

News & Comment

Showdown Nears on ABM Treaty

Congress is trying to force the Administration to stick to the traditional interpretation; the dispute is already casting a shadow over a range of arms control and national security issues

CONGRESS and the Reagan Administration are on a collision course over the precise meaning of a few dozen words in a treaty that has been in force for 15 years. Although the impending showdown revolves, in the words of one participant, around a "theological dispute," it could have a critical impact on a broad range of arms control and national security issues, including whether the Senate will ratify the anticipated agreement to eliminate intermediate-range missiles, the level of funding for the Strategic Defense Initiative (SDI), and the prospects for negotiating reductions in strategic weapons.

The two branches of government have been moving inexorably toward a confrontation for 2 years, ever since former National Security Adviser Robert C. McFarlane announced casually on a Sunday morning talk show that the Administration had determined that the 1972 Antiballistic Missile (ABM) Treaty could be interpreted in a way that would permit extensive testing of space-based ballistic missile defenses. This would eventually free the SDI program from some potentially burdensome legal restrictions.

The announcement took virtually everybody by surprise, for successive administrations from Nixon's onward—including, up to that point, the Reagan Administration—had publicly stated that such testing is prohibited by the treaty. The Administration's new "broad" interpretation inevitably brought a howl of protest, both in the United States and among the Western allies, who had not been consulted.

It also prompted a vast outpouring of analysis of both the treaty and the previously classified record of the negotiations that produced it. Last month alone, the Administration published the third and final volume in defense of its interpretation, the Senate Foreign Relations Committee issued a fat report attacking the Administration's analysis, and several former negotiators of the treaty published articles and monographs defending the "traditional" interpretation. This paper mountain was added to a voluminous four-part analysis produced earlier this year by Senator Sam Nunn (D-GA), the conservative and influential chairman of the Senate Armed Services Commit-

tee, who concluded that the Administration's interpretation is fundamentally wrong.

Meanwhile, the political process has been grinding toward a denouement and the rhetoric has been escalating on both sides. Last week, the Senate approved a defense bill that would require the Administration to keep the SDI program within the constraints of the traditional interpretation of the treaty; a similar provision is also contained in the House version of the bill. President Reagan



Abraham Sofaer. Chief architect of the "broad interpretation."

has threatened to veto the measure if the restriction is not removed, but Congress is expected to try to force it down his throat by attaching it to other critical budget bills if necessary.

At issue is whether the Soviet Union agreed during the ABM negotiations to a U.S. proposal to ban the development and testing of ABM systems and components, such as space-based lasers, that did not exist at the time but are now being investigated as part of SDI. The Reagan Administration maintains that the treaty itself does not explicitly ban such testing and that the negotiating record shows that the Soviets never consented to the American proposal.

The Administration's legal case is largely the work of Abraham D. Sofaer, the State Department's legal adviser. Sofaer was asked to review the matter in September 1985, after some officials in the Defense Department, led by assistant secretary Richard Perle, had claimed that the ABM treaty did not limit SDI testing. On the basis of 2 weeks' study, Sofaer reached a preliminary conclusion that the treaty permits any work on futuristic ABM systems short of actual deployment. McFarlane announced this interpretation a few days afterward on "Meet the Press." The analysis came later—almost 2 years later for the final installment of Sofaer's report.

The issue in dispute is a narrow but critical aspect of the treaty. Nobody disputes that *research* is permitted on all ABM technologies; there is also no argument that development and testing of fixed, land-based systems can take place; and there is virtual unanimity that actual *deployment* of anything except a clearly defined, limited system at a single site is prohibited. The fighting is over the question of whether work on ABM systems and components based on new technologies and intended for deployment on mobile platforms or in space can proceed beyond the research stage.

Sofaer maintains that the only clause in the treaty that places restrictions on future ABM systems and components is "Agreed Statement D," which simply states that if systems and components based on "other physical principles" are created, their deployment will be subject to negotiation.

Supporters of the traditional interpretation argue that development and testing of anything other than fixed, land-based systems are expressly prohibited by Article V, which states: "Each Party undertakes not to develop, test, or deploy ABM systems or components which are sea-based, air-based, space-based, or mobile land-based." They also maintain that ABM systems and components were carefully defined in Article II of the treaty to include those based on future technologies (see box).

Sofaer concedes that this traditional interpretation was explicitly presented to the Senate during the ratification proceedings, and the Senate approved the treaty on that

basis. Moreover, he does not dispute that in its official statements and actions up to 1985, the U.S. government continued to follow this line. The only problem is, he says, the Soviets never agreed to it.

He bases that conclusion on the negotiating record, a collection of cables and memoranda written by U.S. negotiators in 1971 and 1972. The record is secret, but parts were declassified by the Administration in May in support of the reinterpretation. The documents provide a fascinating, if sketchy, account of the inner workings of superpower negotiations.

Sofaer says that Soviet negotiators consistently argued that they could not agree to limit something that does not exist and cannot be defined. He points to numerous statements in the record to support this contention and maintains that in spite of repeated U.S. attempts, the Soviets would not be pinned down with restrictive language. One of the negotiators who took part in the talks, Paul Nitze, now special adviser to the President and Secretary of State for arms control matters, agrees with Sofaer's conclusion. Nitze espoused the traditional interpretation until recently, but he has said that after reviewing the record he is not convinced that the Soviets accepted the U.S. proposal.

The other eight negotiators disagree, however. The negotiating instructions they were given by President Nixon and his security adviser, Henry Kissinger, required them to secure a ban on the development and testing of future ABM systems other than those based on land. But, "In presenting this position, the Delegation should not invite a detailed negotiation or discussion of

future ABM systems," the instructions stated. The reason for keeping to generalities was that the Pentagon did not want to give the Soviets any hint of technologies the United States was looking into for fixed, land-based systems.

The Soviets' persistent demands for specifics on what future systems should be restricted were seen by the U.S. negotiators as stemming partly from a desire to probe what the Pentagon was up to, and partly from concern that whatever was agreed would not restrict their own development of air defenses. However, the negotiators point to several statements in the record that they say indicate that the Soviets did accept restrictions on future ABM systems.

According to a memorandum of a meeting on 15 September 1971, for example, Soviet negotiator Viktor Karpov said that the Soviet reformulation of an American proposal on Article V meant "any type of present or future components" of ABM systems." Three weeks later, Vadim Chulitsky, another member of the Soviet delegation, stated that the restrictions in Article V are "adequate to cover the problem of future systems." As for the definition in Article II, the Soviets in December 1971 accepted a U.S. suggestion that the words "currently consisting of" be inserted before the subparagraphs identifying ABM components as interceptor missiles, launchers, and radars, after U.S. negotiator Raymond Garthoff had specifically pointed out that this language would cover components based on future technology.

Having apparently reached agreement on limiting development of mobile and space-based systems, the negotiations turned in



Raymond Garthoff. *Negotiated key provisions on testing future systems.*

early 1972 to the major outstanding issue: the limits to be placed on fixed, land-based systems. It was during these discussions, according to the negotiating record, that Agreed Statement D was arrived at. In this context, the statement—which has the same legal standing as a clause in the treaty—essentially recognizes that although each side has the right to develop and test new fixed, land-based ABM systems and components, their deployment is prohibited without prior agreement.

Senator Nunn, in his own measured analysis (which he himself has described as "boring"), argues that Sofaer's case is flawed by omissions and inconsistencies that invalidate his conclusions. A report approved by a majority of the Senate Foreign Relations Committee is less polite. It calls the Administration's attempt to reinterpret the treaty "the most flagrant abuse of the Constitution's treaty power in 200 years of American history."

Thus the stage is set for a major political battle over the next few weeks. The vehicle will be the provision in the defense bill requiring SDI tests to be kept within the traditional interpretation of the treaty. If Reagan successfully vetoes the bill, as he has promised, Congress is expected to attach the measure to the continuing resolution, which provides funds for virtually the entire government. There is even talk of putting into a separate continuing resolution funds for strategic weapons programs and attaching the treaty interpretation to that. Such a move would present Reagan with the choice of accepting the restrictions or placing his strategic programs in jeopardy.

Nunn has raised the stakes by putting the Administration on notice that if it insists on the broad interpretation of the treaty, he will support a major cut in the budget for SDI.

But even if Congress eventually prevails,

The Key Provisions

The following are the portions of the ABM treaty that bear most directly on the dispute over testing futuristic systems:

Article II. 1: "For the purpose of this Treaty an ABM system is a system to counter strategic ballistic missiles or their elements in flight trajectory, currently consisting of: (a) ABM interceptor missiles . . . ; (b) ABM launchers . . . ; and (c) ABM radars. . . ."

Article V. 1: "Each Party undertakes not to develop, test, or deploy ABM systems or components which are sea-based, air-based, space-based, or mobile land-based."

Agreed Statement D: "In order to insure fulfillment of the obligation not to deploy ABM systems and their components except as provided in Article III of the Treaty [which permits each side to deploy limited ABM systems at two (later reduced to one) sites], the Parties agree that in the event ABM systems based on other physical principles and including components capable of substituting for ABM interceptor missiles, ABM launchers, or ABM radars are created in the future, specific limitations on such systems and their components would be subject to discussion in accordance with Article XIII and agreement in accordance with Article XIV of the Treaty." [Articles XIII and XIV establish mechanisms for settling disputes and amending the treaty.]

the issue would hang like a lead weight around future arms control issues. Of immediate concern, Nunn and Senator Claiborne Pell (D-RI), the chairman of the Foreign Relations Committee, have said that unless the Administration withdraws its interpretation, they will insist that the Senate be given the entire negotiating record of future treaties—including the anticipated treaty to eliminate intermediate-range missiles—before it ratifies them. This could tie up the ratification process in endless delay.

Perhaps more important, continued disagreement over the interpretation of the ABM treaty could seriously impede efforts to negotiate an agreement to reduce strategic weapons. The Soviets have consistently tried to link negotiations on strategic weapons with limits on SDI, and it is considered unlikely that they will agree to reduce strategic arms while the Reagan Administration continues to insist that it can develop and test SDI unfettered by the ABM treaty. "The reinterpretation of the ABM treaty is the central issue in whether we will see a strategic arms agreement in this Administration," says Garthoff, who is now a senior fellow at the Brookings Institution.

Some, however, see a possible way out of this impasse in a Soviet proposal, advanced by foreign minister Eduard Shevardnadze during his visit to Washington last month. Shevardnadze proposed negotiations on exactly what testing and development is limited by the ABM treaty, with the aim of setting limits on the performance levels of devices such as lasers and rockets to be tested in space. Anything exceeding those limits would have to be tested on earth.

The suggestion has been interpreted as a move away from the Soviets' previous insistence—advanced by Secretary General Mikhail Gorbachev at the Reykjavik summit meeting—that the treaty limits all SDI tests to the laboratory. It has also been welcomed by Nitze as a basis for discussion. At a AAAS arms control symposium on 29 September, Nitze noted that the treaty, under any interpretation, is not crystal clear on exactly what development and testing means, and on what constitutes an ABM component. "The whole theory of the treaty was that when something like this arises, we would talk to the other side about it," he said. To even enter into such discussions would, however, be tantamount to admitting that the broad interpretation of the treaty does not apply.

John Rhinelander, the legal adviser to the U.S. delegation that negotiated the ABM treaty, sums up the choice this way: The debate over the treaty has been "theological," he says. "Now it is time to deal with it on a practical level." ■ COLIN NORMAN

Briefing:

AIDS Panel Goes to Congress

The Presidential Commission on the HIV Epidemic went to Capitol Hill on 30 September to seek advice from Congress on how to fulfill its extremely broad mandate, which requires the 13-member group to examine virtually all aspects of AIDS. It was the commission's second meeting since being formed in July.

The Congressmen's advice:

■ Senator John Danforth (R-MO) told the members that they should convince President Reagan to go on prime-time television and be briefed by a handful of leading AIDS researchers. Reagan has always been "a kind of stand-in for the public," said Danforth. Why not, mused the senator, have the President play the role of an uninformed John Q. Public and ask the experts, for example, if he could get AIDS by standing in an elevator with someone harboring the virus.

■ Senator Lowell Weicker (R-CT) tore into the panel: "To date your commission has yet to prove that it is not merely an extension of the far right moralizing this Administration has employed at its first line of offense in the AIDS battle."

■ Representative Ted Weiss (D-NY) warned of letting the federal response to AIDS get bogged down by budget cutters and Administration officials with conservative social agendas. What is needed is a commitment by the President to listen to his own public health officials and scientists, said Weiss.

■ In other business, the commission announced it has hired a public relations expert, though it has failed to appoint a new executive director to fill the shoes of the first executive director who was ousted last month. The commission is supposed to issue its preliminary report at the beginning of December. "We're not going anywhere until we get somebody in that position," said commission member Burton James Lee III, a physician at Memorial Sloan-Kettering Cancer Center in New York. ■ W.B.

Census Compromise Reached

The Office of Management and Budget (OMB) has modified some of its inflammatory last-minute suggestions for shortening the 1990 census form (*Science*, 21 August, p. 839). Instead of recommending the deletion of almost one-third of all the questions, it

wants to eliminate only three on home fuel and heating. It still wants to transfer seven of the ten housing questions contained on the short (or "100 percent") form to the longer, sampling form, including information on rent and property values.

The sample is also currently being redesigned to respond to OMB's proposal that the sampling rate be reduced from 1 in 6 to 1 in 20 in dense, hard-to-count inner city populations.

Wendy Gramm, OMB administrator for information and regulatory affairs, told the Department of Commerce in a 17 September letter that plans formulated by the census bureau did not meet "the criteria of practical utility and minimization of burden" established by the Paperwork Reduction Act. Citing high rates of nonresponse in the past, Gramm wrote that "the public is more concerned about privacy, less sanguine about surveys, and more suspicious of government than it was in 1970."

The final census forms were supposed to have been approved by 28 September in order to meet next year's 20 March date for the census "dress rehearsal." ■ C.H.

Kondratiev Rehabilitated

The Soviet Union has rehabilitated the economist Nikolai Kondratiev. He is best known for his theory of economic cycles, which has recently seen a resurgence of interest among Western economists as an explanation of the link between technological innovation and economic growth (*Science*, 25 February 1983, p. 933). Kondratiev was one of a number of academic economists who were arrested during the purges of the early 1930s because of their opposition to the economic policies of Josef Stalin. He subsequently disappeared after a show trial. Another of those whose works can now be openly studied in the U.S.S.R. is Alexander Chayanov, a staunch opponent of the mass collectivization of agriculture who supported the gradual transformation and modernization of peasant smallholdings through cooperative farming. Chayanov was shot in 1939. ■ D.D.

Crafoord Prize

The 1987 Crafoord Prize has been awarded to ecologists Eugene P. Odum and Howard T. Odum. The prize, awarded by the Royal Swedish Academy of Sciences and worth \$250,000, rotates on a 4-year cycle between mathematics, astronomy, geosciences, and biosciences—areas not covered by the Nobel. ■ C.N.