

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPRESENTATIVE DENNIS KUCINICH,
et al.,

Plaintiffs,

v.

GEORGE W. BUSH, President of the
United States, et al.,

Defendants.

Civ. No. 02-1137 (JDB)

**EXHIBITS TO DEFENDANTS' MOTION TO DISMISS
OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

<u>Exh. No.</u>	<u>Document</u>
1	Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, U.S.-U.S.S.R., 23 U.S.T. 3435
2	Office of the Press Secretary, The White House, Announcement of Withdrawal From the ABM Treaty (Dec. 13, 2001)
3	Memorandum of Understanding Relating to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems of May 26, 1972, Sept. 26, 1997
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Exh. 1

**Treaty Between the United States of America and the Union of Soviet Socialist Republics
on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, U.S.-U.S.S.R.,
23 U.S.T. 3435**

**TREATY BETWEEN THE
UNITED STATES OF AMERICA
AND THE UNION OF
SOVIET SOCIALIST REPUBLICS
ON THE LIMITATION OF ANTI-BALLISTIC
MISSILE SYSTEMS¹**

The United States of America and the Union of Soviet Socialist Republics, hereinafter referred to as the Parties,

Proceeding from the premise that nuclear war would have devastating consequences for all mankind,

Considering that effective measures to limit anti-ballistic missile systems would be a substantial factor in curbing the race in strategic offensive arms and would lead to a decrease in the risk of outbreak of war involving nuclear weapons,

Proceeding from the premise that the limitation of anti-ballistic missile systems, as well as certain agreed measures with respect to the limitation of strategic offensive arms, would contribute to the creation of more favorable conditions for further negotiations on limiting strategic arms,

Mindful of their obligations under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons,

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to take effective measures toward reductions in strategic arms, nuclear disarmament, and general and complete disarmament,

Desiring to contribute to the relaxation of international tension and the strengthening of trust between States,

Have agreed as follows:

Article I. 1. Each party undertakes to limit anti-ballistic missile (ABM) systems and to adopt other measures in accordance with the provisions of the Treaty.

2. Each Party undertakes not to deploy ABM systems for a defense of the territory of its country and not to provide a base for such a defense, and not to deploy ABM systems for defense of an individual region except as provided for in Article III of this Treaty.

Article II. 1. For the purpose of this Treaty an ABM system is a system to counter strategic ballistic missiles or their elements in flight trajectory, currently consisting of:

(a) ABM interceptor missiles, which are interceptor missiles constructed and deployed for an ABM role, or of a type tested in an ABM mode;

(b) ABM launchers, which are launchers constructed and deployed for launching ABM interceptor missiles; and

(c) ABM radars, which are radars constructed and deployed for an ABM role, or of a type tested in an ABM mode.

¹23 UST 3435, TIAS 7503, 944 UNTS 13 (entered into force Oct. 3, 1972).

2. The ABM system components listed in paragraph 1 of this Article include those which are:

- (a) operational;
- (b) under construction;
- (c) undergoing testing;
- (d) undergoing overhaul, repair or conversion; or
- (e) mothballed.

Article III. Each Party undertakes not to deploy ABM systems or their components except that:

(a) within one ABM system deployment area having a radius of one hundred and fifty kilometers and centered on the Party's national capital, a Party may deploy: (1) no more than one hundred ABM launchers and no more than one hundred ABM interceptor missiles at launch sites, and (2) ABM radars within no more than six ABM radar complexes, the area of each complex being circular and having a diameter of no more than three kilometers; and

(b) within one ABM system deployment area having a radius of one hundred and fifty kilometers and containing ICBM silo launchers, a Party may deploy: (1) no more than one hundred ABM launchers and no more than one hundred ABM interceptor missiles at launch sites, (2) two large phased-array ABM radars comparable in potential to corresponding ABM radars operational or under construction on the date of signature of the Treaty in an ABM system deployment area containing ICBM silo launchers, and (3) no more than eighteen ABM radars each having a potential less than the potential of the smaller of the above-mentioned two large phased-array ABM radars.

Article IV. The limitations provided for in Article III shall not apply to ABM systems or their components used for development or testing, and located within current or additionally agreed test ranges. Each party may have no more than a total of fifteen ABM launchers at test ranges.

Article V. 1. Each Party undertakes not to develop, test, or deploy ABM systems or components which are sea-based, space-based, or mobile land-based.

2. Each Party undertakes not to develop, test, or deploy ABM launchers for launching more than one ABM interceptor missile at a time from each launcher, not to modify deployed launchers to provide them with such a capacity, not to develop, test, or deploy automatic or semi-automatic or other similar systems for rapid reload of ABM launchers.

Article VI. To enhance assurance of the effectiveness of the limitations on ABM systems and their components provided by the Treaty, each Party undertakes:

(a) not to give missiles, launchers, or radars, other than ABM interceptor missiles, ABM launchers, or ABM radars, capabilities to counter strategic ballistic missiles or their elements in flight trajectory, and not to test them in an ABM mode; and

(b) not to deploy in the future radars for early warning of strategic ballistic missile attack except at locations along the periphery of its national territory and oriented outward.

Article VII. Subject to the provisions of this Treaty, modernization and replacement of ABM systems or their components may be carried out.

Article VIII. ABM systems or their components in excess of the numbers or outside

the areas specified in this Treaty, as well as ABM systems or their components prohibited by this Treaty, shall be destroyed or dismantled under agreed procedures within the shortest possible agreed period of time.

Article IX. To assure the viability and effectiveness of this Treaty, each Party undertakes not to transfer to other States, and not to deploy outside its national territory, ABM systems or their components limited by this Treaty.

Article X. Each Party undertakes not to assure any international obligations which would conflict with this Treaty.

Article XI. The Parties undertake to continue active negotiations for limitations on strategic offensive arms.

Article XII. 1. For the purpose of providing assurance of compliance with the provisions of this Treaty, each Party shall use national technical means of verification at its disposal in a manner consistent with generally recognized principles of international law.

2. Each Party undertakes not to interfere with the national technical means of verification of the other Party operating in accordance with paragraph 1 of this Article.

3. Each Party undertakes not to use deliberate concealment measures which impede verification by national technical means of compliance with the provisions of this Treaty. This obligation shall not require changes in current construction, assembly, conversion, or overhaul practices.

Article XIII. 1. To promote the objectives and implementation of the provisions of this Treaty, the Parties shall establish promptly a Standing Consultative Commission, within the framework of which they will:

(a) consider questions concerning compliance with the obligations assumed and related situations which may be considered ambiguous;

(b) provide on a voluntary basis such information as either Party considers necessary to assure confidence in compliance with the obligations assumed;

(c) consider questions involving unintended interference with national technical means of verification;

Article XIV. 1. Each Party may propose amendments to this Treaty. Agreed amendments shall enter into force in accordance with the procedures governing the entry into force of this Treaty.

2. Five years after entry into force of this Treaty, and at five-year intervals thereafter, the Parties shall together conduct a review of this Treaty.

Article XV. 1. This Treaty shall be of unlimited duration.

2. Each party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests. It shall give notice of its decision to the other Party six months prior to withdrawal from the Treaty. Such notice shall include a statement of the extraordinary events the notifying Party regards as having jeopardized its supreme interests.

....

DONE at Moscow on May 26, 1972, in two copies, each in the English and Russian languages, both texts being equally authentic.

Exh. 2

**Office of the Press Secretary, The White House, Announcement of Withdrawal From the
ABM Treaty (Dec. 13, 2001)**

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

December 13, 2001

STATEMENT BY THE PRESS SECRETARY

Announcement of Withdrawal from the ABM Treaty

The circumstances affecting U.S. national security have changed fundamentally since the signing of the ABM Treaty in 1972. The attacks against the U.S. homeland on September 11 vividly demonstrate that the threats we face today are far different from those of the Cold War. During that era, now fortunately in the past, the United States and the Soviet Union were locked in an implacably hostile relationship. Each side deployed thousands of nuclear weapons pointed at the other. Our ultimate security rested largely on the grim premise that neither side would launch a nuclear attack because doing so would result in a counter-attack ensuring the total destruction of both nations.

Today, our security environment is profoundly different. The Cold War is over. The Soviet Union no longer exists. Russia is not an enemy, but in fact is increasingly allied with us on a growing number of critically important issues. The depth of United States-Russian cooperation in counterterrorism is both a model of the new strategic relationship we seek to establish and a foundation on which to build further cooperation across the broad spectrum of political, economic and security issues of mutual interest.

Today, the United States and Russia face new threats to their security. Principal among these threats are weapons of mass destruction and their delivery means wielded by terrorists and rogue states. A number of such states are acquiring increasingly longer-range ballistic missiles as instruments of blackmail and coercion against the United States and its friends and allies. The United States must defend its homeland, its forces and its friends and allies against these threats. We must develop and deploy the means to deter and protect against them, including through limited missile defense of our territory.

Under the terms of the ABM Treaty, the United States is prohibited from defending its homeland against ballistic missile attack. We are also prohibited from cooperating in developing missile defenses against long-range threats with our friends and allies. Given the emergence of these new threats to our national security and the imperative of defending against them, the United States is today providing formal notification of its withdrawal from the ABM Treaty. As provided in Article XV of that Treaty, the effective date of withdrawal will be six months from today.

At the same time, the United States looks forward to moving ahead with Russia in developing elements of a new strategic relationship.

- In the inter-related area of offensive nuclear forces, we welcome President Putin's commitment to deep cuts in Russian nuclear forces, and reaffirm our own commitment to reduce U.S. nuclear forces significantly.
- We look forward to continued consultations on how to achieve increased transparency and predictability regarding reductions in offensive nuclear forces.
- We also look forward to continued consultations on transparency, confidence building, and cooperation on missile defenses, such as joint exercises and potential joint development programs.
- The United States also plans to discuss with Russia ways to establish regular defense planning talks to exchange information on strategic force issues, and to deepen cooperation on efforts to prevent and deal with the effects of the spread of weapons of mass destruction and their means of delivery.

The United States intends to expand cooperation in each of these areas and to work intensively with Russia to further develop and formalize the new strategic relationship between the two countries.

The United States believes that moving beyond the ABM Treaty will contribute to international peace and security. We stand ready to continue our active dialogue with allies, China, and other interested states on all issues associated with strategic stability and how we can best cooperate to meet the threats of

the 21st century. We believe such a dialogue is in the interest of all states.

#

Exh. 3

Memorandum of Understanding Relating to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems of May 26, 1972, Sept. 26, 1997

MEMORANDUM OF UNDERSTANDING
RELATING TO THE TREATY BETWEEN
THE UNITED STATES OF AMERICA
AND THE UNION OF SOVIET SOCIALIST REPUBLICS
ON THE LIMITATION OF ANTI-BALLISTIC MISSILE SYSTEMS
OF MAY 26, 1972

The United States of America, and the Republic of Belarus, the Republic of Kazakhstan, the Russian Federation and Ukraine, hereinafter referred to for purposes of this Memorandum as the Union of Soviet Socialist Republics (USSR) Successor States,

Recognizing the importance of preserving the viability of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems of May 26, 1972, hereinafter referred to as the Treaty, with the aim of maintaining strategic stability,

Recognizing the changes in the political situation resulting from the establishment of new independent states on the territory of the former USSR,

Have, in connection with the Treaty, agreed as follows:

ARTICLE I

The United States of America, the Republic of Belarus, the Republic of Kazakhstan, the Russian Federation, and Ukraine, upon entry into force of this Memorandum, shall constitute the Parties to the Treaty.

ARTICLE II

The USSR Successor States shall assume the rights and obligations of the former USSR under the Treaty and its associated documents.

ARTICLE III

Each USSR Successor State shall implement the provisions of the Treaty with regard to its territory and with regard to its activities, wherever such activities are carried out by that State, independently or in cooperation with any other State.

ARTICLE IV

For purposes of Treaty implementation:

- a. the term "Union of Soviet Socialist Republics" shall mean the USSR Successor States;
- b. the terms "national territory" and "territory of its country" when used to refer to the former USSR shall mean the combined national territories of the USSR Successor States, and the term "periphery of its national territory" when used to refer to the former USSR shall mean the periphery of the combined national territories of those States; and
- c. the term "capital" when used to refer to the capital of the Union of Soviet Socialist Republics

in Article III of the Treaty and the Protocol thereto of July 3, 1974, shall continue to mean the city of Moscow.

ARTICLE V

A USSR Successor State or Successor States may continue to use any facility that is subject to the provisions of the Treaty and that is currently located on the territory of any State that is not a party to the Treaty, with the consent of such State, and provided that the use of such facility shall remain consistent with the provisions of the Treaty.

ARTICLE VI

The USSR Successor States shall collectively be limited at any one time to a single anti-ballistic missile (ABM) system deployment area and to a total of no more than fifteen ABM launchers at ABM test ranges, in accordance with the provisions of the Treaty and its associated documents, including the Protocols of July 3, 1974.

ARTICLE VII

The obligations contained in Article IX of the Treaty and Agreed Statement "G" Regarding the Treaty shall not apply to transfers between or among the USSR Successor States.

ARTICLE VIII

The Standing Consultative Commission, hereinafter referred to as the Commission, shall function in the manner provided for by the Treaty and the Memorandum of Understanding Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding the Establishment of a Standing Consultative Commission of December 21, 1972, as well as by the Regulations of the Commission, which shall reflect the multilateral character of the Treaty and the equal legal status of the Parties in reaching decisions in the Commission.

ARTICLE IX

1. This Memorandum shall be subject to ratification or approval by the signatory States, in accordance with the constitutional procedures of those States.
2. The functions of the depository of this Memorandum shall be exercised by the Government of the United States of America.
3. This Memorandum shall enter into force on the date when the Governments of all the signatory States have deposited instruments of ratification or approval of this Memorandum and shall remain in force so long as the Treaty remains in force.
4. Each State that has ratified or approved this Memorandum shall also be bound by the provisions of the First Agreed Statement of September 26, 1997, Relating to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitations of Anti-Ballistic Missile Systems of May 26, 1972, and the Second Agreed Statement of September 26, 1997, Relating to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of

Anti-Ballistic Missile Systems of May 26, 1972.

DONE at New York City on September 26, 1997, in five copies, each in the English and Russian languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:	Madeleine Albright
FOR THE REPUBLIC OF BELARUS:	I. Antonovich
FOR THE REPUBLIC OF KAZAKHSTAN:	K. Tokayev
FOR THE RUSSIAN FEDERATION:	Y. Primakov
FOR UKRAINE:	H. Udorenko

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Exh. 4

**United States Dep't of State, Text of Diplomatic Notes Sent To Russia, Belarus,
Kazakhstan, and Ukraine (Dec. 14, 2002)**

U.S. DEPARTMENT OF STATE

Press Statement
Richard Boucher, Spokesman
Washington, DC
December 14, 2001



Text of Diplomatic Notes Sent to Russia, Belarus, Kazakhstan and Ukraine

The following is the text of diplomatic notes sent to Russia, Belarus, Kazakhstan, and Ukraine on December 13, 2001:

The Embassy of the United States of America has the honor to refer to the Treaty between the United States of America and the Union of Soviet Socialist Republics (USSR) on the Limitation of Anti-Ballistic Missile Systems signed at Moscow May 26, 1972.

Article XV, paragraph 2, gives each Party the right to withdraw from the Treaty if it decides that extraordinary events related to the subject matter of the treaty have jeopardized its supreme interests.

The United States recognizes that the Treaty was entered into with the USSR, which ceased to exist in 1991. Since then, we have entered into a new strategic relationship with Russia that is cooperative rather than adversarial, and are building strong relationships with most states of the former USSR.

Since the Treaty entered into force in 1972, a number of state and non-state entities have acquired or are actively seeking to acquire weapons of mass destruction. It is clear, and has recently been demonstrated, that some of these entities are prepared to employ these weapons against the United States. Moreover, a number of states are developing ballistic missiles, including long-range ballistic missiles, as a means of delivering weapons of mass destruction. These events pose a direct threat to the territory and security of the United States and jeopardize its supreme interests. As a result, the United States has concluded that it must develop, test, and deploy anti-ballistic missile systems for the defense of its national territory, of its forces outside the United States, and of its friends and allies.

Pursuant to Article XV, paragraph 2, the United States has decided that extraordinary events related to the subject matter of the Treaty have jeopardized its supreme interests. Therefore, in the exercise of the right to withdraw from the Treaty provided in Article XV, paragraph 2, the United States hereby gives notice of its withdrawal from the Treaty. In accordance with the terms of the Treaty, withdrawal will be effective six months from the date of this notice.

[End]

Released on December 14, 2001

Exh. 5

**Office of the Press Secretary, The White House, Remarks by the President on Missile
Defense (Dec. 13, 2001)**

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

December 13, 2001

REMARKS BY THE PRESIDENT
ON MISSILE DEFENSE

The Rose Garden

9:58 A.M. EST

THE PRESIDENT: Good morning. I've just concluded a meeting of my National Security Council. We reviewed what I discussed with my friend, President Vladimir Putin, over the course of many meetings, many months. And that is the need for America to move beyond the 1972 Anti Ballistic Missile treaty.

Today, I have given formal notice to Russia, in accordance with the treaty, that the United States of America is withdrawing from this almost 30 year old treaty. I have concluded the ABM treaty hinders our government's ability to develop ways to protect our people from future terrorist or rogue state missile attacks.

The 1972 ABM treaty was signed by the United States and the Soviet Union at a much different time, in a vastly different world. One of the signatories, the Soviet Union, no longer exists. And neither does the hostility that once led both our countries to keep thousands of nuclear weapons on hair-trigger alert, pointed at each other. The grim theory was that neither side would launch a nuclear attack because it knew the other would respond, thereby destroying both.

Today, as the events of September the 11th made all too clear, the greatest threats to both our countries come not from each other, or other big powers in the world, but from terrorists who strike without warning, or rogue states who seek weapons of mass destruction.

We know that the terrorists, and some of those who support them, seek the ability to deliver death and destruction to our

doorstep via missile. And we must have the freedom and the flexibility to develop effective defenses against those attacks. Defending the American people is my highest priority as Commander in Chief, and I cannot and will not allow the United States to remain in a treaty that prevents us from developing effective defenses.

At the same time, the United States and Russia have developed a new, much more hopeful and constructive relationship. We are moving to replace mutually assured destruction with mutual cooperation. Beginning in Ljubljana, and continuing in meetings in Genoa, Shanghai, Washington and Crawford, President Putin and I developed common ground for a new strategic relationship. Russia is in the midst of a transition to free markets and democracy. We are committed to forging strong economic ties between Russia and the United States, and new bonds between Russia and our partners in NATO. NATO has made clear its desire to identify and pursue opportunities for joint action at 20.

I look forward to visiting Moscow, to continue our discussions, as we seek a formal way to express a new strategic relationship that will last long beyond our individual administrations, providing a foundation for peace for the years to come.

We're already working closely together as the world rallies in the war against terrorism. I appreciate so much President Putin's important advice and cooperation as we fight to dismantle the al Qaeda network in Afghanistan. I appreciate his commitment to reduce Russia's offensive nuclear weapons. I reiterate our pledge to reduce our own nuclear arsenal between 1,700 and 2,200 operationally deployed strategic nuclear weapons. President Putin and I have also agreed that my decision to withdraw from the treaty will not, in any way, undermine our new relationship or Russian security.

As President Putin said in Crawford, we are on the path to a fundamentally different relationship. The Cold War is long gone. Today we leave behind one of its last vestiges.

But this is not a day for looking back. This is a day for looking forward with hope, and anticipation of greater prosperity and peace for Russians, for Americans and for the entire world.

Thank you.

3

END

10:03 A.M. EST

Exh. 6

**National Intelligence Council, Foreign Missile Developments and the Ballistic Missile
Threat Through 2015, Unclassified Summary of a National Intelligence Estimate
(Dec. 2001) (excerpts)**



Unclassified Summary of a National Intelligence Estimate

Foreign Missile Developments and the Ballistic Missile Threat Through 2015

Produced by the National Intelligence Council

December 2001

Foreign Missile Developments and the Ballistic Missile Threat Through 2015

Unclassified Summary of a National Intelligence Estimate

**This Estimate was approved for publication by the
National Foreign Intelligence Board under the
authority of the Director of Central Intelligence.**

*Prepared under the auspices of the National Intelligence Officer for
Strategic and Nuclear Programs. Inquiries may be directed to the NIO
through the Office of Public Affairs on (703) 482-7778.*

Preface

Foreign Missile Developments and the Ballistic Missile Threat Through 2015

The Senate Select Committee on Intelligence has requested that the Intelligence Community (IC) produce annual reports containing the latest intelligence on ballistic missile developments and threats and a discussion of nonmissile threat options. This paper is an unclassified summary of the National Intelligence Estimate (NIE) that is the fourth annual report.

The NIE describes new missile developments and our projections of possible and likely ballistic missile threats to the United States, US interests overseas, and military forces or allies through 2015; updates assessments of theater ballistic missile forces worldwide; discusses the evolving proliferation environment; and provides a summary of forward-based threats and cruise missiles. We examine future ballistic missile capabilities of several countries that have ballistic missiles and ballistic missile development programs. Each country section includes a discussion of theater-range systems and current and projected long-range systems.

Our assessments of future missile developments are inexact and subjective because they are based on often fragmentary information. Many countries surround their ballistic missile programs with extensive secrecy and compartmentalization, and some employ deception. Although such key milestones as flight-testing are difficult to hide, we may miss others. To address these uncertainties, we assess both the earliest date that countries *could* test various missiles, based largely on engineering judgments made by experts inside and outside the Intelligence Community, on the technical capabilities and resources of the countries in question, and, in many cases, on continuing foreign assistance; and when countries would be *likely* to test such missiles, factoring into the above assessments potential delays caused by technical, political, or economic hurdles. We judge that countries are much less likely to test as early as the hypothetical “could” dates than they are by our projected “likely” dates.

In making these projections, we examine the level of success and the pace individual countries have experienced in their missile development efforts and consider foreign technology transfers, political motivations, military incentives, and economic resources. We have not attempted to address all of the potential political, economic, and social changes that could occur; we have projected missile developments between now and 2015 independent of *significant* political and economic changes. For example, some countries that currently have hostile or friendly intentions toward the United States could change significantly over the next fifteen years. As we prepare each annual report, we review strategic trends that could indicate such changes in order to make any necessary adjustments in our projections.

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Key Judgments

Foreign Missile Developments and the Ballistic Missile Threat Through 2015

Most Intelligence Community agencies project that before 2015 the United States most likely will face ICBM threats from North Korea and Iran, and possibly from Iraq—barring significant changes in their political orientations—in addition to the longstanding missile forces of Russia and China. One agency assesses that the United States is unlikely to face an ICBM threat from Iran before 2015.

Short- and medium-range ballistic missiles already pose a significant threat overseas to US interests, military forces, and allies.

- Emerging ballistic missile states continue to increase the range, reliability, and accuracy of the missile systems in their inventories—posing ever greater risks to US forces, interests, and allies throughout the world.
- Proliferation of ballistic missile-related technologies, materials, and expertise—especially by Russian, Chinese, and North Korean entities—has enabled emerging missile states to accelerate missile development, acquire new capabilities, and potentially develop even more capable and longer range future systems.

Unless Moscow significantly increases funding for its strategic forces, the Russian arsenal will decline to less than 2,000 warheads by 2015—with or without arms control.

- Although Russia still maintains the most comprehensive ballistic missile force capable of reaching the United States, force structure decisions resulting from resource problems, program development failures, weapon system aging, the dissolution of the Soviet Union, and arms control treaties have resulted in a steep decline in Russian strategic nuclear forces over the last 10 years.

The Intelligence Community projects that Chinese ballistic missile forces will increase several-fold by 2015, but Beijing's future ICBM force deployed primarily against the United States—which will number around 75 to 100 warheads—will remain considerably smaller and less capable than the strategic missile forces of Russia and the United States.

- China has three new, mobile strategic missiles in development—the road-mobile DF-31 ICBM; the longer range road-mobile DF-31 follow-on; and the JL-2 submarine-launched ballistic missile (SLBM).
- These programs date from the mid-1980s and are the basis of Beijing's efforts to field a modern, more survivable strategic deterrent to the United States and Russia.

North Korea's multiple-stage Taepo Dong-2, which is capable of reaching parts of the United States with a nuclear weapon-sized (several hundred kg) payload, may be ready for flight-testing.

- North Korea in May 2001, however, extended its voluntary moratorium on long-range missile flight-testing until 2003, provided that negotiations with the United States proceed.
- A Taepo Dong-2 test probably would be conducted in a space launch configuration, like the Taepo Dong-1 test in 1998.
- The North continues to develop missiles.

Iran is pursuing short- and long-range missile capabilities.

- Tehran has 1,300-km-range Shahab-3 medium-range ballistic missiles (MRBMs) that could be launched in a conflict.
 - Iran is pursuing an ICBM/space launch vehicle (SLV) system. All agencies agree that Iran *could* attempt a launch in mid-decade, but Tehran is *likely* to take until the last half of the decade to flight test an ICBM/SLV; one agency further believes that Iran is unlikely to conduct a successful test until after 2015.

Iraq, constrained by international sanctions and prohibitions, wants a long-range missile and probably retains a small, covert force of Scud-variant missiles.

- If UN prohibitions were eliminated or significantly reduced, Iraq would be likely to spend several years reestablishing its short-range ballistic missile (SRBM) force, developing and deploying solid-propellant systems, and pursuing MRBMs.
- All agencies agree that Iraq *could* test different ICBM concepts before 2015 if UN prohibitions were eliminated in the next few years. Most agencies, however, believe that it is *unlikely* to do so, even if the prohibitions were eliminated. Some believe that if prohibitions were eliminated Iraq would be *likely* to test an ICBM masked as an SLV before 2015, possibly before 2010 if it received foreign technology.

Several countries *could* develop a mechanism to launch SRBMs, MRBMs, or land-attack cruise missiles from forward-based ships or other platforms; a few are *likely* to do so—more likely for cruise missiles—before 2015.

Nonmissile means for delivering weapons of mass destruction do not provide the same prestige, deterrence, and coercive diplomacy as ICBMs; but they are less expensive, more reliable and accurate, more effective for disseminating biological warfare agents, can be used without attribution, and would avoid missile defenses.

Foreign nonstate actors—including terrorist, insurgent, or extremist groups that have threatened or have the ability to attack the United States or its interests—have expressed an interest in chemical, biological, radiological, or nuclear (CBRN) materials.

Exh. 7

Office of the Press Secretary, The White House, Statement by the President (June 13, 2002)



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For Immediate Release
Office of the Press Secretary
June 13, 2002

Statement by the President

Six months ago, I announced that the United States was withdrawing from the 1972 Anti-Ballistic Missile (ABM) Treaty, and today that withdrawal formally takes effect. With the Treaty now behind us, our task is to develop and deploy effective defenses against limited missile attacks. As the events of September 11 made clear, we no longer live in the Cold War world for which the ABM Treaty was designed. We now face new threats from terrorists who seek to destroy our civilization by any means available to rogue states armed with weapons of mass destruction and long-range missiles. Defending the American people against these threats is my highest priority as Commander-in-Chief.

The new strategic challenges of the 21st century require us to think differently. But they also require us to act. I call on the Congress to approve the full amount of the funding I have requested in my budget for missile defense. This will permit the United States to work closely with all nations committed to freedom to pursue the policies and capabilities needed to make the world a safer place for generations to come.

I am committed to deploying a missile defense system as soon as possible to protect the American people and our deployed forces against the growing missile threats we face. Because these threats also endanger our allies and friends around the world, it is essential that we work together to defend against them, an important task which the ABM Treaty prohibited. The United States will deepen our dialogue and cooperation with other nations on missile defenses.

Last month, President Vladimir Putin and I agreed that Russia and the United States would look for ways to cooperate on missile defenses, including expanding military exercises, sharing early-warning data, and exploring potential joint research and development of missile defense technologies. Over the past year, our countries have worked hard to overcome the legacy of the Cold War and to dismantle its structures. The United States and Russia are building a new relationship based on common interests and, increasingly, common values. Under the Treaty of Moscow, the nuclear arsenals of our nations will be reduced to their lowest levels in decades. Cooperation on missile defense will also make an important contribution to furthering the relationship we both seek.

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Exh. 8

Brief for Respondents in Opposition [to Petition for Writ of Certiorari], Goldwater v. Carter, 444 U.S. 996 (1979) (No. 79-856) (excerpts)

In the Supreme Court of the United States

OCTOBER TERM, 1979

SENATOR BARRY GOLDWATER, ET AL., PETITIONERS

JAMES EARL CARTER, PRESIDENT OF THE
UNITED STATES, AND CARUS VANCE,
SECRETARY OF STATE

ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE
UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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12-14-79
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The logic of the constitutional arrangement is compelling. Just as the Senate or Congress cannot bind the United States to a treaty without the President's active participation and approval, they cannot continue a treaty commitment that the President has determined is contrary to the security or diplomatic interests of the United States and is terminable under international law. The Senate or Congress cannot undertake, or revive or continue, a treaty obligation of the United States over the President's objection. That is the constitutional scheme.

Petitioners' reliance on Article VI of the Constitution is inapposite. The fact that statutes and treaties are both part of "the supreme Law of the Land" does not establish that they must both be terminated in an identical manner. Statutes and treaties are not adopted in the same manner, and nothing in Article VI requires that they be terminated in the same way. Executive agreements and orders, as well as treaties that have been breached or rendered inoperable by changed circumstances, are also part of "the supreme Law of the Land," yet it is undisputed that they may be terminated by the Presi-

State (*id.* at 306); testimony of Leonard C. Meeker, former Legal Adviser of the Department of State (*id.* at 319); testimony of William D. Rogers, former Assistant Secretary of State (*id.* at 286); testimony of John Norton Moore, Walter L. Brown, Professor of Law at University of Virginia School of Law (*id.* at 400, 404); testimony of Professor Andreas F. Lowenfeld of the New York University School of Law (*id.* at 443); testimony of Professor Dean Rusk, former Secretary of State (*id.* at 372-73).

dent alone. As the court of appeals observed (Pet. App. 16a-17a), Article VI, Clause 2, is intended to establish the supremacy of federal law over state law, not to define the proper constitutional procedure for termination.

Finally, the historical practice further supports the conclusion that the Constitution does not mandate a specific role for Congress in the termination of treaties. Of the 26 occasions on which the President has acted to terminate a treaty, 13 involved purely Presidential action without the participation of Congress. Several of the treaties in the latter group involved matters of considerable importance. See *Treaty Termination Hearings, supra*, at 157-191.⁸

When Congress has participated, that participation has taken diverse forms, negating any inference that

⁸ Petitioners' statement (Pet. 24-25) that 54 treaties have been terminated, but only two by the President alone, is incorrect. Petitioners count one statute that affected particular provisions in 25 treaties as 25 separate cases. *Seamens' Act* of 1915, ch. 153, 38 Stat. 1164. Petitioners also count statutes that by implication might be thought to authorize termination. But the cited statutes are not in any way inconsistent with the treaties said to have been terminated, and statutes may not supersede treaties by implication. *United States v. Payne*, 264 U.S. 446 (1924); *Cook v. United States*, 288 U.S. 102, 120 (1933); *Restatement (Second) of the Foreign Relations Law of the United States* § 145(1) at 446 (1965).

Petitioners also repeatedly contend (Pet. 11, 24) that no previous President of the United States has ever asserted the power to terminate a treaty alone. On the contrary, the record shows that the power has been asserted by Presidents Madison, McKinley, Wilson, Coolidge, Roosevelt, Eisenhower, Kennedy, and Johnson. Pet. App. 22a-25a, 126a-127a; *Treaty Termination Hearings, supra*, at 157-191.

the Constitution prescribes a specific mode of legislative involvement.⁹ The Executive Branch has never claimed that Congress has no role in treaty termination. Through legislation, Congress may nullify the domestic legal implications of a treaty (*Hooper v. United States*, 22 Ct. Cl. 408 (1887)), and through the exercise of its enumerated powers, Congress may effectively make it impossible or impractical for the United States to fulfill its treaty obligations. In the past, Presidents have terminated treaties either for these reasons or because they have agreed with Congress' political determination; on some occasions the President has followed the congressional initiative while on others Congress has supported the President's action.

But petitioners have not pointed to a *single* example of a congressional attempt to veto a Presidential decision to terminate a treaty. None of petitioners' historical precedents bears on the proposition fundamental to this case: that the United States

⁹ See *Treaty Termination Hearings*, *supra*, at 157-191; Pet. App. 167a-171a. In 1936, Green Hackworth, Legal Adviser of the Department of State, reported:

In some cases treaties have been terminated by the President, in accordance with their terms, pursuant to action by the Congress. In other cases action was taken by the President pursuant to resolutions of the Senate alone. In still others the initiative was taken by the President, in some cases independently, and in others his action was later notified to one or both Houses of Congress and approved by both Houses. No settled rule or procedure has been followed.

V G. Hackworth, *Digest of International Law* 327 (1943).

cannot maintain treaty relations without the continuing concurrence of the President. The only relevant historical precedents are the instances of unilateral Presidential treaty terminations. While petitioners attempt to distinguish these instances from the present case on grounds such as changed circumstances, ineffectuality, or impossibility of performance, they do not explain why the Constitution gives the President, acting alone, the power to terminate treaties in some circumstances, but not in others, nor do they explain by what standards a court is to determine what the crucial circumstances are.

Construed most favorably to petitioners, the historical record demonstrates only that Presidents have long acknowledged their practical and political dependence on congressional acquiescence or concurrence as a prerequisite for the successful maintenance of a treaty obligation. Past practice also shows that the President and Congress have often reached political accommodations to terminate treaties. The most important lesson of the past, however, is the one that is dispositive here: treaty obligations cannot survive, and have never survived, a President's decision to terminate.

4. In addition to the correctness and limited nature of the court of appeals' decision, and the practical problems associated with further review within the relevant time frame, there are two jurisdictional grounds on which petitioners' request for a writ of certiorari should be denied. Without institutional support for their position, petitioners lack stand-