

**LEGAL MEMORANDUM**

TO: All Commissioners, Division Heads, Team Leaders

FROM: Ralph Kaiser, Counsel

SUBJECT: Implications of the Realignment of Grand Forks AFB, ND on the 1972 ABM Treaty

DATE: 1 May 1995

*Madeline -  
- let's discuss. Deal  
you talk to Bob  
Deal?  
Attach letter to  
Dorothy from  
ASD.  
- This memo should  
have your name  
it too. This is  
a big  
issue.  
JK*

**Department of Defense (DoD) Recommendation**

Realign Grand Forks AFB. The 321st Missile Group will inactivate, unless prior to December 1996, the Secretary of Defense determines that the need to retain ballistic missile defense (BMD) options effectively precludes this action. If the Secretary of Defense makes such a determination, Minot AFB, North Dakota, will be realigned and the 91st Missile Group will inactivate.

If Grand Forks AFB is realigned, the 321st Missile Group will inactivate. Minuteman III missiles will relocate to Malmstrom AFB, Montana, be maintained at depot facilities, or be retired. A small number of silo launchers at Grand Forks may be retained if required. The 319th Air Refueling Wing will remain in place. All activities and facilities at the base associated with the 319th Air Refueling Wing, including family housing, the hospital, commissary, and base exchange will remain open.

If Minot AFB is realigned, the 91st Missile Group will inactivate. Minuteman III missiles will relocate to Malmstrom AFB, Montana, be maintained at depot facilities, or be retired. The 5th Bomb Wing will remain in place. All activities and facilities at the base associated with the 5th Bomb Wing, including family housing, the hospital, commissary, and base exchange will remain open.

Department of Defense Base Closure and Realignment Report, March 1995, p. 5-122

**Background**

The Nuclear Posture Review, implemented by National Security Decision Directive #30 and signed by the President, limits the number of ground-based inter-continental ballistic missiles (ICBMs) in the U.S. arsenal to 450 or 500, calling for the elimination of either 150 or 200 Minuteman III ICBMs. A missile base, such as those contemplated in DoD's Recommendation, contains either 150 or 200 ICBMs. Thus, the inactivation of a missile base, any missile base, is in line with the Nuclear Posture Review. There are two other missile sites in addition to Grand Forks (150 ICBMs) and Minot (150 ICBMs). They are the 341st Missile

*We recommend opt. Force Structure Plan, not NPR! Force Structure Plan cap 567  
glidepath point @ 201 450 or 500 is end pt.*

Wing at Malmstrom AFB, Montana (200 ICBMs), and the 90th Missile Wing at F.E. Warren AFB, Wyoming (150 ICBMs).

### **The Anti-Ballistic Missile (ABM) Treaty of 1972**

*The Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems* (ABM Treaty) was signed 26 May 1972 and entered into force, for unlimited duration, on 3 October 1972. The treaty permits each party to deploy one limited ABM system to protect its capital, and one system to protect an intercontinental ballistic missile (ICBM) launch area. The treaty states that this latter deployment area must contain "ICBM silo launchers" and be within 150 kilometers of the designated ICBM silo launchers. ABM Treaty, Art. III.b. Article XIV of the treaty calls for review of the treaty every five years by a Standing Consultative Commission. The next review is scheduled for 1997.

Accompanying the ABM Treaty is the *Agreed Statements, Common Understandings, and Unilateral Statements Regarding the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missiles* (Agreed Statements), also signed 26 May 1972, in which the parties state their understanding that the two ABM sites within each country must be separated by no less than 1,300 kilometers from center to center. Within the *Common Understandings* section of the Agreed Statements document the U.S. delegation "notes that its ABM system deployment area for defense of ICBM silo launchers, located west of the Mississippi River, will be centered in the Grand Forks ICBM silo launcher deployment area." Agreed Statements, Art. 2.A. (Note: The ABM system at Grand Forks has been inactive since 1976).

On 3 July 1974 the parties signed the *Protocol to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems* (ABM Protocol) further restricting the deployment of ABM systems. The ABM Protocol, entered into force on 24 May 1976, limits each party to one site only instead of the two sites originally contemplated by the ABM Treaty. ABM Protocol, Art. I. The effect of the protocol is to restrict the U.S. to maintain its ABM site to Grand Forks while the U.S.S.R. is bound by its selection of Moscow, its capital. However, each party is allowed a one-time election to reverse its decision, i.e., the U.S. has the right to dismantle or destroy its ABM site at Grand Forks (ICBM field) and deploy an ABM system at Washington D.C. (its capital), but nowhere else. ABM Protocol, Art. II.2 (emphasis added). Similarly, the U.S.S.R. may dismantle its site at Moscow (its capital) and deploy an ABM system in defense of an ICBM field. *Id.* To do so, each party must, prior to initiation of construction, give notification of its intent to relocate during a meeting of the five year Standing Consultative Commission (next scheduled for 1997). ABM Protocol, Art. II.1.

### **Legal Analysis of the DoD Recommendation**

The inactivation of the 321st Missile Group at Grand Forks AFB, ND can be done consistently with the ABM Treaty; however, the inactivation triggers certain treaty requirements.

First, the ABM site at Grand Forks must be dismantled/destroyed. ABM Protocol, Art. II.1. Second, if the U.S. decides to redeploy an ABM site, at an unknown cost, it may do so only in defense of Washington D.C. ABM Protocol, Art. I.2. Additionally, the U.S. may not redesignate the defense of an alternate ICBM field, such as at Minot AFB, ND, based on the clear language of Article 2.A. of the Agreed Statements which specifies Grand Forks by name. There is simply nothing contained in the source documents which allows the U.S. to redesignate another or alternate ICBM site. A one-time designation was made in the ABM Treaty and Agreed Statements and this designation was solidified by the ABM Protocol.

The DoD Recommendation includes the statement: "A small number of silo launchers at Grand Forks may be retained if required." This suggests an option of leaving a small number of ICBM launchers behind (when inactivating the 321st Missile Group), either with or without missiles, to be defended by the ABM site at Grand Forks in order to keep the ABM site intact and attempt to remain treaty compliant. While the phrase "ICBM silo launchers" is contained in Article II.b. of the ABM Treaty, the clear understanding of the signatories is to defend either a national capital, or a major ICBM missile site, i.e., one actually containing missiles. Indeed, the professional judgment of those involved with this issue, including Ambassador Edward L. Rowny (LTG USA, Ret.), the former Chief START Negotiator who spoke at the Grand Forks Regional Hearing and has since briefed members of the BRAC staff, is that the ABM Treaty, as ratified, was meant to defend an ICBM complex and not simply several ICBM launchers. A review of the Congressional Record of 3 August 1972 is consistent with Ambassador Rowny's opinion. See 118 Cong. Rec. 26647-26763, Aug. 3, 1972 at Attachment 1.

*Rowny on  
a compliance  
to Grand Forks.*

**Summary and Conclusion**

The inactivation of the 321st Missile Group at Grand Forks AFB, ND is not precluded by the ABM Treaty although certain required U.S. actions under the treaty must occur: The ABM site at Grand Forks must be destroyed, and the only alternate site for redeployment is Washington D.C. (the likelihood of which seems slim at best) as no other ICBM site may be substituted for Grand Forks. This process could begin, if it all, no earlier than late in calendar year 1997. These actions could significantly effect the U.S. national security posture as it relates to ballistic missile defense.

*not for Comm?*

Unilateral "amendment" or reinterpretation of the ABM Treaty, by redesignating an ICBM silo launcher site for ABM defense or leaving a few ICBM silo launchers behind at Grand Forks, is not contemplated by the ABM Treaty, and should be avoided. If done, it may affect further treaty negotiations, including the implementation of START II. This type of decision is clearly beyond the scope of the BRAC process and best left to the National Command Authority of the United States. (Note: Although an interagency opinion on this issue was promised at the 1 March 1995 hearing, as of the date of this memorandum, it has not been delivered).

*So the cardinal that we should not include a few silos at Grand Forks a redesign them administratively to Minot? Yes, but it's the Commis. decision*

- 
- Senator Byrd - "The ABM Treaty restrict the Soviet Union and the United States to two defensive networks each. One would shield a major offensive weapons site, and a second would be placed near each country's capital." (118 Cong. Rec. 26647 (Aug. 3, 1972));
  - Senator Jackson - "Both we and they are permitted two ABM sites, one at our respective national capitals and one located so as to defend strategic offensive weapons." (118 Cong. Rec. 26693 (Aug. 3, 1972));
  - Senator Buckley (one of two Senators to oppose the Senate resolution advising the ratification of the ABM Treaty) - "The immediate objectives of the treaty, of course, is to limit antiballistic missile systems to nominal levels, where each side agrees to defend its national capital and one strategic missile site . . . ." (118 Cong. Rec. 26703 (Aug. 3, 1972));
  - Senator Kennedy - "The only exceptions [to the prohibitions on deploying ABM systems] are made for a National Capital site and for the protection of a single ICBM site." (118 Cong. Rec. 26763 (Aug. 3, 1972)); and
  - Senator Fong - "[The ABM Treaty] [l]imits each side to one ABM site for the defense of its respective capital and one site each for the defense of an ICBM field." (118 Cong. Rec. 26707 (Aug. 3, 1972)).
-



**THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION**

1700 NORTH MOORE STREET SUITE 1425

ARLINGTON, VA 22209

703-696-0504

ALAN J. DIXON, CHAIRMAN

**COMMISSIONERS:**

AL CORNELLA

REBECCA COX

GEN J. B. DAVIS, USAF (RET)

S. LEE KLING

RADM BENJAMIN F. MONTOYA, USN (RET)

MG JOSUE ROBLES, JR., USA (RET)

WENDI LOUISE STEELE

**LEGAL MEMORANDUM**

**TO:** All Commissioners, Division Heads, Team Leaders

**FROM:** Madelyn Creedon, Ralph Kaiser

**SUBJECT:** Implications of the Realignment of Grand Forks AFB, ND on the 1972 ABM Treaty

**DATE:** 9 May 1995

**Department of Defense (DoD) Recommendation**

Realign Grand Forks AFB. The 321st Missile Group will inactivate, unless prior to December 1996, the Secretary of Defense determines that the need to retain ballistic missile defense (BMD) options effectively precludes this action. If the Secretary of Defense makes such a determination, Minot AFB, North Dakota, will be realigned and the 91st Missile Group will inactivate.

If Grand Forks AFB is realigned, the 321st Missile Group will inactivate. Minuteman III missiles will relocate to Malmstrom AFB, Montana, be maintained at depot facilities, or be retired. A small number of silo launchers at Grand Forks may be retained if required. The 319th Air Refueling Wing will remain in place. All activities and facilities at the base associated with the 319th Air Refueling Wing, including family housing, the hospital, commissary, and base exchange will remain open.

If Minot AFB is realigned, the 91st Missile Group will inactivate. Minuteman III missiles will relocate to Malmstrom AFB, Montana, be maintained at depot facilities, or be retired. The 5th Bomb Wing will remain in place. All activities and facilities at the base associated with the 5th Bomb Wing, including family housing, the hospital, commissary, and base exchange will remain open.

Department of Defense Base Closure and  
Realignment Report, March 1995, p. 5-122

## **Background**

The Nuclear Posture Review, implemented by National Security Decision Directive #30 and signed by the President, limits the number of ground-based inter-continental ballistic missiles (ICBMs) in the U.S. arsenal to 450 or 500, calling for the elimination of either 150 or 200 Minuteman III ICBMs. A missile base, such as those contemplated in DoD's Recommendation, contains either 150 or 200 ICBMs. Thus, the inactivation of a missile base, any missile base, is in line with the Nuclear Posture Review. There are two other missile sites in addition to Grand Forks (150 ICBMs) and Minot (150 ICBMs). They are the 341st Missile Wing at Malmstrom AFB, Montana (200 ICBMs), and the 90th Missile Wing at F.E. Warren AFB, Wyoming (150 ICBMs).

## **The Anti-Ballistic Missile (ABM) Treaty of 1972**

*The Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems* (ABM Treaty) was signed 26 May 1972 and entered into force, for unlimited duration, on 3 October 1972. The treaty permits each party to deploy one limited ABM system to protect its capital, and one system to protect an intercontinental ballistic missile (ICBM) launch area. The treaty states that this latter deployment area must contain "ICBM silo launchers" and be within 150 kilometers of the designated ICBM silo launchers. ABM Treaty, Art. III.b. Article XIV of the treaty calls for review of the treaty every five years by a Standing Consultative Commission. The next review is scheduled for 1997.

Accompanying the ABM Treaty is the *Agreed Statements, Common Understandings, and Unilateral Statements Regarding the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missiles* (Agreed Statements), also signed 26 May 1972, in which the parties state their understanding that the two ABM sites within each country must be separated by no less than 1,300 kilometers from center to center. Within the *Common Understandings* section of the Agreed Statements document the U.S. delegation "notes that its ABM system deployment area for defense of ICBM silo launchers, located west of the Mississippi River, will be centered in the Grand Forks ICBM silo launcher deployment area." Agreed Statements, Art. 2.A. (*Note: The ABM system at Grand Forks has been inactive since 1976*).

On 3 July 1974 the parties signed the *Protocol to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems* (ABM Protocol) further restricting the deployment of ABM systems. The ABM Protocol, entered into force on 24 May 1976, limits each party to one site only instead of the two sites originally contemplated by the ABM Treaty. ABM Protocol, Art. I. The effect of the protocol is to restrict the U.S. to maintain its ABM site to Grand Forks while the U.S.S.R. is bound by its selection of Moscow, its capital. However, each party is allowed a one-time election to reverse its decision, i.e., the U.S. has the right to dismantle or destroy its ABM site at Grand Forks (ICBM field) and deploy an ABM system at Washington D.C. (its capital), but nowhere else. ABM Protocol, Art. II.2 (emphasis added). Similarly, the U.S.S.R. may dismantle

its site at Moscow (its capital) and deploy an ABM system in defense of an ICBM field. *Id.* To do so, each party must, prior to initiation of construction, give notification of its intent to relocate during a meeting of the five year Standing Consultative Commission (next scheduled for 1997). ABM Protocol, Art. II.1.

### **Legal Analysis of the DoD Recommendation**

The inactivation of the 321st Missile Group at Grand Forks AFB, North Dakota can be done consistently with the ABM Treaty; however, the inactivation triggers certain treaty requirements. First, the ABM site at Grand Forks must be dismantled/destroyed. ABM Protocol, Art. II.1. Second, if the U.S. decides to redeploy an ABM site, at an unknown cost, it may do so only in defense of Washington D.C. ABM Protocol, Art. I.2. Additionally, the U.S. may not redesignate the defense of an alternate ICBM field, such as at Minot AFB, North Dakota, based on the clear language of Article 2.A. of the Agreed Statements which specifies Grand Forks by name. There is nothing contained in the source documents which allows the U.S. to redesignate another or alternate ICBM site. A one-time designation was made in the ABM Treaty and Agreed Statements and this designation was solidified by the ABM Protocol.

The DoD Recommendation includes the statement: "A small number of silo launchers at Grand Forks may be retained if required." This suggests an option of leaving a small number of ICBM launchers behind (when inactivating the 321st Missile Group), either with or without missiles, to be defended by the ABM site at Grand Forks in order to keep the ABM site intact and attempt to remain treaty compliant. While the phrase "ICBM silo launchers" is contained in Article II.b. of the ABM Treaty, the clear understanding of the signatories is to defend either a national capital, or a major ICBM missile site, i.e., one actually containing missiles. Indeed, the professional judgment of those involved with this issue, including Ambassador Edward L. Rowny (LTG USA, Ret.)<sup>1</sup>, the former Chief START Negotiator who spoke at the Grand Forks Regional Hearing and has since briefed members of the BRAC staff, is that the ABM Treaty, as ratified, was meant to defend an ICBM complex and not simply several ICBM launchers. A review of the Congressional Record of 3 August 1972 is consistent with Ambassador Rowny's opinion. *See* 118 Cong. Rec. 26647-26763, Aug. 3, 1972 at Attachment 1.

### **Summary and Conclusion**

The inactivation of the 321st Missile Group at Grand Forks AFB, North Dakota is not precluded by the ABM Treaty although certain required U.S. actions under the treaty must occur: The ABM site at Grand Forks must be destroyed, and the only alternate site for redeployment is Washington D.C. as no other ICBM site may be substituted for Grand Forks. This process could begin, if it all, no earlier than late in calendar year 1997. These actions could significantly effect the U.S. national security posture as it relates to ballistic missile defense.

Unilateral "amendment" or reinterpretation of the ABM Treaty, by redesignating an ICBM silo launcher site for ABM defense or leaving a few ICBM silo launchers behind at Grand

---

<sup>1</sup> Currently a paid consultant for Grand Forks AFB, North Dakota.

Forks, is not contemplated by the ABM Treaty. If done, it may affect further treaty negotiations, including the implementation of START II.

An interagency opinion on this issue was promised at the 1 March 1995 hearing, as of the date of this memorandum, it has not been delivered. See Attachment 2.



THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-1000

9 May 1995



The Honorable Alan J. Dixon  
Chairman, Defense Base Closure  
and Realignment Commission  
1700 North Moore Street, Suite 1425  
Arlington, VA 22209

Please refer to this number  
when responding 950324-16R1

Dear Chairman Dixon:

This letter follows up on my testimony before the Commission on March 1, and responds to your letter to me of March 24, concerning the proposed realignment of Grand Forks AFB through inactivation of the 321st Missile Group, and interagency review of associated treaty issues.

As you will recall, our recommendation concerning Grand Forks was made subject to a possible determination by the Secretary relating to Ballistic Missile Defense (BMD) options. Specifically, we recommended that Grand Forks AFB be realigned and the 321st Missile Group inactivated, "unless the Secretary of Defense determines that the need to retain [BMD] options effectively precludes this action." That, in turn, has been the focus of a legal review of treaty issues by representatives of the Department of Defense (including the Office of the Chairman, Joint Chiefs of Staff), the Department of State, the Arms Control and Disarmament Agency, and the National Security Council staff.

I am pleased to report that the interagency review has been completed and that the contingency has been favorably resolved. There will be no determination by the Secretary that would require retention of the missile group at Grand Forks. Realignment of Minot AFB and inactivation of the 91st Missile Group is no longer a necessary alternative. Consequently, our recommendation, as transmitted on February 28, remains that Grand Forks AFB be realigned and the 321st Missile Group inactivated.

I trust that this will enable the Commission to proceed with the formulation of its recommendation to the President.

Sincerely yours,

Unilateral "amendment" or reinterpretation of the ABM Treaty, by redesignating an ICBM silo launcher site for ABM defense or leaving a few ICBM silo launchers behind at Grand Forks, is not contemplated by the ABM Treaty, ~~and any decision to do so has greater implications.~~ If done, it may affect further treaty negotiations, including the implementation of START II. ~~This type of decision is clearly beyond the scope of the BRAC process and best left to the National Command Authority of the United States.~~ (Note: Although an interagency opinion on this issue was promised at the 1 March 1995 hearing, as of the date of this memorandum, it has not been delivered; See Attachment 2)

STET

Pls. ?  
out - this  
sure about want  
was needed.