# Nuclear Arms Control and National Missile Defense in the Early 21st Century: What Hope for the Future?

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EMILY CAMINS†

*The production, stockpiling and use of nuclear weapons is regulated by a number of international arms control agreements which form a delicate and interdependent structure. By withdrawing from a key treaty in order to pursue national missile defense plans, the United States has removed a crucial element in this structure. The move invites the question: what hope for the future?*

LIMITING the means and methods of warfare is a fundamental way in which the instruments of international humanitarian law (or 'the laws of war') seek to alleviate the suffering of victims of armed conflict. Arms control operates in conjunction with humanitarian law to meet this end; by placing restraints on the types of weapons that states may possess or use, it seeks to lessen suffering and damage if war should break out. Moreover, arms control reduces the likelihood of war by imposing limits on the evolution and proliferation of weapons that might destabilise strategic relationships or create incentives for preventive attacks.[1] With US plans to deploy a national missile defense system or 'Missile Defense',[2] as it

† Final year student, Law Honours candidate, UWA. An earlier version of this paper won the UWA Richard Kiwanuka Prize for International Humanitarian and Refugee Law and the Australian Law Students Association paper presentation championship. The author dedicates this paper to the memory of her mother, Kate.

1. D Frei 'International Humanitarian Law and Arms Control' (1988) 267 Int'l Rev of the Red Cross 491.
2. The Bush administration does not use the term 'National Missile Defense' because it was

has become known under the Bush administration, likely to proceed,[3] there is continued speculation over how the proposed system will affect global stability and arms control. Indeed, missile defense plans have already precipitated significant changes to the international arms control network. Although the deployment of a national missile defense system is not conducive to arms control, the system looks set to proceed in the foreseeable future, thus bringing into focus the question of minimising potentially adverse consequences of continued development and deployment.

This paper will first discuss the object of a national missile defense and how the planned system will operate. Anticipating that development of such a missile defense system could have a negative effect on nuclear disarmament efforts, it will proceed to consider the 'anti-nuclear weapons' obligations imposed by humanitarian law and arms control and the close interaction between the two. Keeping in mind that violation of arms control obligations is contrary to principles of humanitarian law, the paper will then examine how the US plans, in particular under the current Bush administration, to develop and deploy a national missile defense have affected various nuclear arms control treaties. It will focus on the now discarded Anti-Ballistic Missile (ABM) Treaty,[4] arguing that, given the adverse consequences that withdrawal entails for present-day arms control and for the formation of arms control agreements in the future, US President George W Bush should not have withdrawn from the Treaty. The paper will then examine major aspects of the post-ABM Treaty arms control framework, an arrangement shaped by American plans for a national missile defense, and its shortcomings. Finally, it will consider the implications of deployment of a national missile defense for global stability and weapons proliferation, and whether deployment is necessarily contrary to principles of international humanitarian law.

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the name of the mid-course system pursued by the Clinton administration and because the Pentagon's missile defense plans are now more robust: see text accompanying nn 14-19 below; also see P Coyle 'Rhetoric or Reality? Missile Defense Under Bush' (2002) 32(4) Arms Control Today <http://www.armscontrol.org/act/2002_05/coylemay02.asp>. However, 'national missile defense' is a useful term for any system that is intended to defend the continental United States, Alaska and Hawaii against strategic ballistic missiles, and is used in that sense in this paper.

3. The system is set to proceed despite a temporary setback following the terrorist attacks of 11 September 2001: see B Blair 'Terror Attacks Define New Military Agenda' in Center for Defense Information (CDI) *Terrorism Project* <http://www.cdi.org/terrorism/newagenda-pr.html>. Since it assumed office, the Bush administration has made national missile defense one of its top priorities, giving it prominence in policy, funding and organisation: see Coyle above n 2.

4. US-USSR Treaty on the Limitation of Anti-Ballistic Missile Systems 944 UNTS 13 (26 May 1972). For the text of the ABM Treaty and associated documents, see <http://www.defenselink.mil/acq/acic/treaties/abm/abmtoc.htm>.

## A NATIONAL MISSILE DEFENSE SYSTEM: WHAT AND HOW?

Prior to the terrorist attacks in New York and Washington on 11 September 2001, the US government had intended to deploy a limited national missile defense as soon as it became technologically feasible.[5] Senior officials in the Bush administration argued that such a system was necessary to protect the people and territory of the United States from imminent nuclear attack.[6] The September attacks, while setting back the deployment date of the national missile defense, strengthened the resolve of the US government to deploy such a system.[7] However, the exact type of missile defense and the technology to be employed is yet to be determined. President Bush has indicated that in the short term, the government will deploy an initial system to defend against limited attacks by intercontinental ballistic missiles[8] (ICBMs) armed with nuclear, biological and chemical warheads, using already established technologies.[9] This defensive weapon, which purportedly seeks to defend against limited nuclear attack from 'rogue' states,[10] an accidental or unauthorised attack from Russia or China, and perhaps most topically against attack from terrorist groups, could conceivably be deployed by 2008.[11]

The initial system most likely to be deployed by the Bush administration is based on the National Missile Defense (NMD) system, developed under the Clinton administration.[12] The system uses an initial launch detection and tracking system of satellites to send data through to five ground-based early warning radars. These

5. Pursuant to National Missile Defense Act 1999 (US) s 2.
6. See comments by D Rumsfeld, Secretary of Defense, and C Powell, Secretary of State; noted in W Boese 'Bush Administration Stresses Commitment to Missile Defense' (2001) 31(2) Arms Control Today <http://www.armscontrol.org/act/2001_03/bushnmd.asp>.
7. W Boese 'Democrats Withdraw Missile Defense Restrictions' (2001) 31(8) Arms Control Today <http://www.armscontrol.org/ACT/2001_10/misdefoct01.asp>.
8. Missiles are 'ballistic' if, once their fuel is expended on launch, they then travel under the influence of gravity (and air resistance) alone. The missile's warhead separates from the missile while in space, re-enters the earth's atmosphere and descends under gravity to the target. See G Brown & G Klintworth *The US National Missile Defense Program: Vital Shield or Modern-Day Maginot Line?* Research Paper No 16 (5 Dec 2000) <http://www.aph.gov.au/library/pubs/rp/2000-01/01rp16.htm>.
9. GW Bush 'Remarks by the President to Students and Faculty at National Defense University' (Washington, 1 May 2001) <http://www.whitehouse.gov/news/releases/2001/05/20010501-10.html>.
10. Namely Cuba, Syria, North Korea, Iran, Libya, Sudan and Iraq. See D Smith 'The Ballistic Missile Threat' in Center for Defense Information *National Missile Defense: What Does it All Mean?*< www.cdi.org/Hotspots/nmdissuebrief/nmd32.pdf> 8. However, whether rogue states in fact have long-range missiles capable of reaching the US is doubtful: see CV Pena *The New National Security Strategy is American Empire* (20 Oct 2002) <http://www.cato.org/cgi-bin/scripts/printtech.cgi/dailys/10-20-02.html>.
11. Coyle above n 2.
12. See eg Coyle ibid.

radars project the flight pattern of the hostile missile's trajectory. A number of X-band radars then seek to discriminate between incoming real warheads and decoys. The information from the radars is transmitted to land-based interceptor boosters, which seek to collide with and destroy incoming warheads. Guided by radars, space-based sensors and battle management computers, each interceptor would loft into space a rocket carrying a non-nuclear[13] 'ex-atmospheric kill vehicle' supposed to distinguish every warhead and destroy it in mid-course or after it re-enters the atmosphere.[14] This proposed system is not infallible. Three of the eight relatively simple interceptor tests, including the most recent test, have failed,[15] and the system cannot reliably distinguish between decoy and real warheads.[16]

The Bush administration has also expressed more ambitious plans for a national missile defense, and in 2002 the US government increased expenditure on the program from US$5.3 billion to US$7.8 billion.[17] In its most recent Nuclear Posture Review, the administration stated that, between 2003 and 2008, in addition to a ground-based system as discussed above, it wishes to have ready a variety of more advanced missile defense technologies, including air- and sea-based elements.[18]

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13. While members of the Bush administration have been considering incorporating nuclear kill-vehicles into the Missile Defense, at present such technology has not been adopted. In fact, nuclear arms control and weapons experts have warned that such technology would do more harm than good to US commercial, diplomatic and military interests, and could potentially violate the Treaty Banning Nuclear Weapon Tests in the Atmosphere in Outer Space and Under Water 480 UNTS 43 (entered into force 10 Oct 1963). See Arms Control Association 'Nuclear Experts Blast Idea of Arming Missile Interceptors with Nuclear Warheads' (17 Apr 2002) <www.armscontrol.org/aca/mdadvapril02.asp>.
14. Smith above n 10, 10-11. A ballistic missile trajectory involves three phases: (i) *Boost phase*: rocket motors are fired to lift the missile and its payload into space; (ii) *Ballistic* or *midcourse phase*: rocket motors shut down, the missile follows a trajectory determined by speed and gravity, the payload separates from the missile; (iii) *Re-entry* or *terminal phase*: payload re-enters the earth's atmosphere: Brown & Klintworth above n 8.
15. W Boese 'Ground-Based Midcourse Defense Hits Again' (2002) 32(9) Arms Control Today <http://www.armscontrol.org/act/2002_11/mdnov02.asp>; Center for Defense Information 'GMD flight test a failure' in *Missile Defense Updates: Technology* (Dec 2002) <http://www.cdi.org/missile-defense/technology.cfm>.
16. See Coyle above n 2. Other states are already developing decoy technology to defeat the system, as well as underwater and other weapons of mass destruction that NMD could not intercept.
17. See P Wolfowitz *Testimony Prepared for the House Budget Committee 2003 Defense Budget Request* (Washington, 12 Feb 2002) <http://www.house.gov/budget/hearings/wolfowitz021202.htm>; also see Coyle above n 2.
18. These technologies include: advanced sensors and interceptors that will intercept missiles earlier in their flight, in the 'boost' phase: see Bush above n 9; an air-based laser to shoot down missiles of all ranges during their boost phase; a sea-based system with rudimentary midcourse capability against short- and medium-range threats; terminal defenses against long-range ICBMs capable of reaching the US; and a system of satellites to track enemy missiles and distinguish re-entry vehicles from decoys: see Coyle above n 2. For further details of the Bush administration's Missile Defense plans, see House of Representatives

Despite the US government's increased expenditure on, and ambitious plans for, a national missile defense, many argue that the only system likely to be ready for deployment by 2008 is a rudimentary ground-based system, such as the two-site, 250 land-based anti-missile system developed by the Clinton Administration.[19]

The perceived danger of a national missile defense to potential adversaries is twofold: first, it could potentially render the US immune from nuclear attack, thus weakening the relative nuclear power of potential adversaries;[20] and secondly, anti-missile systems can be used offensively as well as defensively, by combining with offensive nuclear and conventional arms to threaten and deter potential attackers with their collective capacity.[21] The greater the capability of a national missile defense to defend the US against nuclear missiles, the more threatened by the US potential adversaries are likely to perceive themselves to be. Thus, the system and technology on which the Bush administration eventually decides will have significant implications for arms control and disarmament aspirations, in that it has the potential to shape nations' defense policies worldwide.[22] It may even influence the legality of a national missile defense and future US foreign policies under international law.[23]

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Committee on Armed Services *Bob Stump Report on HR 4546* (3 May 2002) <http://www.defenselink.mil/dodgc/lrs/docs/HR4546-HASCrpt.pdf>.

19. This would entail 250 interceptor missiles divided between two sites, one in Alaska and the other in North Dakota – sites chosen to ensure the entire territory of the US was defended. Correspondence with Col D Smith (Sep 2001). See also Coyle above n 2; D Smith 'Redefining Terms – Taking the "N" Out of NMD' (2001) 5(11) CDI Weekly Defense Monitor <http://www.cdi.org/weekly/2001/issue11.html#1>.
20. This gives rise to the major concern in terms of nuclear arms control that countries such as Russia, China and their neighbours or competitors will seek to rapidly increase their own nuclear arsenals in order to ensure that they are able to overwhelm America's national missile defense system if need be. See eg EJ Carroll 'Why Should We Care?' in CDI Issue Brief *National Missile Defense: What Does it All Mean?* (Sep 2000) <http://www.cdi.org/Hotspots/nmdissuebrief/nmd32.pdf> 1. Indeed, the Pentagon reports that China, whose current nuclear weapons arsenal could be easily neutralised by a national missile defense system, is expected to sharply increase its missile forces in response to the development of a US national missile defense: V Samson 'China is upgrading its missile systems' in CDI *Missile Defense Updates: Asia* (15 Jul 2002) <http://www.cdi.org/missile-defense/asia.cfm>. This in turn could spark an arms race among other nations, as each seeks to overcome the other's arsenal. Alternatively, it may strengthen strategic co-operation between nations such as Russia, China, Iran and perhaps others, destabilising global relations: see AC Kuchins 'Explaining Mr Putin: Russia's New Nuclear Diplomacy' (2002) 32(8) Arms Control Today <http://www.armscontrol.org/act/2002_10/kuchinsoct02.asp>.
21. See AF Woolf 'Missile Defense, Arms Control and Deterrence: A New Strategic Framework' *CRS Report for Congress* (31 Oct 2001) 1-3 <http://fpc.state.gov/documents/organization/6254.pdf>. The notion that the US may use its missile defense technology aggressively increases the potential for the scenarios mentioned above n 20.
22. The more advanced the technology, the more antagonised potential adversaries are likely to become, which resentment could well result in weapons proliferation and increased likelihood of use.
23. See below nn 174-176 and accompanying text.

## INTERNATIONAL HUMANITARIAN LAW AND INSTRUMENTS OF NUCLEAR ARMS CONTROL

'The rights of belligerents to adopt means of injuring the enemy is not unlimited'.[24]

In recognition of the very real danger that certain weapons pose to people, territories, and international peace and security, an array of instruments has been assembled under the rubric of international humanitarian law to limit the use of such weapons, thus reducing the risk and extent of suffering of victims in armed conflict. Such customary laws regulate nuclear weapons.[25] Indeed, some commentators argue that, while it is not expressly codified, humanitarian law imposes a blanket prohibition on nuclear weapons.

There are, for current purposes, three cardinal principles contained in the fabric of humanitarian law, most notably in Additional Protocol I to the Geneva Conventions,[26] which seeks to protect victims of international armed conflict. First, Additional Protocol I codifies the 'principle of distinction': that states must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets.[27] Secondly, Additional Protocol I prohibits the employment of weapons and methods of warfare which cause superfluous injury or unnecessary suffering.[28] Finally, Additional Protocol I forbids the use of 'methods or means of warfare which are intended, or may be expected, to cause widespread, long term and severe damage to the natural environment'.[29] Nuclear weapons fall within the scope of these principles. While technically the scope of each individual restriction is not absolute,[30] the three principles interrelate to impose a blanket prohibition on nuclear weapon use. The

24. Hague Convention (IV) Respecting the Laws and Customs of War on Land 36 Stat 227 (18 Oct 1907) Art 22 . This has become a principle of customary international law: International Court of Justice (ICJ) *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* General List No 95 (8 Jul 1996) paras 75, 81.
25. ICJ ibid, specifically para 86.
26. Protocol Additional to the Geneva Conventions of 12 Aug 1949, and relating to the Protection of Victims of International Armed Conflicts 1125 UNTS 3 (8 Jun 1977) (hereinafter 'Additional Protocol I'). Russia has ratified Additional Protocol I, but the US has not.
27. Ibid, Art 51(4) prohibits indiscriminate attacks. Art 51(5) describes an indiscriminate attack as one which 'may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof which would be excessive in relation to the concrete and direct military advantage anticipated'.
28. Ibid, Art 35(2).
29. Ibid, Art 35(3).
30. Ibid, Art 35(2) refers to weapons that cause '*superfluous* injury or *unnecessary* suffering' (emphasis added); and Art 51(5) refers to *excessive* harm to civilians in relation to military advantage, thus allowing for use of weapons in situations where strategic or military necessity warrant such suffering. This may be referred to as the principle of proportionality.

degree of suffering imposed by the use of nuclear weapons could never be justified as 'necessary' or 'non-excessive'. Thus, the use of such weapons would violate the principle of proportionality embodied in these articles and is therefore unlawful. It is immaterial that the US has not ratified Additional Protocol I, as the aforementioned rules are principles of customary international law that apply regardless.[31]

The International Court of Justice (ICJ) Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons[32] reflects the notion that nuclear weapons are generally incompatible with humanitarian law principles. In that Advisory Opinion, the court unanimously confirmed that a threat or use of nuclear weapons is subject to the laws of war,[33] finding that such threat or use of nuclear weapons would generally be contrary to the rules of humanitarian law.[34] Furthermore, the ICJ advised that to threaten to use, or actually use, nuclear weapons may be unlawful under customary international law,[35] and in certain circumstances, possession of nuclear weapons could itself constitute an illegal threat.[36] In addition, the court unanimously maintained that states have an 'obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control'.[37]

Arms control and disarmament negotiations are driven, at least in part, by a humanitarian concern to alleviate the suffering of victims of armed conflict.[38] While

31. ICJ above n 24, paras 74-84, in particular paras 79 & 84.
32. Ibid.
33. Ibid, paras 85-87, 105(2)D.
34. Ibid, para 105(2)E. The vote on this point was divided 7:7, with the President's casting vote. The majority was unable to conclude whether the threat or use of nuclear weapons would be unlawful or lawful in extreme circumstances of self-defence.
35. The Court found that a threat or use of nuclear force that is contrary to the law of the Charter of the United Nations (signed 26 Jun 1945) (UN Charter) is unlawful under international law. See unanimous finding of the Court: ICJ ibid, para 105(2)C, also para 48. The envisaged use of force would be unlawful if such use were prohibited under the UN Charter. Art 2(4) of the Charter provides that '[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations'. Such threat or use of force will only be unlawful if it fails to meet all the requirements of Art 51, dealing with the right to individual or collective self-defence if an armed attack occurs.
36. The ICJ advised that, where possession justifies an inference of preparedness to use such weapons, and where the envisaged use of nuclear force would be unlawful, the inferred threat of force would be unlawful under the law of the UN Charter: ICJ ibid, para 48. By this rationale, 'it would be illegal for a State to threaten force to secure territory from another State, or to cause it to follow or not follow certain political or economic paths': ICJ ibid, para 47. That possession may constitute an unlawful threat may affect the legality of national missile defense deployment: see below nn 174-176 and accompanying text.
37. Unanimous conclusion of the ICJ in the Advisory Opinion ibid, para 105(2)F.
38. One of the themes of the First International Peace Conference of the Hague (1899) was arms control and disarmament. Part of the motivation in 1899, and indeed at the Second Hague International Peace Conference (1907) in considering this theme was unquestionably

arms control and disarmament agreements do not specifically address the conduct of armed conflict, they regulate the production, testing, stockpiling, transfer or deployment of the weapons by which armed conflict might be conducted.[39] Such agreements can have considerable implications for the conduct of armed conflict, and often reinforce existing prohibitions in the laws of war on the use of certain types of weapons.[40] Furthermore, arms control agreements may help to build up confidence among states through greater openness in the military field, and thereby produce an international climate conducive to disarmament.[41] Arms control efforts have been aptly described as representing a 'unique synthesis between the theories and instruments of international law, international relations, and national security'.[42]

Reinforcing the humanitarian law prohibition on nuclear weapons, a number of interdependent instruments exist at international law, forming an elaborate arms control structure designed to reduce nuclear weapons arsenals, limit the circumstances in which certain weapons may be used and prevent more nations from acquiring them. In developing a national missile defense system, the US is under an obligation to act in accordance with arms control agreements to which it is a party and customary international law. Moreover, when a state undertakes a legal commitment, it must honour that commitment in good faith.[43] Only where a state adheres to its arms control obligations will its adversaries feel confident in relinquishing their rights and fulfilling their treaty obligations. Additionally, under Additional Protocol I, in the study, development or adoption of a new weapon, means or method of warfare, a state must determine whether its employment would be prohibited by any rule of international law applicable to that state.[44]

In the past six months, the global nuclear arms control network has changed considerably, following the US government's withdrawal from the ABM Treaty[45] on

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a humanitarian concern to alleviate the suffering of victims of armed conflict. See R Mathews & T McCormack 'The Influence of Humanitarian Principles in the Negotiation of Arms Control Treaties' (1999) 834 Int'l Rev of the Red Cross 331.

39. A Roberts & R Guelff *Documents on the Laws of War* 3rd edn (Oxford: OUP, 2000) 37.
40. Eg the Ottawa Convention (1997), Chemical Weapons Convention (1993) and Inhumane Weapons Convention (1980) ban landmines, chemical and inhumane weapons (respectively) that fall foul of the abovementioned principles of Additional Protocol 1.
41. Mathews & McCormack above n 38. As discussed below n 164, the ability to predict another country's nuclear force structure is a central purpose of arms control: see W Boese & JP Scoblic 'The Jury is Still Out' (2002) 32(5) Arms Control Today <http://www.armscontrol.org/act/2002_06/sortanaljune02.asp>.
42. See T Graham Jr 'International Law and the Proliferation of Nuclear Weapons' (2001) 33(1) GW Int'l L Rev 49, 49.
43. Art 26 of the Vienna Convention on the Law of Treaties 1155 UNTS 331 (23 May 1969) codifies the jus cogens principle of pacta sunt servanda: every treaty is binding upon the parties to it and must be performed by them in good faith.
44. Additional Protocol I, Art 36, above n 26. It is submitted that this provision codifies customary international law, and is thus binding on the US: see ICJ above n 24, para 84.
45. ABM Treaty above n 4.

13 June 2002, a move thought necessary by President Bush to enable the US to proceed freely with its national missile defense plans. Prior to June 2002, the now invalid ABM Treaty was often said to provide the 'cornerstone' of strategic stability[46] and of many treaties in the nuclear arms control arrangement. It was negotiated by the US and the USSR in 1972, concurrently with an Interim Agreement[47] (together known as the SALT I Accords).[48] A protocol to the ABM Treaty was signed two years later.[49] The ABM Treaty denoted the aspirations of the two superpowers to '[curb] the race in strategic offensive arms' and '[take] effective measures towards ... nuclear disarmament and general and complete disarmament'.[50] Subsequently, SALT II and the Strategic Arms Reduction Treaties (START I and II)[51] were erected between the US and the USSR (later the Russian Federation (Russia)) on the SALT/ABM Treaty foundation. For decades these bilateral treaties operated alongside key multilateral arms control agreements, such as the Nuclear Non-Proliferation Treaty[52] (NPT), to reduce the likelihood of nuclear weapons use.

The abrogation of the ABM Treaty arguably undermines the entire structure of nuclear arms control.[53] In order to understand the impact of withdrawal from the Treaty, it is necessary to understand what the ABM Treaty achieved.

## 1. The Anti-Ballistic Missile Treaty: an obstacle to a national missile defense

The ABM Treaty limited the rights of the parties to it to develop and deploy anti-ballistic missile systems. The Treaty codified the theory of 'mutual assured

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46. See eg '2000 NPT Review Conference Final Document'(2000) 30(5) Arms Control Today <http://www.armscontrol.org/act/2000_06/docjun.asp>. Such sentiments were also expressed by the Clinton administration and by Russia under Presidents Putin and Yeltsin: see L Gronlund & G Lewis 'How a Limited National Missile Defense Would Impact the ABM Treaty' (1999) 29(7) Arms Control Today <http://www.armscontrol.org/act/1999_11/lgno99.asp>; Kuchins above n 20.
47. Interim Agreement on Certain Measures with respect to the Limitation of Strategic Offensive Arms (26 May 1972).
48. Strategic Arms Limitation Treaty (1972). The Interim Agreement froze the number of intercontinental ballistic missiles each side possessed, while the ABM Treaty limited the rights of parties to develop and deploy systems to defend against missile attack.
49. Protocol to the US-USSR Treaty on the Limitation of Anti-Ballistic Missile Systems (3 Jul 1974) (the Helsinki Protocol).
50. ABM Treaty above n 4, preamble.
51. US-USSR Treaty on the Reduction and Limitation of Strategic Offensive Arms (No 102-20, 31 Jul 1991) 2 (START I) <http://www.state.gov/www/global/arms/starthtm/start/toc.html>; US-USSR Treaty on Further Reduction and Limitation of Strategic Offensive Arms (No 103-1, 3 Jan 1993) (START II).
52. Treaty on Non-Proliferation of Nuclear Weapons 729 UNTS 161 (1 Jul 1968). See text accompanying below nn 114-119. Both the US and Russia are parties to the NPT.
53. Abrogation of the ABM Treaty could have a 'negative flow-on effect', undercutting the doctrine of mutual deterrence and undermining adherence to key treaties such as the NPT: ibid. See Graham above nn 42, 57-58 and below n 80.

destruction' (MAD) or 'mutual deterrence', which hypothesises that if a state were exposed to attack by the second-strike nuclear forces[54] of its enemy, that state would not willingly begin a nuclear attack.[55]

An ABM system was defined as 'a system to counter strategic ballistic missiles or their elements in flight trajectory'.[56] Article I prohibited each country from deploying 'ABM systems for a defense of the territory of its country' and from 'provid[ing] a base for such a defense'.[57] While the Treaty allowed each party to construct a limited missile defense to protect a specified area of its territory,[58] the prohibition on deploying systems capable of defending the entire territory of either party state was reflected throughout the articles of the ABM Treaty.[59] While in the past there has been speculation that the ABM Treaty may be reinterpreted to allow a 'thin'[60] national missile defense system,[61] it has generally been accepted that

54. Second-strike forces are those nuclear weapons that can survive an initial nuclear weapon attack by another state. If one State has more or 'better' nuclear weapons than the state that makes the first strike (ie, the initial attack), it would probably have second strike forces.

55. D Hodgkinson 'Shelter from the Storm: Succession and Demarcation Issues Under the ABM Treaty' (1999) 28 UWAL Rev 162, 163. In this respect offensive and defensive weapons are inextricably linked; only if anti-missile systems were constrained could missiles themselves be reduced without upsetting the balance of global security.

56. ABM Treaty above n 4, Art II(1).

57. Ibid, Art I(2) (first limb).

68. Ibid. Art I prohibits deployment of 'ABM systems for a defense of the territory of its country', and of regional defense systems 'except as provided for in Art III' (Art I(2)). The original Art III allowed parties to deploy two ABM systems to protect a 150-kilometre radius centred on (a) the national capital, and (b) a ballistic missile field. The 1974 Protocol to the Treaty (above n 51) further limits the defensible areas to one base instead of two.

59. The fact that Art III delimits the permissible range of a missile defense necessarily implies the areas which may be protected are limited.

60. A 'thin' defense is one which, although capable of providing a shield across the entire territory of the US, could only defend against a very limited number of incoming nuclear weapons. A 'heavy' or 'thick' defense, on the other hand, could defend against a far greater nuclear barrage.

61. Pursuant to the Vienna Convention on the Law of Treaties above n 43, Art 31, treaty terms are to be interpreted in accordance with their ordinary meaning given the terms in context, and in light of the treaty's object and purpose. A 'special meaning' will be given to a term if it is established that the parties so intended. It has been suggested that the deployment of a 'thin' national missile defense would not be inconsistent with the overall spirit of the ABM Treaty, as a missile defense which protects against terrorist or 'rogue' state attacks does not upset the strategic balance between US and Russia, and may serve to neutralise an unauthorised or accidental missile attack: see DE Grogan 'Power Play: Theater Ballistic Missile Defense, National Ballistic Missile Defense and the ABM Treaty' (1999) 39 Va J Int'l Law. 799, 870. Thus, the argument, pursued by President Clinton among others, is that the US could unilaterally reinterpret the Treaty to allow for a system which, if it could operate from a single site, could be accommodated within the ABM Treaty: Grogan, 840.

deploying a national missile defense in any form would have violated the Treaty.[62]

Although the ABM Treaty did not ban development of a limited land-based national missile defense, it did prohibit the testing, development or deployment of ABM systems or components which are mobile or based in air, space or at sea,[63] and of many possible missile defense technologies.[64] Even though the ABM Treaty is no longer on foot, the author suggests that resistance to more advanced missile defense technologies persists among the international community.[65]

## (a) The legal status of the ABM Treaty following the dissolution of the USSR

Article XV provided that the ABM Treaty was of unlimited duration.[66] Nonetheless, throughout the latter years of the past decade, proponents of a national missile defense called for the termination of the ABM Treaty as a 'relic of the Cold War'.[67] They contended that rapidly advancing technology and the changing strategic climate have made continued adherence to the ABM Treaty a serious threat to US national security,[68] and that the US owed a duty to the American people to protect them from imminent nuclear threat. Accordingly, they sought to undermine the foundation of the ABM Treaty, claiming that when the USSR was dissolved in 1991, its non-dispositive[69] bilateral treaties, including the ABM Treaty, lapsed

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62. In the present case, a unilateral declaration of a material change in the meaning of the ABM Treaty is contrary to the parties' intended meaning and is incompatible with the requirement of fulfilling treaty obligations in good faith arising under the Vienna Convention on the Law of Treaties above n 43, Art 26. It is apparent from the text of the Treaty, and from the fact the parties considered and rejected the notion, that the parties did not intend to allow deployment of even a 'thin' ABM system. Even a system that is limited to a single site violates the ABM Treaty if it protects the entire US from even a limited or accidental missile attack. Reinterpreting the Treaty to allow for national missile defense deployment would be unlawful: see Grogan ibid, 869. A narrow interpretation of the Treaty has been favoured in recent years, notably by the Clinton administration, Russian President Yeltsin and the Russian Duma. See Hodgkinson above n 55, 164.
63. ABM Treaty above n 4, Art V(1).
64. See ABM Treaty above n 4, in particular Art VI and the Agreed Statements accompanying the ABM Treaty (26 May 1972).
65. See above n 22.
66. ABM Treaty above n 4, Art XV.
67. Grogan above n 61.
68. Ibid.
69. A dispositive treaty is one which irrevocably fixes a right to particular territory. For example, it delineates a border between two States: G Miron 'Memorandum of Law: Did the ABM Treaty of 1972 Remain in Force After the USSR Ceased to Exist in December 1991 and Did It Become a Treaty Between the US and the Russian Federation?' (2002) 17 American Uni Int'l L Rev 189, 198. Miron notes that it has been argued that the ABM Treaty is in fact dispositive, in which case the obligations under the treaty would be permanent and the ABM Treaty would remain valid after the dissolution of the USSR.

automatically and, under the law of succession,[70] no one state or group of states could fulfil its obligations.[71]

In an effort to formally adopt the terms of the ABM Treaty, the US and Russia agreed, by a 1997 Memorandum of Understanding (MOU) on Succession with the other former Soviet states,[72] to inherit the obligations of the former USSR. However, the US never ratified the MOU, and its validity continues to be questioned by those who argue that, as a matter of US domestic law, the MOU requires the advice and consent of the US Senate to come into force as a new treaty.[73]

This view is not universally accepted. Many legal commentators,[74] including the author, argue that any agreement by which States formally succeed to the ABM Treaty obligations of their predecessor, should not be seen as one which requires Senate advice and consent. Moreover, even if this view is incorrect, the Senate impliedly manifested its concurrence for the ABM Treaty to be a legally binding agreement by agreeing in 1997 to submit for Senate advice and ratification any international agreement that would substantially affect the ABM Treaty.[75] On either analysis, the Treaty remained in force after the dissolution of the USSR, continuing to pose an obstacle for the deployment and continued development of a national missile defense system.

Furthermore, even if, from a purely legal perspective, these analyses were incorrect and the ABM Treaty were not technically legally valid (the MOU having not been ratified by the US Senate), political reality would have prevented any

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70. 'State succession' (ie, the replacement of one state by another in the responsibility for the international relations of a territory) occurs whenever there is a change in the territory of the state. States concerned may settle terms and conditions of succession by agreement: Vienna Convention on the Succession of States in Respect of Treaties (23 Aug 1978) 72 AJIL 971. See DJ Harris *Cases and Materials on International Law* 5th edn (London: Sweet & Maxwell, 1998) 124.

71. See I Eland 'Abrogation of the ABM Treaty?' (1999) 4 Spr NEXUS: J Opinion 59, 62; also Miron above n 69, 195. See also R Turner 'National Missile Defense and the 1972 ABM Treaty' (2002) 36 New England L Rev 807. For example, Miron argues that following the extinction of the USSR, the ABM Treaty did not become a treaty between the US and the Russian Federation. Rather, as a bilateral, non-dispositive treaty, the ABM Treaty between the US and USSR lapsed when the USSR ceased to exist.

72. Memorandum of Understanding between the US, Russia, Ukraine, Belarus and Kazakhstan (26 Sep 1997): see above n 4.

73. See Miron above n 69, 195; see also Turner above n 71.

74. Including Hodgkinson above n 55, 166; SM Keeney Jr, J Mendelsohn, JB Rhinelander & J Steinbruner 'Arms Control and the Helsinki Summit: Issues and Obstacles in the Second Clinton Term' (1997) 27(1) Arms Control Today <http://www.armscontrol.org/act/1997_03/acapanel.asp>; SM Keeny Jr, J Mendelsohn, T Graham Jr & D Kimball 'Implications of the Duma's Approval of START II' (2000) 30(4) Arms Control Today <http://www.armscontrol.org/act/2000_05/panma00.asp>.

75. MJ Glennon 'Ballistic Missiles: Threat and Response – Hearing Before the S Comm on Foreign Relations, 106th Cong 276' (1999), cited in Miron above n 69, 199.

parties from acting as though free from all obligations under the Treaty.[76] Given that US Presidents George HW Bush, Bill Clinton and Russian President Boris Yeltsin took the view that the ABM Treaty remained 'in force' between the US and the Russian Federation, for a US president to renege on such executive pronouncements and behave contrary to the Treaty terms would be politically and morally untenable.[77]

## 2. The Bush administration's response to the ABM Treaty problem

On 13 December 2001, President Bush announced that the US intended to withdraw from the ABM Treaty in six months, and gave formal notice of this intention to Russia, Belarus, Kazakhstan and Ukraine.[78] Thus, as of 13 June 2002, the Treaty ceased to be binding on the US,[79] and the US became the first nation since World War II to withdraw from an arms control treaty.[80] The decision to withdraw is fraught with negative ramifications for nuclear arms control.

While the ABM Treaty was of indefinite duration, Article XV allowed either party to withdraw on six months' notice 'if it [decided] that extraordinary events related to the subject matter of this Treaty have jeopardised its supreme interest'.[81] As justification for withdrawal, President Bush stated that a number of state and non-state entities, including terrorist groups, have acquired or are actively seeking to acquire 'weapons of mass destruction', and are prepared to employ these weapons against the US.[82] He also observed that a number of states are developing ballistic missiles, including long-range ballistic missiles, as a means of delivering weapons of mass destruction. These events, he argued, pose a direct threat to the territory

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76. To do so would be to severely jeopardise and perhaps destroy political goodwill towards a government, both domestically and internationally. See eg Turner above n 71, 811-812. Moreover, Turner (810-811) is of the view that as the Memorandum of Understanding (above n 72) had been signed by the US, the international law 'good faith' requirement not to take steps to defeat the object and purpose of a treaty until it gives notice that it does not intend to proceed to ratification, reflected in Art 18 of the Vienna Convention on the Law of Treaties (above n 43), remained a moral and legal constraint on the development of a national missile defense system.
77. See eg Turner ibid, 811-812.
78. US Dept of State 'US Withdrawal From the ABM Treaty: President Bush's Remarks and US Diplomatic Notes' (2002) 32(1) Arms Control Today <http://www.armscontrol.org/act/2002_01-02/docjanfeb02.asp>.
79. W Boese 'Bush Announces US Intent to Withdraw from ABM Treaty' (2002) 32(1) Arms Control Today<http://www.armscontrol.org/act/2002_01-02/abmjanfeb02.asp>.
80. In 1993, North Korea announced its intention to withdraw from the NPT, but at the last moment reversed its decision. See DG Kimball, J Cirincione, L Gronlund & J Rhinelander 'ABM Treaty Withdrawal: Neither Necessary nor Prudent' (2002) 32(1) Arms Control Today <http://www.armscontrol.org/act/2002_01-02/pressconjanfeb02.asp>. On 10 January 2003, North Korea announced that it was withdrawing from the NPT, effective immediately. See further n 124 below.
81. ABM Treaty above n 4, Art XV(2).
82. Boese above n 79.

and security of the US and jeopardise its supreme interests. His decision and rationalisation for withdrawal have been met with scepticism. For example, Russian President Vladimir Putin described the US rationale for withdrawal as 'unconvincing', stating that neither terrorists nor rogue states 'have or are likely to ever have' strategic ballistic missiles.[83]

As there is no precedent for withdrawal from the ABM Treaty, it is not clear whether or not the threats the Bush administration cited meet the withdrawal criterion. However, given that the Treaty only requires a unilateral characterisation that a party's 'supreme interests' be jeopardised, and in light of events such as the 11 September 2001 terrorist attacks and the 'war against terror', it is doubtful that a tribunal would find that the US violated international law in withdrawing from the ABM Treaty. Any domestic action, based on the fact that President Bush did not seek the approval of Congress to withdraw, would need to overcome widely accepted constitutional principles to succeed.[84]

Regardless of the legality of the decision to withdraw from the Treaty, such action was neither necessary nor prudent. Immediately prior to withdrawal, the Treaty permitted the Pentagon to test fully a ground-based system as proposed by the Clinton administration,[85] and further tests and developments on land-based national missile defense systems were also permissible under the ABM Treaty.[86] Withdrawal from that Treaty undermines the doctrine of mutual deterrence,[87] which in turn has the potential to upset strategic stability. Moreover, in the authors's view, premature and unjustified withdrawal from the Treaty damages US credibility, and such withdrawal might be perceived as evidence of the government's disrespect for international law obligations[88] and nuclear arms control. These factors will not only

83. Press Statement 'Putin criticizes "mistaken" US withdrawal from ABM Treaty' (BBC Monitoring Service, 13 Dec 2001).
84. The executive power conferred on the President by the US Constitution, Art II(1), includes the power to execute and terminate treaties: see SB Prakash & MD Ramsay 'The Executive Power over Foreign Affairs' (2001) 111 Yale L Journ 231; also MA McCann 'National Missile Defense: Legal and Policy Justifications for Expanding Deterrence and Preventing War in the 21st Century' (2002) 3 San Diego Int'l L Journ 207, 220-223.
85. See above n 19. Further, see Kimball et al above n 80, L Gronlund.
86. All developments on missile defenses which are technologically feasible in the next couple of years are permitted under the ABM Treaty. The development of sea- and air-based mobile systems for boost-phase intercepts may violate Article V of the Treaty. However these plans are years away from being ready for testing that would infringe the Treaty. Furthermore, it is unlikely that the US will develop a deployable system before 2009: see Kimball et al ibid, J Rhinelander.
87. See above n 53.
88. Given the Senate's rejection of the Comprehensive Test Ban Treaty, the Administration's refusal to submit the Rome Statute for Senate consent and President Bush's abandonment of the Kyoto Protocol, unilateral withdrawal from the ABM Treaty would be widely seen as proof that the US has become a rogue superpower that considers itself above the law. IH Daalder & JM Lindsay 'Unilateral Withdrawal From the ABM Treaty is a Bad Idea'

negatively affect long-term relations between the US and the international community, but will also undermine efforts to curb the spread of nuclear, chemical and biological weapons, discouraging other nuclear weapon states from entering into bi- or multilateral arms control agreements for fear that such agreements are 'flimsy'. In this respect, unilateral US withdrawal from the ABM Treaty runs counter to the spirit of humanitarian law.

For these reasons and in the interests of nuclear disarmament, President Bush should not have withdrawn from the Treaty; rather, he should have pursued a compromise. Renegotiation of the ABM Treaty was contemplated under Article XIV, which allowed both parties to propose and agree to amendments to the Treaty. Throughout the first year of the Bush administration, Russia had repeatedly expressed its desire that the ABM Treaty be 'preserved and strengthened', and had also stated its preparedness to negotiate on the issue.[89] Unfortunately, while the Treaty has undergone successful renegotiation in the past,[90] the Bush administration proved unwilling to compromise on the Treaty, preferring unilateral withdrawal.

Domestically, the decision to withdraw from the ABM Treaty provoked mixed reaction which was, for the most part, divided along party lines. While Republicans tended to support the President's announcement on 13 December 2001, the decision drew sharp criticism from senior congressional Democrats. Republican senators were of the view that the announcement 'fulfill[ed] the President's stated commitment of America's defense' and indicated that 'the President [was] moving forward with the necessary steps to build (a national missile defense system)'.[91] On the other hand, Senate Majority Leader Tom Daschle voiced concerns, echoed by other senior Senate Democrats,[92] that unilateral withdrawal carries the potential for unleashing a new arms race.[93] He further commented that the action 'could rupture relations with

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*International Herald Tribune* (30 Apr 2001) <http://www.brook.edu/views/op-ed/daalder/20010430.htm>. For an alternative view of issues surrounding US refusal to ratify the Rome Statute and the Kyoto Protocol, see D Arnaut 'When in Rome ...? The International Criminal Court and Avenues for US Participation' (2003) 43 Va J Int'l Law 525; A Royden 'US Climate Change Policy Under President Clinton: A Look Back' (2002) 32 Glolden Gate U L Rev 415 (respectively).

89. IS Ivanov 'Russia's Reaction to New American NMD Policy Stance' Press Conference (2 May 2001) <http://www.brook.edu/fp/research/areas/nmd/russiarxn20010502.htm>.

90. See above n 58, describing the 1974 amendment and also Eland above n 71.

91. Comment by Senator C Hagel, quoted in R Dannheisser 'Senior Senate Democrats Criticize Bush ABM Treaty Withdrawal' (US Embassy, Tokyo) <http://usembassy.state.gov/tokyo/wwwhse0799.html>. See also comments supporting withdrawal quoted in MA McCann 'National Missile Defense: Legal and Policy Justifications for Expanding Deterrence and Preventing War in the 21st Century' (2002) 3 San Diego Int'l L Journ 207, 222-223.

92. See, eg, comments of Senate Armed Services Committee Chairman C Levin, who warned that possible retaliatory steps by Russia in withdrawing from other arms control treaties would probably 'lead to an action-reaction cycle in offensive and defensive technologies, including countermeasures': quoted in Dannheisser ibid.

93. See also above n 20.

key countries and governments around the world', and 'sends the wrong message to the world with regard to our intent in abiding with treaties'.[94]

Internationally, the US withdrawal was greeted with muted criticism[95] and some apprehension, with Australia being one of the few nations to support the decision.[96] The action met its most vocal opposition from Russia, with President Putin stating that he disagreed with the US action and had rebuffed 'insistent [US] proposals' for the two countries to withdraw from the treaty jointly.[97] Notwithstanding his apparent opposition, President Putin also said the US move would not of itself destroy Russian relations with the US or the West in general, and emphasised the importance of enhancing the NATO-Russian relationship.[98]

A major concern internationally was that the action could prove damaging to global arms control and might provoke an arms race, a possibility compounded by the US government's approach to a national missile defense.[99] In light of this fear, UN Secretary-General Kofi Annan expressed 'regret' about the US decision. Members of the international community also expressed fears that withdrawal could undercut other arms control efforts,[100] which fears have already proven justified.

## THE AFTERMATH OF ABM TREATY WITHDRAWAL

Withdrawal from the ABM Treaty has grave implications for nuclear arms control efforts. In 2001, prior to President Bush's formal announcement of his intention to withdraw from the ABM Treaty, President Putin and other top Russian officials

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94. See Dannheisser above n 91.
95. It has been suggested that the low-key allied reaction reflected 'resignation in the face of facts created by the [US] rather than support on substance': see Boese above n 79. Others suggest that criticism of US national missile defense plans generally has been muted in the wake of the September 11 attacks: 'CDI's "Briefing Room"' (2002) 6(23) Weekly Defense Monitor <http://www.cdi.org/weekly/2002/issue23.html#briefing>.
96. See G Brown 'Walking Away: The US Withdrawal from the ABM Treaty' Research Note 14 (Canberra: Parliamentary Library, 2002) <http://www.aph.gov.au/library/pubs/rn/2001-02/02rn14.htm>. Brown notes that while the Australian government supported the US decision to withdraw, the Opposition expressed regret. Australia's precise role in the US national missile defense effort, including the extent to which Australia will support the US by continuing to provide a facility for the missile defense system's early warning satellites at Pine Gap, is not yet clear.
97. See Boese above n 79. For a further discussion on US-Russian relations in light of US withdrawal from the ABM Treaty, see Kuchins above n 20.
98. Less than a week before President Bush announced his intention to withdraw from the ABM Treaty, on 7 December 2001 NATO and Russia committed themselves to create a new council at NATO to 'identify and pursue opportunities for joint action': Boese above n 79. It is not unreasonable to think that US-Russian relations are largely governed by Russia's desire to enter further into the NATO alliance.
99. See above nn 20-22 and accompanying text.
100. See Boese above n 79.

warned that a unilateral US withdrawal from that Treaty could lead to the demise of more than 30 other security and disarmament agreements.[101] While the full extent of this warning has yet to become apparent, US withdrawal from the ABM Treaty has already damaged or led to the abandonment of other arms control agreements.

## 1. The end of START II and III

START II[102] was the most recently negotiated agreement in the bilateral arms control arrangement between the US and Russia, which sought to progressively reduce the number of strategic offensive arms held by each party and limit the testing, development and deployment of nuclear weaponry. In general terms, START II halved the number of deployed strategic nuclear warheads that were permitted under START I[103] and prohibited land-based missiles equipped with multiple warheads (MIRVs).[104] MIRVs are lethal weapons and, because they are attractive targets,[105] pose a significant threat to strategic stability. They are potentially destabilising because in theory, in a crisis, either side would be tempted to launch a pre-emptive attack in order to destroy the enemy's MIRVed missiles.[106]

The abrogation of the ABM Treaty postponed the entry into force of START II indefinitely.[107] Prior to the US announcing its intention to withdraw from the ABM Treaty, the Russian Duma resolved that US withdrawal from or violation of the ABM Treaty constituted grounds for Russia to withdraw from START II;[108] in consequence, on 14 June 2002, Russia announced it would no longer be bound by the offensive arms reduction treaty.[109] Thus, abrogation of the ABM Treaty essentially precluded any possibility of START II coming into force, as Russia withdrew before the necessary US ratification.[110] Further, since START II became defunct, Russia effectively 'acquire[d] [the] right' to maintain and deploy MIRVs.[111]

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101. Boese above n 79.
102. START II above n 51, signed by Presidents G Bush & B Yeltsin (3 Jan 1993); ratified by the US Senate (26 Jan 1996).
103. By 31 December 2003 each side was permitted to deploy no more than 3 000–3 500 strategic nuclear warheads: ibid.
104. Ibid. MIRVs is the acronym for multiple independently-targetable re-entry vehicles.
105. A single ICBM equipped with multiple warheads (a 'MIRVed missile') could be used to destroy many enemy targets, but a single enemy warhead could destroy many warheads on the ground if they were mated to a single MIRVed missile: Boese & Scoblic above n 41.
106. Ibid, for definition of 'MIRVed missiles'.
107. START II above n 51 never came into force as the US did not fulfil a condition precedent to the treaty entering into force (the US had to ratify a protocol which made amendments to START II) (the Helsinki Protocol above n 49): Kimball et al above n 74.
108. Resolution by the Russian Duma (LH) Art 2, ratifying the Helsinki Protocol above n 49.
109. W Boese 'US Withdraws from ABM Treaty: Global Response Muted' (2002) 32(6) Arms Control Today <http://www.armscontrol.org/act/2002_07-08/abmjul_aug02.asp>.
110. See Boese above n 79.
111. President Putin, cited in Boese above n 79.

Since the abrogation of the ABM Treaty, and Russia's subsequent withdrawal from START II, negotiations regarding its successor, START III,[112] have been postponed indefinitely.[113]

## 2. Damage to the Nuclear Non-Proliferation Treaty and other non-proliferation agreements

Signed in 1968, the NPT[114] commits the state parties[115] to work towards achieving nuclear disarmament through non-proliferation. The 183 non-nuclear weapon states[116] which are party to the NPT are committed to never developing or otherwise acquiring nuclear weapons, and are required to submit to international safeguards intended to verify compliance with this commitment.[117] The five nuclear weapon state[118] parties (the US, the USSR (now Russia), the United Kingdom, France and China) pledged in Article VI to engage in disarmament negotiations aimed at the ultimate elimination of their nuclear arsenals.[119] Commitment to this pledge was affirmed at the 2000 Review Conference for the party states to the NPT.[120]

Abrogation of the ABM Treaty does not itself technically invalidate the NPT. However, US withdrawal from the ABM Treaty, coupled with unilateral development and deployment of a national missile defense, may prompt states such as Russia and China to expand, rather than contract, their nuclear arsenals.[121] This, in turn,

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112. In March 1997, Presidents Clinton and Yeltsin agreed to a framework for START III negotiations that included a reduction in deployed strategic warheads to 2 000-2 500. Negotiations on START III were supposed to begin after START II entered into force, which never happened: see Arms Control Assoc 'US-Soviet Union/Russia Nuclear Arms Control' Arms Control Today (2002) 32(5) <http://www.armscontrol.org/act/2002_06/factfilejune02.asp>
113. Kimball et al above n 74.
114. Above n 52.
115. Only India, Pakistan, Israel and now North Korea (see above n 80) are not parties to the NPT (above n 52) since Cuba acceded to the treaty in October 2002: Arms Control Assoc 'Cuba Will Accede to NPT' (2002) 32(8) Arms Control Today <http://www.armscontrol.org/act/2002_10briefsoct02.asp#cuba>.
116. NPT above n 52, Art IX stipulates that '[f]or the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967.' In this paper, the appellation 'non-nuclear weapon states' is intended to refer to all other states.
117. Ibid, Arts II, III.
118. See above n 116 for definition of a nuclear weapon state.
119. Ibid.
120. Art VI '2000 NPT Review Conference Final Document' above n 46.
121. Over the past two years, Russian, Chinese and even French officials have independently indicated that unilateral deployment of a national missile defense could have such a negative effect on their respective arsenals: see Graham above n 42, 58-59. The author suggests that the US government's apparent dislike for binding arms control agreements is likely to compound that possibility. Moreover, the cancellation of the second and third Strategic

could severely undermine the provisions of NPT and other non-proliferation regimes.[122] Furthermore, US withdrawal and the rationale cited in support of it[123] could serve as a precedent for NPT states to seek to withdraw,[124] asserting that their 'supreme (national) interests' have been compromised by the prospect of nuclear attack by terrorist groups.[125] The author suggests that without adherence to non-proliferation agreements, nuclear disarmament, a central object of international humanitarian law, is unlikely to be achieved.

## A NEW STAGE IN NUCLEAR ARMS CONTROL: THE STRATEGIC OFFENSIVE REDUCTIONS TREATY

Recognising the grave implications that US withdrawal from the ABM Treaty will have on global arms control, and impliedly acknowledging the inextricable link between offensive and defensive weapons[126] (such as missile defenses), many members of the international community called for a new strategic offensive arms control treaty between the US and Russia. For example, UN Secretary-General Kofi Annan called upon all countries to explore 'binding and irreversible initiatives' to forestall the possibility of new arms races.[127] Similarly, prior to President Bush's formal announcement of intention to withdraw, the German Foreign Minister Joschka Fisher warned that should the US no longer recognise the ABM Treaty, 'it must be replaced only by better ... or more effective [treaties]'.[128]

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Arms Reduction Treaties is highly damaging to non-proliferation efforts, as is the Bush administration's defense policy which lends greater weight to the role of nuclear weapons: see text accompanying below n 155.

122. Eg Comprehensive Nuclear Test Ban Treaty, S Treaty Doc No 105-28 (24 Sep 1996): see ibid.
123. See text accompanying above n 80.
124. Withdrawal is contemplated under NPT above n 52, Art X; each party shall have the right to withdraw from the NPT on three months' notice, and, as under the ABM Treaty, must cite extraordinary events related to the subject matter of the NPT that have jeopardised its supreme interest. Since US withdrawal from the ABM Treaty, North Korea has withdrawn from the NPT, stating that the US was threatening its security by its hostile policy toward North Korea. The effect of North Korea's withdrawal on arms control remains to be seen.
125. NPT member non-nuclear weapon states might well conclude that they now require the capacity, through the threat or use of nuclear weapons, to retaliate and thereby deter states from giving support to terrorists capable of using weapons of mass destruction: see AF Perez 'The Adequacy pf International Law for Arms Control, Post-September 11' (2002) 96 American Soc of Int'l Law Proceedings 273, 274.
126. See above n 55.
127. See UN 'Secretary-General Regrets United States Decision to Withdraw from ABM Treaty' (Press Release SG/SM/8080, 14 Dec 2001) <http://www.un.org/News/Press/docs/2001/sgsm8080.doc.htm>. France urged 'binding international rules and instruments' to help guarantee strategic stability: see Boese above n 79.
128. J Fisher, quoted in M Thompson 'The Secretary of Missile Defense' *Time Magazine* (14 May 2001) <http://www.cnn.com/ALLPOLITICS/time/2001/05/14/missle.defense.html>.

On 24 May 2002, President Bush and President Putin signed the Strategic Offensive Reductions Treaty (SORT),[129] under which the US and Russia have agreed to reduce their current strategic arsenals to between 1 700 and 2 200 warheads each by 31 December 2012.[130] Whether the treaty will in fact have a positive effect on global arms control efforts has yet to become fully apparent. While President Bush has stated that the agreement 'liquidates the Cold War legacy of nuclear hostility'[131] between the US and Russia, President Putin was more reserved in his assessment.[132] Unfortunately, a preliminary analysis of the provisions of SORT reveals a less than promising prognosis for arms control, indicating a regression from the Strategic Arms Reductions Treaties and an enduring role for nuclear weapons.

## 1. The terms of SORT in context

SORT represents progress insofar as it cuts weapons levels to below those prescribed by START II and III. In this regard, while the treaty deals with offensive, as opposed to defensive, weapons, it nonetheless goes some way towards filling the arms control vacuum left by the abrogation of the ABM Treaty and the abandonment of START II and III. Moreover, it has been suggested that SORT represents a departure from the Bush administration's unilateral approach to international agreements and arms control in particular,[133] albeit a seemingly reluctant and minor one.[134] However, there are significant drawbacks to SORT,[135] most of

129. Treaty Between USA and USSR on Strategic Offensive Reductions (signed 24 May 2002). The US has ratified the agreement and, at the time of writing, the bill on ratification was before the Russian Duma.

130. The treaty had its genesis in remarks made by President Bush on 13 November 2001 that the US would unilaterally reduce its 'operationally deployed' strategic nuclear weapons. President Putin stated that Russia would 'try to respond in kind': P Bleek 'US, Russia Sign Treaty Cutting Deployed Nuclear Forces' (2002) 32(5) Arms Control Today <http://www.armscontrol.org/act/2002_06/sortjune02.asp>; P Bleek 'Bush, Putin Pledge Nuclear Cuts: Implementation Unclear' (2001) 31(10) <http://www.armscontrol.org/act/2001_12/stratreddec01.asp>.

131. White House 'President Bush, Russian President Putin Sign Nuclear Arms Treaty' (Press Release, 24 May 2002) <http://www.whitehouse.gov/news/releases/2002/05/20020524-10.html>; see also SD Murphy 'Signing of Treaty on Strategic Offensive Reductions' (2002) 96 American J of Int'l Law 734, 734-735.

132. President Putin described the agreement as 'a serious move ahead', but noted that the two sides have agreed to continue their work toward resolving remaining differences: Bleek 'US, Russia Sign Treaty' above n 130.

133. President Bush was initially reluctant to enter into a formal and binding agreement to reduce strategic nuclear weapons, but Moscow insisted on such a pact: see Bleek ibid.

134. Bleek ibid; J Holum 'Assessing the New US-Russian Pact' (2002) 32(5) Arms Control Today <http://www.armscontrol.org/act/2002_06/holumjune02.asp>. Holum notes that the treaty does not point to a major reversal of the Bush administration's unilateral approach, given the high degree of self-regulation allowed by SORT: see above n 129.

135. The Treaty has been criticised as it 'repudiates key arms control principles and achievements, eschewing predictability and compounding the proliferation dangers from Russia's unsecured nuclear weapons complex': Boese & Scoblic above n 41.

which arise by virtue of the pact's deliberately vague and non-specific provisions,[136] and it has been said that the new treaty sets aside some arms control gains in START II.[137]

First, the treaty does not specify which warheads count towards the 2 200 warhead limit, and the US and Russia are at odds on the matter. While both parties have agreed that the limit refers to deployed, as opposed to stored or reserve, warheads,[138] they disagree on the meaning of 'deployed'. Under the Bush administration's counting rules,[139] the US can deploy delivery vehicles[140] that can carry multiple warheads, but only those warheads actually attached to the delivery vehicle at any given time will count towards the treaty's limit as 'deployed' warheads.[141] This view represents a regression from arms control gains in START II which would have eliminated all remaining land-based missiles with multiple warheads.[142] Russia, on the other hand, argues that warheads should be counted according to the maximum number any deployed delivery vehicle could carry,[143] provisions similar to START I.[144] However, rather than imposing limits on the types of ICBMs that may be deployed,[145] the treaty does not address the counting issue, effectively allowing the US to pursue its more liberal interpretation.[146]

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136. With the US determined to maintain flexibility, the treaty, which is less than 500 words in length, fails to specify many terms which were specified in the START agreements. While SORT contemplates that the parties shall hold meetings at least twice a year at a Bilateral Implementation Commission for the purposes of implementing the treaty (SORT above n 129, Art III), there is no schedule or any requirement that the parties come to an agreement on any particular issues.
137. Holum above n 134.
138. See Boese & Scoblic above n 41.
139. According to the Bush administration, 'operationally deployed warheads' also means those warheads assigned to ICBMs, bombers and submarines that are in active service, but not to warheads associated with delivery vehicles that are being overhauled or undergoing repairs.
140. According to the US Department of State, '"delivery vehicle" [refers to] a ballistic or cruise missile or bomber that carries one or more warheads through its flight to target': US Dept of State International Information Programs <http://usinfo.state.gov/topical/pol/arms/stories/pt11.htm>. This definition includes ICBMs and deployed submarine-launched ballistic missiles (SLBMs), as well as air-, ground- or sea-launched cruise missiles and heavy bombers.
141. See Boese & Scoblic above n 41. The authors note that a 10-warhead ICBM with only one warhead actually on it would count as only one warhead, even if nine warheads stored nearby could be loaded onto the missile relatively quickly.
142. See above n 104 and accompanying text.
143. See Boese & Scoblic above n 41. By this reasoning, a deployed missile that could carry 10 warheads would count as 10 warheads regardless of how many warheads were actually on it.
144. See START I above n 51, Art III, para 4 and the Memorandum of Understanding referred to in Art III.
145. See Murphy above n 131, 735; Holum above n 134.
146. According to Boese & Scoblic above n 41, while the Russian Foreign Ministry has indicated its disagreement with the US view and its expectation that the matter will be discussed further, the US apparently considers the matter closed.

Secondly, while requiring each party to 'reduce and limit strategic nuclear warheads' to between 1 700 and 2 200, SORT fails to require either party to destroy those weapons arsenals removed from operational status. The treaty thus falls short of the prior undertaking by the US and Russia to eliminate their nuclear arsenals[147] and to undertake irreversible initiatives towards nuclear disarmament.[148] This represents a setback from the provisions of earlier US-Russian agreements: although START I and II did not call for warhead destruction, they did require the verifiable destruction of most delivery systems removed from service,[149] and it was hoped that START III would include 'measures relating ... to the destruction of strategic nuclear warheads ... to promote the irreversibility of deep reductions including prevention of a rapid increase in the number of warheads'.[150] The failure of SORT to provide for destruction or even dismantling of nuclear weapons indicates that the Bush administration sees a larger and more durable role for nuclear weapons in international affairs,[151] a position underscored by its missile defense plans.

Thirdly, the treaty is weakened by a lack of verification or transparency procedures. Such measures are an important element of any arms control regime enabling the parties to conduct weapons inspections, and thus ensure compliance by the other party. They are also crucial to international security as they allow one party to assess the other's nuclear arsenal, thus reducing uncertainty and helping to prevent suspicion and misperception.[152] However, in negotiating SORT, the traditional approach to nuclear arms control verification was considered, at least by the US, 'neither required nor relevant'.[153] Rather, it appears that transparency will depend primarily on parties providing information voluntarily, much of which information will not be verifiable.[154]

The START I provisions relating to verification and transparency will continue to apply until that treaty's expiration in 2009.[155] Unfortunately, however, there is no

147. On 22 May 2002, the US and Russia, among other nuclear weapon states, undertook at a Review Conference of Party States to the NPT (above n 52) to 'accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament': see '2000 NPT Review Conference Final Document' above n 46, Art VI, para 15(6).
148. See ibid, Article VI, para 15(5).
149. See Bleek 'US, Russia Sign Treaty' above n 130.
150. These aspirations were agreed between presidents Clinton and Yeltsin in 1997: see Bleek (2002) above n 130.
151. Holum above n 134.
152. N Sokov 'No SORT of Verification' (2002) 103 Trust & Verify 1, 2 <http://www.vertic.org/tnv/julaug02/july_aug02.pdf>.
153. C Powell, US Secretary of State, quoted in Sokov ibid, 2.
154. Ibid.
155. SORT above n 129, Art II states that the parties agree that the START Treaty remains in force in accordance with its terms. START I requires for the verification of weapons destruction via on-site inspections and regular exchanges of information as well as national

indication that the START verification regime will be used to confirm that reductions under SORT are taking place.[156] Furthermore, it is unclear what new arrangements, if any, the parties will make at the expiration of START I.[157] In light of the treaty's lack of substantive verification and transparency provisions, the author suggests that the value of SORT in terms of nuclear weapons reductions and strategic stability will depend on the outcome of discussions on the treaty's Bilateral Implementation Commission, which is to meet biannually to deal with issues of compliance.[158]

Finally, the treaty is weakened by the fact that, unlike START I and II, it sets no schedule for weapons reductions.[159] Indeed, the agreement's implementation and expiration deadlines are the same (31 December 2012), which has led some to conclude that it is technically impossible to violate the pact.[160] In addition, the treaty provides no means of enforcing compliance or punishing non-compliance, making SORT considerably weaker than the Strategic Arms Reduction Treaties.

## 2. The value of SORT for nuclear arms control

The Strategic Offensive Reductions Treaty is, on the whole, unsatisfactory; it diminishes the value of past US-Russian arms control agreements[161] and reflects the US government's stance that nuclear weapons have an enduring role in US defense policy and global security.[162] Throughout treaty negotiations, the US appeared intent on maintaining a large strategic arsenal and flexible force structure, factors necessary to 'dissuade the emergence of potential [nuclear states] or would-be [nuclear] competitors, by underscoring the futility of trying to sprint toward parity with [the US]'.[163] As a result, the treaty may be said to offer 'a great deal of

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technical means such as satellites: see START I above n 51, Arts IX, XI. In a joint declaration on 24 May 2002, Presidents Bush and Putin stated that START I will 'provide the foundation for providing confidence, transparency, and predictability in further strategic offensive reductions'; however they fail to specify how the terms of START I will apply to the new reductions under SORT: see Boese & Scoblic above n 41.

156. See Boese & Scoblic above n 41.
157. Bleek 'US, Russia Sign Treaty' above n 130.
158. Above n 136.
159. Murphy above n 131, 735. See also M Rivers 'Fact Sheet: Comparison of US-Russia Nuclear Reductions Treaties' in *British American Security Information Council Notes* (8 Jul 2002) <http://www.basicint.org/pubs/Notes/2002factsheet.htm>.
160. Bleek'US, Russia Sign Treaty' above n 130. In any case, the parties need only be in compliance for one day.
161. By failing to build on the foundation of its predecessor treaties, SORT above n 129, repudiates arms control gains secured over several decades: see Rivers above n 159.
162. Above n 151.
163. DH Rumsfeld 'Testimony Before the Senate Armed Services Committee on Ratification of the Moscow Treaty' (25 Jul 2002) 7 <http://www.defenselink.mil/dodgc/lrs/docs/test02-

flexibility but little ability to predict the other country's force structure',[164] a central purpose of arms control.

The flimsy nature of SORT further diminishes its value as an arms control agreement. The fact that the treaty allows either party to withdraw on just three months' notice,[165] with no requirement that the withdrawing party cite 'extraordinary events [that] have jeopardised its supreme interest',[166] while ensuring almost complete flexibility for the parties, weakens the treaty. The author suggests that the flimsy nature of SORT will discourage other nuclear weapon states from aspiring towards disarmament and entering into binding arms control agreements, a possibility compounded by President Bush's apparent dislike for formal arms control, evidenced by his withdrawal from the ABM Treaty.

From a practical perspective, the provisions of SORT fail to safeguard against 'horizontal' weapons proliferation.[167] By permitting Russia to store warheads removed from service, rather than requiring it to dismantle or destroy them, the treaty will 'add weapons to Russia's vast complex of (poorly guarded) nuclear-warhead and weapons-usable-material storage sites'.[168] These sites are already considered to be a potential source of nuclear weapons for terrorists or rogue states, and the increased pressure on the storage system is likely to add to the dangers of horizontal proliferation, damaging chances of achieving global nuclear disarmament, a central theme of international humanitarian law.[169] Thus, while the SORT may appear to be a positive step towards nuclear arms reduction, its dangers are manifold, and its success (in respect of arms control) contingent upon the degree to which the parties are willing to agree to further terms which would strengthen the agreement.

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07-25Rumsfeld.doc>. See also W Boese 'Senate Reviews US-Russian Nuclear Reductions Treaty' (2002) 32(7) Arms Control Today <http://www.armscontrol.org/act/2002_09/moscowtreaty_sept02.asp>. This view is echoed in Committee on Armed Services (HR) *Bob Stump Report 4546* (3 May 2002) 12. President Bush was of the view that, given that it is impossible to predict the future, a strong nuclear force should be maintained. He said: '[w]ho knows what will happen 10 years from now? Who knows what future presidents will say and how they [will] react?' Bleek 'US, Russia Sign Treaty' above n 130.

164. Boese & Scoblic above n 41. See also text accompanying n 41 above with respect to the central tenets of arms control.
165. SORT above n 129, Art IV(3).
166. In this respect, the treaty is flimsier than both START, above n 51, and the ABM Treaty above n 4, which required six months' notice and events which jeopardised the withdrawing party's supreme interests.
167. Horizontal weapons proliferation refers to the spread of nuclear weapons or fissile material to other states and (the author submits) to non-state actors such as terrorist groups, not previously possessing them.
168. Boese & Scoblic above n 41. The authors note that the storage sites lack modern security, have poor accounting methods, and are protected by underpaid guards.
169. Above n 38.

## NATIONAL MISSILE DEFENSE, ARMS CONTROL AND INTERNATIONAL HUMANITARIAN LAW - POSSIBLE PROGNOSES

Since the end of the Cold War there has been, particularly amongst Western nations, an ideological movement towards complete nuclear disarmament,[170] a stance manifest in the fabric of international humanitarian law. The current climate of terror and the US-led war on terrorism present an opportunity for the US to further this evolution, by fostering valuable alliances with states such as Russia and China, neither of which is a traditional ally of the US and both of which are vehement opponents of a national missile defense system. However, deployment of a national missile defense 'would have extremely dangerous consequences for the entire arms control process',[171] as the world watches the Bush administration move away from a system of mutual deterrence and slowly accrued disarmament goodwill and towards one of isolationism and global nuclear dominance.[172] In fact, an all-out nuclear arms race among the US, Russia, China and other nations could conceivably result from unilateral deployment, as each country seeks to overcome the others' nuclear arsenals and maintain deterrence. An increase in the weapons arsenals of these major nuclear states would disturb stability around the world, particularly in volatile states such as North Korea, India and Pakistan. The author suggests that the more technologically advanced and comprehensive the planned system becomes, the greater the danger of antagonising such states and even terrorist groups. This in turn increases the likelihood of weapon use and of irreparable harm to people, property and the environment.

This paper has argued that the US government's estimation of the threat of nuclear attack from a 'rogue' state, or of an accidental launch, is exaggerated, warranting neither deployment of a national missile defense nor withdrawal from the ABM Treaty. Moreover, deployment of a national anti-missile system is neither an effective nor a desirable safeguard against terrorist threats to the US,[173] and may

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170. This ideological shift away is reflected in the Advisory Opinion 'good faith' provision: see above n 24.

171. Comment made by then President Yeltsin in a letter to President Clinton: see T Graham Jr 'Strengthening Arms Control' (2000) 23 Wash Quarterly 183, 193. China and France have also indicated deployment would cause them to expand their strategic nuclear arsenals: see J Dean 'Going Up the Hill and Down Again: A Crisis for Nuclear Disarmament' (Union of Concerned Scientists: Cambridge, 2000) <http://www.ucsusa.org/global_security/archive/page.cfm?pageID=597>.

172. See EJ Carroll Jr 'We Are Taking a Detour From Deterrence' *Los Angeles Times* (14 Jul 2000) <http://www.cdi.org/issues/proliferation/carroll71400.html>.

173. As one critic notes, 'Even the CIA's latest threat analysis says that [the] most likely threats are not incoming missiles but rather such portable weapons of mass destruction as truck and suitcase bombs': Thompson above n 128.

prove more destabilising to global peace, security and nuclear disarmament aspirations than it is worth.

From an international law perspective, it could plausibly be argued that unilateral deployment of a national missile defense, combined with US offensive nuclear arsenals and aggressive foreign policy, amounts to a threat prohibited under the UN Charter. Possession of nuclear weapons might, in certain circumstances, amount to an unlawful threat.[174] The fact that deployment of a national missile defense will increase the capacity of the US nuclear arsenal relative to that of other nuclear states might justify an inference of preparedness to use that arsenal,[175] particularly if individual states perceive that they are targets of the anti-missile system.[176] Enhanced nuclear capability, coupled with a perceived intention to exert political and military pressure, could potentially amount to an unlawful threat to use nuclear force. Notwithstanding this, it is likely that the Bush administration will seek to continue plans to develop and deploy a national missile defense.

The current Bush administration's inclination towards unilateralism, evidenced inter alia by its assertion that the doctrine of mutual deterrence no longer prevails[177] and ensuing withdrawal from the ABM Treaty,[178] is not promising for nuclear arms control and consequently is a step away from the objectives of international humanitarian law. While the signing of SORT represents a positive departure from US nuclear unilateralism towards strategic offensive arms reductions, the value of the agreement to arms control efforts has yet to become apparent. The treaty, with

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174. Above n 35 and accompanying text.

175. Above n 21-22 and accompanying text. Because a national missile defense potentially enables the US to defend against hundreds of incoming missiles, the US would have little reason to fear effective retaliation. The concern is that, as the US would cease to be vulnerable to retaliatory strikes, there would be less to deter it from striking first.

176. This is a real possibility for nations whose nuclear forces could be neutralised by the proposed national missile defense operating alone, such as China, or in conjunction with a surprise US offensive strike such as Russia: see B Blair 'The Impact of NMD on Russia and Nuclear Security' (2000) CDI Defense Monitor 29(8) <http://www.cdi.org/dm/2000/issue8/nmdrussia.html>; also Congressional Record 'Remarks by JR Biden Jr on China and National Missile Defense' (106th Congress, 14 Jul 2000) <http://www.clw.org/pub/clw/coalition/biden071400.htm>.

177. In its 2002 Nuclear Posture Review, the Bush administration stated that the Cold War strategy is no longer appropriate: see A Woolf 'The Nuclear Posture Review: Overview and Emerging Issues' in CRS *Report for Congress* (31 Jan 2002) 2 <http://fpc.state.gov/documents/organization/8039.pdf>. See generally W Curtis 'National Missile Defense: A Retreat from Dr. Strangelove or How I Learnt to Stop Worrying and Love MAD' (2002) 36 New Eng L Rev 795. However, while the Bush administration argues that the doctrine of mutual deterrence no longer prevails, the provisions of SORT belie this claim, with the US nuclear posture still based on deterring and defeating Russia's nuclear and conventional military forces: see See D Kimball 'A Beginning, Not an End' Arms Control Today (2002) 32(5) <http://www.armscontrol.org/act/2002_06/focjune02.asp>.

178. For examples of the US government's trend towards unilateralism in recent years, see above n 88.

its vague and open-ended provisions, prioritises immediate military self-interest above nuclear arms control, a formula which effectively negates any chance of global nuclear disarmament. For there to be any chance of nuclear disarmament, it is essential that the US and Russia agree to strong treaty terms which prioritise disarmament efforts above short-term self-interest. If this were achieved, SORT could provide a valuable basis for further arms control treaties, and an assurance to nations worldwide that the two states with the most prolific nuclear arsenals were committed to disarmament. Moreover, it could provide a disincentive to nuclear proliferation worldwide (the first step towards nuclear disarmament) as the US continues its plans to develop and deploy a national missile defense.

Assuming a national missile defense were indeed deployed without doing irreparable harm to arms control and the strategic climate, perhaps the safest way to move toward nuclear disarmament would be for the US to share its limited national missile defense system with Russia and other allies[179] and then pursue step-by-step reciprocal disarmament, replacing deterrence with defense.[180] In this way, a national missile defense would cease to be perceived as a threat to the interests of any particular nation; it would thus be less inflammatory and within the parameters of international law as defined by the UN Charter. Conceivably a national missile defense could operate alongside arms control agreements to negate the possibility of nuclear war by stabilising strategic relations and achieving nuclear disarmament, a primary objective of international humanitarian law.

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179. While the Pentagon and US arms companies have made concerted efforts to get foreign governments and businesses more involved in US missile defense programmes, they have had little success. Foreign reaction to the efforts has been mixed, but few countries remain vehemently opposed to a national missile defense: see Arms Control Association 'US Steps up Missile Defense Marketing Abroad' (2002) 32(7) Arms Control Today 5 <http://www.armscontrol.org/act/2002_09/briefssept02.asp#defense>. Britain seems fairly amenable to participating in a national missile defense system: V Samson 'Britain Discusses Missile Defense Participation' in CDI *Missile Defense Updates: Europe* (12 Dec 2002) <http://www.cdi.org/missile-defense/europe-pr.cfm>. Japan has softened its opposition to cooperating with the US on missile defense in response to recent actions taken by North Korea: V Samson 'Japan Reconsidering Missile Defense' in CDI *Missile Defense Updates: Asia* (11 Nov 2002) <http://www.cdi.org/missile-defense/asia-pr.cfm>.

180. Instead of relying on the doctrine of mutual deterence to preserve strategic stability, a state would focus on ensuring that its territory is effectively defended in the event of nuclear attack. In theory, this would render nuclear weapons redundant.