

Reagan Reinterprets the ABM Treaty

On more than one occasion over the past decade, according to former U.S. Ambassador Gerard Smith, the Defense Department has argued that the development and testing of exotic missile defenses are not constrained by the SALT I treaty. Until recently, Smith says, "when they heard the argumentation on the other side, they gave up."

Several months ago, however, the Pentagon did not give up. It hired a lawyer who insisted that an exotic missile defense—such as that envisioned in the "Star Wars" program—could indeed be developed and tested without constraint. Propelled through the interagency process by assistant secretary of defense Richard Perle, a committed SALT I opponent, this time the claim won official endorsement, with the consequence that dozens of doors have been effectively unlocked for "Star Wars" scientists.

The Administration's decision, which has rankled the arms control community, effectively reinterprets a key provision of SALT I, known as Article 5. It states that "each party undertakes not to develop, test, or deploy ABM [antiballistic missile] systems or components which are sea-based, air-based, space-based, or mobile land-based." Until a few weeks ago, the prevailing U.S. view—as expressed in both Pentagon and White House statements—was that this limited "Star Wars" research to lab work and tests involving ABM subcomponents. "This reading of the Treaty is plausible, but it is not the only reasonable reading," says Abraham Sofaer, the State Department's chief legal counsel.

After a fresh look at the classified negotiating record, Sofaer concluded that this provision refers only to ABM systems and components that were "current" at the time the treaty was written. New technologies, such as those presently under investigation for "Star Wars," are said to be governed by a different provision, Agreed Statement D, which clearly bans deployment but says nothing about development and testing.

This reading of the treaty is complicated by the fact that the United

States clearly *tried* to obtain development and testing restrictions on exotic technologies—a point that the Administration concedes. Its new interpretation thus rests on the assertion that the United States failed to get the Soviets' agreement. The evidence is not that the Soviets actively disagreed but that they explicitly failed to signal their assent, Sofaer says. "In effect, because the Soviets succeeded in avoiding a broad binding commitment . . . we cannot properly be said to be bound by such a commitment," he argues.

Not surprisingly, this view angers Albert Carnesale, a professor of government at Harvard who served as a special adviser to the SALT I delegation. "Having been through the negotiations myself, having been on the [relevant] subgroup there, my understanding of the treaty has always been invariant: Article 5 means what it says, and prohibits development and testing regardless of the nature of the technology," he says.

Carnesale and three other former members of the U.S. delegation, Gerard Smith, Raymond Garthoff, and John Rhinelander, all remember that the Soviets initially resisted any constraints on future technologies. But they insist that the constraints were eventually accepted, even if the Soviets did not say so explicitly at the time. "It never occurred to anyone on either side to make an explicit statement," Garthoff says, because the provision's meaning appeared so obvious. In any event, the Soviets said that they accepted the constraint earlier this year.

As a result of the Administration's new interpretation, the Pentagon can legally orbit free electron lasers, kinetic kill vehicles, railguns, neutral particle beams, and other exotic technologies under the rubric of an elaborate test program. It could also "transfer" these technologies to other countries, who are not bound by a deployment ban. The only remaining constraint is that of politics, for the Reagan Administration, acting in response to protests from European allies, decided not to take advantage of the new interpretation as yet, and to keep to its original research plan. Paul Nitze, the senior U.S. arms control adviser, says that "there is no intention to deviate" from this plan, but Richard Perle says, "it remains to be seen."

—R. JEFFREY SMITH

Rumors of China-Iran Trade Clouds Nuke Pact

Legislation sponsored by Senator John Glenn (D-Ohio) to address weaknesses in the pending nuclear trade agreement with China appears to be gaining momentum in the Senate. Concern in Washington about flaws in the nuclear trade pact have been heightened in recent days by allegations that China may be doing business with Iran.

Questions about the Iranian connection, which was disclosed by Senator Alan Cranston (D-Calif.) in a statement on the Senate floor on 21 October, have not been answered fully. It has rekindled doubts about the "Agreement for Nuclear Cooperation," which President Reagan signed 24 July. Cranston's charges, which allegedly can be substantiated by intelligence reports, follow a series of House and Senate hearings that have focused on China's past nuclear trade practices and on the vagueness of proliferation safeguards assurances contained in the trade pact.

The Glenn legislation, which still must come before the Foreign Relations Committee for markup, has attracted the support of Senator Dave Durenberger (R-Minn.), chairman of the select Committee on Intelligence. The bill (S. 1754) would require that before any U.S. nuclear fuel or technology transactions proceed, China must verify that its export procedures comply with International Atomic Energy Agency rules, and recognize that the United States is not bound to okay future reprocessing requests or alterations of materials and technology. Enactment of the nuclear pact is necessary for American firms to compete against European companies to supply nuclear reactor components and engineering services to China.

Whether China has any substantive dealings with Iran is unclear. Ali Akbar Hashemi Rafsanjani, the speaker of Iran's parliament, visited China in late June. The Chinese are thought to have made a pledge then to assist Iran in the application of nuclear technology for peaceful industrial purposes. Senate sources say this information was first reported by the British Broadcasting Corporation on 4 July. A similar report subsequently appeared