

## Eye on Washington by Nicholas F. Benton

### 'Legal thinking' blocks action vs. Soviet ABM

A leading Pentagon official, in a background briefing to this writer, expressed frustration and alarm over the "legalistic thinking" in the Washington bureaucracy which is blinding top administration policymakers to the dangers of an emerging Soviet nationwide anti-ballistic missile (ABM) system.

He contrasted what he called a "limp-wristed diplomat's" way of assessing intelligence on the Soviet build-up of a nationwide radar nexus, to a realistic evaluation of what the Soviets are up to.

In reality, he said, the Soviets have achieved a massive redundancy in phased-array radar capabilities which can only be explained in terms of preparations for a nationwide anti-ballistic missile capability.

What makes the Soviets' apparent ABM preparation especially alarming, he said, is the fact that the kind of system they are putting up would only be effective in deterring a second strike, rather than a first strike.

"If you assume the appearance of their radar facilities means they are preparing a nationwide ABM defense, then you are forced to conclude that it is being designed to augment a Soviet first nuclear strike," he said.

Unlike the U.S. Strategic Defense Initiative (SDI) program, he said, which is being designed to deter a first strike, the configuration of the Soviet system is clearly useless against a first strike. Therefore, it is being designed only to be used against a counterattack, after the Soviets have launched a surprise nuclear first strike against targets in the West.

With the completion of a radar network that covers their entire landmass, he added, the Soviets have already completed the component of an ABM system that requires the longest amount of time to build.

Now, he said, the Soviets are in a position where they could surprise the West by beginning rapid construction of anti-missile weapons sites. These could be completed in one to two years, he said, giving the West, once it detected this activity (assuming it could), almost no time to react.

Asked whether top administration officials, including the President, appreciate the dangers inherent in this situation, he shrugged, indicating that "matters of interpretation" intervene which prevent a clear and incisive picture of the danger from being conveyed.

"There is a great tendency in this country toward legalistic thinking. For example, in the case of the Krasnoyarsk radar—the one Soviet radar which faces outward beyond the boundaries of the Soviet Union and therefore is in clear violation of the ABM Treaty—there is no difficulty convincing people that there is a violation here," he said.

"But as for all the other radars that the Soviets have amassed, since none of them are in formal violation of the treaty, it is almost impossible to convince some people that, cumulatively, they represent a real danger. The ABM Treaty provides that it is a violation to construct a base for a nationwide ABM defense. It is clear the Soviets have done this. But how do you, in a legal way, prove this? How do you prove it in a way that compels appropriate action in response? This is very frustrating," he said.

"I am a lawyer by trade myself," he added. "Therefore, I know the way a legal argument can be construed to make it almost impossible to prove

anything with only circumstantial evidence. You can posit a situation where it is obvious that someone was murdered by a right-handed man wielding a blunt object who had only one possible point of entry to the scene. But even with that evidence, a talented defense lawyer can get a hung jury, by persuasively arguing that an alternative scenario was also possible; namely, that the victim fell off a chair and killed himself."

It is the gridlock created by the introduction of alternative, although implausible, legalistic arguments which is paralyzing the ability of the United States to seriously prepare for the eventuality of a "worst-case scenario," he said. The intervention by those who insist that "there is another way to look at the evidence" has forced the administration to limit its responses to only that kind of evidence which is clearly and indisputably in violation of a treaty, and therefore is beyond a doubt and not "circumstantial."

Faced with a "hung jury" within the deliberative institutions of the government, he said that only a "long-term educational process of the U.S. population" about Soviet military capabilities can turn the situation around, even though there might not be enough time for this.

When asked why the Soviets have been so much more successful in their propaganda efforts against the U.S. SDI than the United States has been in revealing the existence of Soviet military capabilities and their implications for world peace, he said, "Well, God knows we try." But then he repeated his frustration with the "legalistic" thinking that dominates the American mind and, as he implied, is preventing the President from effectively grasping the significance of the evidence that has been gathered about the Soviets' ABM system so far.