## 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

in the National Intelligence Daily, a classified report circulated to about 200 high-ranking U.S. officials.

China denies that it is engaged in nuclear commerce with Iran, but says it is working with Brazil, Pakistan, and other countries in peaceful development of nuclear power. And for the moment, the Administration and key Senate members such as Foreign Relations Committee Chairman Richard Lugar (R–Ind.) and Senator Jesse Helms (R–N.C.) continue to support the trade pact. Even if China does engage in peaceful nuclear trade with Iran, government officials say that is not a basis for rejecting the treaty. West German and British companies also are talking with the Iranians, officials note, about completion of several nuclear power plants.

But whether Helms and Lugar can avoid consideration of Glenn's bill is uncertain. Says one committee aide, "It may be very difficult for other senators to consider this trade pact in a rational way." Unless Congress acts to block the pact, it will go into effect by January. Glenn's proposal still could be enacted afterward, but the chances for passage would be reduced.—**Mark Crawford**

## Surveillance Laws Need Overhaul

In long-ago 1968, when new federal privacy legislation was passed, electronic surveillance was primarily limited to telephone taps and concealed microphones. But now the explosion of communications technology "is rapidly outpacing law," according to a report from the Office of Technology Assessment (OTA). Legislated policy is ambiguous, incomplete or nonexistent with regard to a number of technological innovations, among them: digitally transmitted telephone conversations, calls on cellular or cordless phones, data communication between computers, electronic mail, database surveillance, pen registers, closed circuit television, and electronic beepers.

In a survey of 142 federal agencies (not counting intelligence agencies), the OTA found that 25 percent use or plan to use electronic surveillance. The same proportion uses computerized record systems for law enforcement, investigative or intelligence purposes. As for the private sector, "the extent of use of electronic surveillance . . . is unknown," says the report.

Surveillance technology is getting ever more flexible, reliable, fast, and difficult to detect, and new capabilities, such as computer speech recognition, are imminent. Yet technological protection against electronic surveillance is lagging, with encryption being the only generally effective countermeasure at this point.

The new developments pose a wealth of challenges to the Bill of Rights. Title III of the 1968 Omnibus Crime Control and Safe Streets Act only protects oral communications transmitted by wire. The other major statute regulating government surveillance, the 1978 Foreign Intelligence Surveillance Act, has broader coverage of technology, but the terms of protection are limited. Other recent laws are restricted to protection of the transfer of certain kinds of information.

The OTA report spells out various policy options with regard to telephone calls, electronic mail transmission, and other technologies including electronic physical, visual, and database surveillance. Basically, it says new measures could either be designed to give blanket coverage in each area, or policies could be fashioned according to specific technologies or specific stages of transmission (for example, there are at least five discrete stages where electronic mail can be intercepted). Congress could also set up new mechanisms for control and oversight of federal database surveillance.

Congress is, in fact, making moves to bring federal privacy laws up to date. Representative Bob Kastenmeier (D–Wis.) of the House Judiciary Committee has introduced an "electronic communications privacy act of 1985" (H.R. 3378), cosponsored in the Senate by Charles McC. Mathias (R–Md.), that would bring new technologies under the purview of the 1968 law. And Senator William V. Roth, Jr. (R–Del.), who with Kastenmeier requested the OTA report, has initiated an assessment by the Senate Committee on Governmental Affairs, which he chairs, of computer use in the federal government.

—**Constance Holden**

## A Plan to Save Tropical Forests

A 56-country, $8 billion plan for salvaging what remains of the world's tropical forests has been proposed by the Washington-based World Resources Institute. WRI president Gus Speth claimed at a 22 October press conference that the 5-year strategy, developed by an international task force, is "the first concrete action plan" for "arresting and ultimately reversing" rainforest destruction, which is proceeding at a rate of more than 27 million acres—an area larger than Austria—every year.

The plan, which has the endorsement of the World Bank, the Agency for International Development, and the United Nations Development Program and its Food and Agricultural Organization, represents an unprecedented attempt to coordinate government, private and grassroots organizations on behalf of what many regard as the world's most urgent environmental problem. WRI hopes to garner financial support for the plan at various forthcoming international meetings, and international assistance agencies will be convening to discuss it at The Hague in November. Next year, the aim is to bring together top political leaders for a "summit meeting" on the subject.

The goal of the planners is to double global expenditures on tropical forests. This means raising investments by international aid agencies and lending institutions to $800 million a year, and contributions from national governments and private organizations by a like amount. The World Bank, whose forestry expert John Spears had a leading role in the development of the plan, and AID are already putting increasing emphasis on forest conservation, primarily through projects to develop alternative sources of fuelwood.

The action program is organized around five issues: fuelwood and agroforestry; watershed protection; forest management for industrial uses; ecosystem conservation; and strengthening of institutions for research, training, and extension. There is special emphasis on local participation, particularly by women.

—**Constance Holden**