Early Dismantlement of the ABM Treaty

Experts Criticize Administration Move Toward Treaty Reinterpretation, Early SDI Deployment

On February 13, amidst growing signals that the Reagan administration was preparing to abandon the traditional understanding of the Anti-ballistic Missile Treaty in order to accommodate its plans for testing and deployment of a space-based missile defense, a press briefing was held in Washington, D.C., to explore the significance of the proposed changes for arms control and national security. The briefing was sponsored by the Media Information Project, a joint service of the Arms Control Association and the Committee for National Security, and also by the National Campaign to Save the ABM Treaty. Speakers were: Gerard C. Smith, chief negotiator of the 1972 ABM Treaty and the Interim Agreement on Strategic Offensive Arms (SALT I); Robert S. McNamara, secretary of defense during the Kennedy and Johnson administrations; John B. Rhinelander, legal advisor to the delegation that negotiated the ABM Treaty and SALT I; and Spurgeon M. Keeny, Jr., president of the Arms Control Association and former deputy director of the Arms Control and Disarmament Agency.

Spurgeon M. Keeny: For the last two weeks, Washington has been filled with reports and rumors as to what the administration is going to do about the reinterpretation of the ABM Treaty and about possible decisions to go for an early deployment of an ABM system. Of course, the two subjects are closely interrelated. In early February it began to appear that a decision had been formally made. At this time Senator Sam Nunn, chairman of the Senate Armed Services Committee, sent an extremely blunt letter to the President stating that a unilateral executive decision on a reinterpretation of the treaty from the form in which the Senate believed ratification had been advised would, I quote, "provoke a constitutional confrontation of profound dimensions." A similar letter calling for consultation was sent by Dante Fascell, chairman of the House Foreign Affairs Committee, and was jointly signed by Representative William Goodling, the committee's ranking minority member. In addition, it was reported that allied states had made strong objections to the decision being taken without appropriate consultation.

On February 8, Secretary of State George Shultz stated on national television that the final decision could not be made at this time on deployment, and any implementation of the administration's reinterpretation of the treaty would only follow a detailed consultation with Congress and the allies. The debate continued, however. This morning NBC television reported that White House sources revealed that the decision on reinterpretation had already been made. I don't think any of us can resolve the state of the debate, but we can clarify for you what the debate is about and what the implications might be.

Gerard C. Smith: I think we're looking at a much broader problem than a question of treaty interpretation. We're facing a period of increased uncertainty about our whole national security situation. To my mind, national security, in the end, depends on confidence: confidence in leadership, confidence in strategy, and confidence in our weapons. I won't comment about our leadership. But on the question of our weapons and arms control policy, we are in a period of doubt.

We have a treaty that has operated effectively for almost 15 years, whose purpose was to stop the deployment of anti-ballistic missile systems. It did—completely. At the time the ABM Treaty negotiations began we were looking at estimates that we would have to penetrate as many as 12,000 Soviet anti-ballistic missiles. Now there are no more than 100. I think that was a great accomplishment. I much prefer to see the Soviet Union defenseless in the face of our ballistic missiles than having a lot of defenses, which is apparently the aim of this administration: to make the Soviet Union defensible.

I'm certain that we're not going to have control of offensive strategic weapons while we are trying to decontrol defensive weapons. That's the one thing that I am confident of.

John B. Rhinelander: Much of the debate going on today is really political and strategic, but it is in the guise of legal questions concerning the ABM Treaty. The fundamental premise of the ABM Treaty was to get, and to keep, tight constraints on defensive systems. There were two fundamental purposes behind pursuing this goal. One was the view then, which I still believe is correct, that it increases stability. Secondly, it was recognized then, and I think it still is true, that tight constraint on defense is a precondition to limitations on offense.

The ABM Treaty has a series of barriers against breakout. The concept of the treaty was to prevent those long lead-time items so that if the Soviets began to do things, we would have a long warning time. Let me just stress three for you. First, as the treaty says explicitly, there will be no nationwide defense, or even a base for a defense. Second, the only permitted ABM deployment was fixed land-based components. They are large and visible. Third, and I would say most important, was the prohibition on the development, testing, and deployment of any mobile type of system: mobile land, sea, air, and of course, space. That was a fundamental barrier against breakout.

Why the ban on testing mobile systems? First, fixed land-based systems are tested at the test ranges. They are visible and we know where they're going to be. Inherently, a space-based system can be tested anywhere. You can't confine it geographically. Secondly, air and space systems are inherently nationwide, and a nationwide defense is explicitly contrary to the purpose of the treaty. Third, if you complete a full testing cycle, you really have broken the barrier. We faced a similar kind of problem in SALT I with MIRV's (multiple independently targetable reentry vehicles). No constraints were agreed to. As a result, MIRV's became an accepted part of the arsenals and we had to try to build constraints around them.

There are now two legal issues. The first concerns the reinterpretation of the treaty to say that the treaty is limited to the conventional technology of the 1970s and doesn't prohibit the development and testing of the exotic systems. The position of all of the U.S. SALT I delegation, with the exception of Paul Nitze, is clear. The ABM Treaty prohibits the development and testing of the exotic systems. The Senate understood this when it gave its advice and consent. Subsequent practice on both sides has confirmed this. This is the law of the land.

The second issue revolves around the administration's new thrust toward a near-term deployment. A key segment of the proposed system will be space-based missiles. Article V of the treaty prohibits space-based missiles. It cannot be argued that space-based missiles are not prohibited by the treaty, even under the reinterpretation.

Robert S. McNamara: I'm going to make three points. The first point, and the most important, is that the issues associated with SDI are, with all due respect to my associates here today, neither legal nor technical. They are strategic and political. Secondly, there should be no restrictions whatsoever on offensive strategic nuclear weapons that
are not accompanied by restrictions on strategic defensive systems. It is absolutely contrary to crisis stability if we were to face limits on offensive weapons with no limits on defense. Thirdly, the administration's program, contrary to what the public understands and to what is often said in the press, contemplates deployment of defenses in association with offenses. Therefore, you immediately come to my point, we should never, never, never permit the Soviets to deploy ballistic missile defenses, and of course if we deploy them they will. This point is not generally understood.

In a truly remarkable speech on February 20, 1985, in Philadelphia, Paul Nitze made this exact point. He said, of course, we're not going to be ready for deploying any defenses for at least 10 years. And then we shouldn't deploy anything unless we can meet these three tests: effectiveness, survivability, and cost-effectiveness at the margin. And he said, even then, it would be "tricky." That was his exact word. Now, he didn't use the word tricky meaning devious. He meant difficult. And the reason he meant difficult was he didn't know then, and I don't know today, how to write the arms control agreement that is absolutely required before you can reasonably deploy any strategic defense. Secretary Schultz, in effect, recognized that problem last Sunday in his statement on TV. On Sunday, George Schultz added two criteria to the three that Nitze put forward in Philadelphia, that in his opinion must be met before we deploy SDI. They were very sensible criteria. He said: (a) we must know what we're deploying. Let's not start the first phase until we know what the second, third, and fourth phases are. We don't know that today. And (b) don't do it unless at each stage you contribute to crisis stability. You can't do that unless you have an arms control regime. We don't know how to develop that.

Now, having said all that, that doesn't mean we should not go ahead with SDI. It does mean that we should go ahead with it as a research program, which the President has repeatedly stated was his objective, a research program to probe the potential of defense technology. That can be done. It must be done within the limits of the ABM Treaty, which is the absolute foundation of crisis stability.

**QUESTION AND ANSWER:**

Q: Mr. Rhinelander, does Senate ratification of the treaty prohibit the administration from withdrawing?

**Rhinelander:** No, not from withdrawing. Under the treaty there is an explicit article [XV] which permits withdrawal by either side upon six months notice. The constitutional law of the United States is that the President alone has the power to make that decision. I think he could be circumcised, however, by Congress, either through the instrument of ratification, or in subsequent legislation. But that legislation would probably have to be enacted over Presidential veto.

Q: So Senate advice and consent is just opinion and the administration can deal with it as if it's just what the Senate happened to think in 1972?

**Rhinelander:** No, the President can abrogate a treaty, but he cannot reinterpret it. As long as the treaty is in effect, it is the law of the land, as much as any domestic legislation. The President cannot announce that a treaty formerly meant A, but now it means B. The interpretation which was given by the executive in 1972 and accepted by the Senate is the law of the land. Congress might fund only programs, including research, consistent with that interpretation.

Q: Mr. Rhinelander, you have said that we should go forward with research, but Secretary Schultz has said more than once that we can't go forward with more research without this reinterpretation, because without it we can't figure out exactly what the SDI program can do. How do you respond to that?

**Rhinelander:** I think everybody who was involved in SALT I agrees you can go on with research. The issue is what kind of development and testing can you have consistent with the treaty? During SALT I, the U.S. and the Soviet Union agreed that research was permissible. Research is not mentioned in the treaty. One of the reasons research is permitted is that we could not verify a prohibition on it. The limits of the treaty are on actual ABM components. As long as your R&D is confined to testing at a threshold below what might be called an ABM "component," you can do it. You can also have activities in space, provided you test devices in space below that threshold. We did not define what that threshold was in 1972 with respect to new technologies. That is the issue that ought to be the focus of attention in Geneva. But there is room for a sound R&D program.

Q: Ambassador Smith, what's your reaction to Henry Kissinger's effort to suggest that the Soviets accept the broad interpretation?

**Smith:** I guess my reaction is like my reaction to all of Secretary Kissinger's views. I think the statement he cited by Marshal Gromko simply does not support that assertion. The marshal said there was nothing to stop research. He said nothing about testing exotic components and systems in space. His exact language was, "The ABM Treaty provides for a quantitatively small development of ABM facilities. At the same time, it imposes no limitations on the performance of research and experimental work aimed at resolving the problem of defending the country." That's quite consistent with what we are saying. I don't know how Henry takes that language and finds comfort in it for any new interpretation.

Q: How serious would it be if the broad interpretation were adopted and testing goes forward? And to what extent does that lock in future administrations to support the program, assuming that a future administration didn't support it? Would you be able to stop the train once it left the station?

**Rhinelander:** Stopping the train or starting the train are political decisions made between the White House and the Congress. It gets more difficult, obviously, the larger and more diverse a program is. I think the problem is the erosion over time. A lot of the current debate is focused on 1989. It is to control the agenda of the next President. One thrust is to have so much activity going on that it will be difficult for the next President to stop it. The counter-thrust is to keep options open for the next President. At the moment I think that what we are seeing is a struggle for the future.

**Keeny:** There is no question in my mind that the motive of some of the people within the administration is to attempt to lock in future administrations. If reinterpretation led to the collapse of the treaty, or if the President actually terminated the treaty, or gave notice of termination, as some people within the administration have apparently proposed, I think this would have a fundamental effect on a future administration. There's no question that if the exploratory research program that is now under way is converted into an engineering development program directed at early deployment, the program will develop a great deal more momentum and present the next administration with substantial problems on how they proceed. We all know that terminating major programs can be a very complicated problem. A formal engineering development program moving toward a target date employing present technological concepts would...
engender many vested interests and require a tremendous amount of funding.

Q: Mr. Rhinelander, could you address the question as to whether a space-based kinetic-kill vehicle could be considered "other physical principles" or exotic technologies, under the ABM Treaty?

Rhinelander: As I recall in the negotiations, the examples that were given as other physical principles were lasers and particle beams. There is no doubt in my mind that the electromagnetic rail-gun can also be viewed as a device based on new physical principles. On the other hand, the kind of technology the administration is now talking about is ground-based rockets and rockets on orbiting satellites, the kind of technologies we were dealing with in the 1960s and 1970s. I can't conceive of any argument that these kinds of systems are new physical principles.

Keeny: It will indeed be unusual when one considers that hitting something with a rock is a new physical principle. We should look on other physical principles in relation to what was under way when the treaty was negotiated. One of the first notions on ABM was the so-called BAMBI system, in which a vast number of rockets in space with infrared sensors would home in on missiles in the launch. This system was terminated by Secretary McNamara and Harold Brown in 1961 or 1962 as lacking in real technical promise. So it's difficult to say that the present space-based kinetic-kill program is based on a new physical principle. Someone did comment to me the other day that anyone who could justify the broad interpretation that the clear treaty language would probably have little difficulty figuring out how to classify the kinetic-kill vehicles as a "new physical principle."

Q: Hasn't the Reagan administration succeeded in its main objective, which is to make everybody think in terms of defending against Soviet missiles, which was something that was dismissed after 1972 as being foolish because it only makes them go for better offense?

McNamara: The Defense Department for at least three and a half decades has been carrying on an insurance program—research insurance—examining a wide variety of technologies, many of which have no clear strategic application and perhaps even negative potential. We dared not fail to probe the cutting edge of all points of technology that conceivably had any application to military weapons by our opponents or ourselves. Now tentative decisions are being made that it is in our interest to deploy them. This is what is new, and I submit to you that the argument in favor of that has not been put forward.

Keeny: As far as I can see, research has not produced any major breakthroughs. If there have been any dramatic breakthroughs, they haven't been shared with the American people or the Congress. In fact, the areas touted most widely and loudly—X-ray lasers, other advanced lasers, and particle beams—are receding further into the future the more one knows about them. The so-called early deployment program harks back to rather conventional developments of the past, essentially efforts to upgrade the old Safeguard system and exploit missile radar and infrared technology, something that's been with us for quite a while. Obviously there has been some technological progress with the passage of the years, but there has also been technological progress on the part of the Soviets in offensive weapons capabilities. Consequently, there still does not appear to be any prospect for the development of a defense that could not be easily overwhelmed using offensive penetration technology which is in hand, which the Soviets are certainly well aware of, and which they can implement if they think there's any reason to do so.

Q: What would the Soviet reaction be to the news that we are going ahead with a near-term deployment?

McNamara: Half rational and half irrational. In the mid-1960s the United States had clear evidence that the Soviets were deploying an ABM system around Moscow. In reaction, we acted irrationally when the Congress went ahead with a U.S. defensive system in response to the Soviet defenses. A proper response was an expansion of our offense, and we were beginning to do that. Now how will the Soviets react? My belief is that the Soviets will expand their offense and greatly increase their countermeasures. And they very likely will go ahead, and this is the irrational part of it, with a nationwide ABM system of their own. And how shall we respond? There is a dynamic of action and reaction. If we deploy SDI, I can guarantee you, it won't add to stability or to our security.

Q: In the 1960s lasers and other directed energy systems were obviously known. It was known that the Soviets were working on them. Is there a specific definition of what is a new physical principle and what is an old physical principle? That leads to a second question: [interim] CIA Director Robert Gates a month ago essentially implied that the Soviets were prepared to deploy an ABM system using laser weapons. Where do the Soviets stand precisely?

Keeny: You are correct that research was being done on lasers and particle beams in the 1960s. However, at the time the negotiations were under way it had not really reached a point where anyone thought they could seriously be considered for weapon systems. And I believe the negotiators, thinking of examples of "other physical principles," specifically made reference to lasers. There is nothing in the treaty that says the kill mechanism has to be nuclear. It talks about missiles and radars and launchers, but there is no language about nuclear versus nonnuclear. That is the reason I think it's hard to include kinetic-energy kill as a new physical principle, when you use conventional missiles and delivery technology.

Concerning Mr. Gates' speech to which you referred—the speech seemed to go beyond anything the intelligence community has previously said. There are capability statements on lasers and particle beams. But I don't think there is any evidence of the programs and schedules he mentioned. I think there is no evidence that the Soviets are about to deploy a nationwide ABM system based on what we would call conventional technology.

There is no question, however, that the Soviet Union has had a major program, previously comparable to ours in high technology, and certainly larger in the area of conventional technology. Should the United States move to an early deployment, or quit or terminate the ABM Treaty and force a race in defensive systems, I think that the Soviet Union might initially be able to move more quickly. They have a small legal deployment at Moscow with some production lines using conventional technology. They would probably decide to move to broader defenses, even though the logical response to our move toward early deployment is simply to improve their penetration capabilities. Since they know that and they can do it, it is politically unthinkable that they would stand by and not pursue technology in which they have considerable ability while the United States moved ahead in a major program in this area.

So I think that may be the real message of Mr. Gates' speech—namely, that if we initiate a race in this field, we won't have a unilateral advantage and we will find ourselves in a new, incredibly expensive and nonproductive race with the Soviet Union.