now underway.

Second, the framework for a new security arrangement set forth by President Bush included the issue of reducing the risk of accidental or unauthor-

ized launch of nuclear missiles. I would hope the two nations will explore a variety of steps that can move us in a more stable direction. There has already been good United States-Russian cooperation on data exchanges on missile launches, and we are improving our work on exchanging early warning data to reduce the risk of a false alert leading to a military crisis or a missile launch. We need to expand our cooperation and make sure that neither side maintains unnecessary and potentially destabilizing nuclear postures or practices. For example, both sides could agree to deactivate nuclear weapon systems that are awaiting dismantlement. As President Bush stated, “the United States should remove as many weapons as possible from high alert, hair-trigger status.”

Third, there is also a great need for enhanced and expanded cooperation on reducing the threats of proliferation. There is perhaps no more operationally effective and cost-effective means of reducing proliferation threats than assisting Russia in eliminating its nuclear and chemical weapons. Earlier this year, a task force led by former Senate Majority Leader Howard Baker and former White House Counsel Lloyd Cutler concluded that “the most urgent unmet national security threat to the United States today is the danger that weapons of mass destruction or weapons-usable material in Russia could be stolen and sold to terrorists or hostile nation states and used against American troops abroad or citizens at home.” I hope the two nations can continue to make great progress in this area, since much remains to be done.

Finally, given the current anthrax attacks in the United States and our concerns about other potential biological terrorist attacks, we should be working much more closely with Russian scientists who have great expertise in biological warfare defense. They may be able to help us develop better defenses and vaccines, and also help us with the analysis of current biological threats. There is a unique and timely opportunity for major United States-Russian cooperation in this effort.

In short, I hope that President Bush and President Putin will be bold in their effort not just to bury the Cold War, but to forge a new alliance or a mutual security agreement against the terrorist menace that threatens both our nations and the world.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Ms. STABENOW). Without objection, it is so ordered.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

## EXECUTIVE SESSION

### NOMINATION OF LARRY R. HICKS, OF NEVADA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEVADA

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to the consideration of Executive Calendar No. 515, which the clerk will report.

The legislative clerk read the nomination of Larry R. Hicks, of Nevada, to be United States District Judge for the District of Nevada.

The PRESIDING OFFICER. Under the previous order, time will be evenly divided until 6 o'clock, and controlled between the chairman and ranking member or their designees.

The Senator from Vermont.

Mr. LEAHY. Madam President, my wife was kind enough to remind me that 27 years ago today I was first elected to this body. I am not quite sure I knew at the time I was first elected what I might be doing here today.

I say to the distinguished Presiding Officer, when I took office, the Senate was comprised of 99 men, with one seat vacant because of a tied race in New Hampshire. Madam President, I must say, both on my feelings as a Vermonter and as a Senator with some seniority, I am delighted to see the changing face of the Senate that the distinguished Presiding Officer, and many others, have brought to it.

We should, of course, have a far better balance of both men and women in this body, just as we have those who range across the political spectrum.

Today we will confirm another judicial nominee—actually our 13th since July 20. Since becoming chairman of the Judiciary Committee, after the delay in Senate reorganization and assignment of Committee members, I have taken seriously the responsibility to fill these vacancies on the federal courts around the country with consensus nominees.

Larry Hicks is another candidate strongly supported by both of his home State Senators. One of his home State Senators is the deputy leader among Democrats, the other a well-respected, strong Republican.

We have confirmed as many court of appeals judges as were confirmed in the entire first year of the Clinton administration in 1993—actually four more than the zero total confirmed by the Senate under other control in all of the 1996 session. We are moving forward.

I think we have hearings on five more judicial nominees this week. Of these nominees, the ABA peer reviews on several were only completed and received last week.