

## CHAPTER 4

### MISSILE DEFENSE COOPERATION AND THE MISSILE TECHNOLOGY CONTROL REGIME

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This presentation has three key conclusions: 1) There need not be friction between the intersection of the Missile Technology Control Regime (MTCR) and international missile defense cooperation; 2) To the extent such friction exists, it is being generated by some supporters of the MTCR, though there are many people—myself included—who regard themselves both as supporters of missile defense *and* the MTCR; and, 3) To the extent a conflict between missile defense and the MTCR is generated—needlessly, in my view—it will be the MTCR that suffers.

Along with many others, I spent much time during the Clinton presidency working in support of missile defense. In 1997 I was given an opportunity to run a new subcommittee on the Senate Governmental Affairs Committee, whose principal focus was on what we thought of as the “strategic basket” of issues: missile defense, arms control, proliferation, export controls, and strategic deterrence. Under Senator Thad Cochran’s chairmanship, we looked into each of these areas, shifting our attention occasionally among the various elements of the “strategic basket” while remaining faithful to the overall outlines of the basket.

Senator Cochran quite consciously defined the elements of this “strategic basket,” after reflection on why missile defense was not making greater progress. Of course, the Clinton administration’s absolute hostility to missile defense was a significant element of the lack of progress, but the absence of a coherent strategy by missile defense supporters allowed the administration to inhibit progress unfettered by significant opposition.

So we began in 1997 with a string of hearings on missile proliferation which, I should note, would not have been possible without the work of Dennis Ward and a Legis Fellow whose services

I was sharing with the office of Senator Jon Kyl, John Rood, whose findings were captured in *The Proliferation Primer*, a 1998 majority report of Senator Cochran's subcommittee. We focused so much on proliferation because missile defense proponents were in the habit of giving lengthy speeches on the various missile defense architectures they found attractive without explaining *why* they were convinced of the need for missile defense. By failing to make clear the fundamental need for missile defense, we were failing to attract sufficient support.

In looking back at the *Primer*, it strikes me that so little has changed in the nearly 8 years since it was published. Proliferation from Russia and China continues. What was then emerging as a serious threat, was noted as such in the *Primer*, and has now fully emerged—the phenomenon of rogue to rogue proliferation—not only continues, but shows little signs of abating.

And, of course, all of this has occurred under the regime of the MTCR. In fact, more countries have ballistic missile technology now than when the regime began. We could have an endless debate about whether in the absence of the MTCR still more would have had such technology, or whether those that possess missile technology would have had even more advanced technology than they currently possess, but that debate would miss the point: However well-intentioned and well-executed, the MTCR has not, and will not, stop the spread of missile technology. At best, it can, on occasion, slow it down; at worst, it can lull us into a false sense of security—that is, a mindset of “as it is written, so it shall be,” with little regard to the facts.

Consider what the Director of Central Intelligence's (DCI) July-December 1996 report, “The Acquisition of Technology Relating to Weapons of Mass Destruction (WMD) and Advanced Conventional Munitions”, said then:

- Nonproliferation . . . regimes can be deceived by determined proliferators.
- During the last half of 1996, China was the most significant supplier of WMD-related goods and technology to foreign countries. The Chinese provided a tremendous variety of assistance to both Iran's and Pakistan's ballistic missile programs.

- Russia supplied a variety of ballistic missile-related goods to foreign countries during the reporting period, especially to Iran.

Now consider some of the missile-related points in the DCI's latest report covering the period January 1-June 30, 2002:

- Chinese entities continued to provide Pakistan with missile-related technical and material assistance during the reporting period . . . . In addition, firms in China have provided dual-use missile-related items, raw materials, and/or assistance to several other countries of proliferation concern – such as Iran, Libya, and to a lesser extent, North Korea.
- Russian entities during the reporting period continued to supply a variety of ballistic missile-related goods and technical know-how to countries such as Iran, India, and China. Iran's earlier success in gaining technology and materials from Russian entities has helped to accelerate Iranian development of the *Shaab-3* medium range ballistic missile (MRBM), and continuing Russian entity assistance most likely supports Iranian efforts to develop new missiles and increase Tehran's self-sufficiency in missile production.
- Throughout the first half of 2002, North Korea continued to export significant ballistic missile-related equipment, components, materials, and technical expertise to the Middle East, South Asia, and North Africa. P'yongyang attaches high priority to the development and sale of ballistic missiles, equipment, and related technology. Exports of ballistic missiles and related technology are one of the North's major sources of hard currency, which fuel continued missile development and production.

How much has actually changed? It is important to understand just what the threat is and what it is not. Countries are not *the* threat; they are simply the threat's manifestation. *The* threat, in ballistic missile terms, is *proliferation*. So while on occasion we will eliminate a ballistic missile threat from one country or another, as has recently been done so successfully in Iraq, over time we should expect other

countries to emerge as ballistic missile successors. This will happen despite the presence and best efforts of the MTCR. And it stands to reason that this will occur as hostile states seek methods by which to threaten – coerce, deter, call it what you will – the United States, its deployed forces, allies, and friends.

And thus the need for missile defense – again, despite the best efforts of the MTCR. More importantly, the need for international cooperation on missile defense, particularly in light of the Bush administration’s entirely new missile defense policy to protect not only the United States and deployed forces, but also allies and friends.

In fact, international cooperation already has begun. The United States is – and has been – working with Israel on the *Arrow* interceptor for quite some time, and enhanced co-production of the interceptor is beginning in the United States. We are working with Japan on the *Standard Missile-3* (SM-3), and Japan has noted publicly its interest in working on a larger booster for the SM-3. We are working with Italy and Germany on the Medium Extended Air Defense System (MEADS) program, and with the United Kingdom on the upgrade to the early warning radar at Fylingdales. It appears that a similar upgrade, in cooperation with Denmark, will also soon begin on the Thule early warning radar. The bilateral missile defense relationship also appears to be proceeding quickly with Poland, as does the multilateral missile defense work with the North Atlantic Treaty Organization (NATO), which, in a recent major move forward, added the protection of population centers to its considerations for missile defense. So there is cooperation with six countries – Israel, England, Japan, Germany, Italy, and Denmark; expanding cooperation with NATO; and imminent cooperation with Poland, which is rapidly emerging as one of America’s closest allies.

It is only with Israel, on *Arrow* cooperation, that there have been MTCR issues. I will take a moment now to comment on the most recent *Arrow* issue.

Israel is going to test the *Arrow* interceptor twice in the United States in the near future. As conducting a test in the United States is a difficult and expensive endeavor, Israel will ship four *Arrow* interceptors here to ensure the availability of two spares, should there be any problems with the test articles.

The Israelis were informed, however, that in the event their spares were not used, they would not be able to return them to Israel because the United States would, in sending them back, be transferring MTCR “category 1” items. Transferring category 1 items, while permissible under the MTCR, is considered anathema by most of the regime’s supporters.

Now, consider for a moment a few relevant facts: Israel already manufactures the *Arrow* interceptor. Israel has already deployed the *Arrow* interceptor. The interceptors the United States would be sending back to Israel were already in the possession of the Israelis themselves. In sum, shipping the two spare *Arrows* back to Israel would not in any way, shape, or form enhance the missile technology of Israel. But, unfortunately, this most recent case has demonstrated that oftentimes there exists little room for the intrusion of common sense upon the MTCR.

After examining a variety of options—to include even storing the spare *Arrow* interceptors at sea so they are not technically in the United States before shipment back to Israel—the “solution” found is for the Israelis to be in “possession” (whatever that means) of the spare *Arrows* at all times when they are in the United States. So when these spares are shipped back to Israel, it will be Israel shipping to Israel, not the United States shipping to Israel.

This example is considered to be a “success” by many MTCR supporters. Though there are others, myself included, who find this to be the ultimate in form over substance. Indeed, I suspect this odd example should be more than sufficient for other MTCR members seeking to use U.S. actions as justification for their proliferation activities, otherwise known as “exports.”

Surely supporters of the MTCR must acknowledge that this makes no sense. Would it have not been better, not to mention honest, to state simply that Israel already possesses the *Arrow* interceptor and the spares being shipped back do nothing to enhance Israel’s missile capabilities? That shipping another nation’s property hardly can be construed reasonably as violating the MTCR? Not to mention the fact that the United States has been supporting Israel, financially and technologically, in building *Arrow*? Or even that the United States doesn’t consider missile defense to be governed by the MTCR?

Protecting the United States could, perhaps, be done only from the territory of the United States. Anything is possible. But the truth of the matter is that anything beyond a rudimentary defense requires assets placed outside of the United States. Placing assets outside of the United States, though, will not necessarily cause conflict with the MTCR. Sensors in space or radars in other countries will not conflict with the MTCR, nor will battle management or command and control assets. But what about interceptors?

I will briefly survey examples of potential international missile defense cooperation, some of which might be managed successfully under the MTCR.

1. *Interceptor cooperation falling below MTCR thresholds.* It is hard to imagine that the administration, having so recently divested itself of the Anti-ballistic Missile (ABM) Treaty—which prohibited substantive international cooperation—would now allow the MTCR to substitute for portions (i.e., Articles IX and X) of that defunct treaty. Or that the Bush administration would, in limiting interceptor cooperation to that permitted by the MTCR, essentially impose upon itself the kind of “demarcation” between permissible and impermissible cooperation that was so bitterly opposed in years past during the “theater/strategic demarcation” debates under the ABM Treaty.

2. *Basing U.S. interceptors on foreign soil but under the control of the United States.* Some of my friends with a different view than mine insist that providing missile defense for host nations in exchange for using their territory to base our interceptors should be more than sufficient for the host nation. In some instances this may be a reasonable trade. In many instances, the basing of interceptors will protect not only foreign soil, but also deployed U.S. forces, while at the same time enhancing protection for the United States itself.

3. *Receiving technological assistance from our allies and friends.* There is no denying that the United States has done a tremendous amount of research and development on missile defense, far more than any other country. But to therefore assume that no other nation could contribute its technological expertise usefully would be arrogant in the extreme. In my current position, I spend a substantial amount of time with defense companies in other countries, and I can assure you that in every one of these companies, I work with people every bit

as talented as the best in American industry. As hardware follows know-how, without question the MTCR will be an impediment here.

4. *Transferring interceptors to others.* Without question, the greatest potential for missile defense/MTCR conflict comes from this option. Some seem unwilling to accept the fact that many of our allies view themselves as sovereign nations with a responsibility for their own defense. As sovereigns, they may well object to continued U.S. control of interceptors on their soil rather than transferring the interceptors to them for their use – as we already do with so many other weapons systems.

While currently the MTCR is inhibiting *Arrow* cooperation in particular, the fact remains that *Arrow* is further along in terms of international cooperation than most of our other programs. The time for transferring other hardware will soon be upon us, along with the choices that invariably will be faced if the MTCR is left as it is now.

There are two broad options to choose from, each obviously having many permutations. We can:

1. *Declare as a matter of policy that missile defense cooperation will be excluded from the purview of the MTCR.* The United States has, after all, managed to export the D5 missile and cruise missiles despite the MTCR. Has this brought the regime to its knees? Of course it has not. But the regime has managed to continue, even though the United States is transferring an inter-continental ballistic missile (ICBM) capable of being nuclear-armed to the United Kingdom. Why, then, should transferring missile defense to the United Kingdom, or, for that matter, any other ally, pose a problem? The simple fact is that the object of the MTCR is to reduce as much as possible the flow of missile technology *to those we don't want to have such technology.* The purpose of missile defense is, among other things, for protection from the failures of the MTCR. These purposes are complementary and should not be set in opposition.

2. *Restrict cooperation to that permitted by the MTCR.* In so doing, we would occupy vast amounts of the bureaucracy's time and effort in what would be a "Groundhog Day" of missile defense fights. On each and every occasion that some form of cooperation was proposed, proponents would line up their arguments and opponents would be energized by having another opportunity to draw the line

on the primacy of the MTCR over missile defense cooperation. In some cases, cooperation would be denied; in others, as has already been the case, we would see cooperation reduced. Of course, as cited already on *Arrow*, in still other cases, some cute interpretation of the MTCR might be found such that we remain “compliant” with the regime. But I wonder of what value such a regime would be if its ideas are to be made as infinitely elastic as the government’s lexicon in George Orwell’s *1984*?

Colleagues of mine with opposing views frequently insist that a unilateral policy decision on the part of the United States to interpret the MTCR as permitting international missile defense cooperation will only throw open the door for any country – and these colleagues always stress “*any*” – to act however it pleases in exporting missile technology. Perhaps that is true. But I do not think so.

The menace of WMD delivered by ballistic missiles is well known today. It is more than a theory; we have seen ballistic missiles used just as we have witnessed the actions of several nations in pursuing WMD to seat atop their missiles. Countries today know – without needing the MTCR to inform them – of the danger of exporting missile technology and know-how without regard for the consequences.

Even if there were no MTCR, the United States – and like-minded nations – would be perfectly capable of doing their utmost to stem missile proliferation. So it is entirely possible that leaders of some nations will suggest that their missile proliferation is no different from that practiced by the United States, albeit ours under the “guise” of “missile defense cooperation.” The United States should not accept this type of statement as having even a shred of legitimacy.

Nations may well seek to justify their missile proliferation in this manner. But in so doing, they will be offering an excuse for actions they otherwise would have taken anyway. At most, the United States will be providing a new excuse for old and illegitimate actions on the part of proliferators.