

2. Ambiguities of the Treaty

Chayes admitted that the Treaty had serious ambiguities. Some could be addressed satisfactorily, but others continued to provide legal loopholes. He cited the following instances:

- a) anything done “under-roof” can be considered “research”; as soon as it comes out where it can be monitored, it can be considered “development and testing”.
- b) the United States is testing devices for tracking and pointing in space. These devices could be considered to be ABM components because they can be used for tracking missiles or warheads in space, and for pointing beam weapons. However, representatives of the US Department of Defense argue that they are *not* components of an ABM system because: they could not, in their present form be used to attack missiles in space; tests are being conducted at a level of power and performance which is insufficient for the ABM role; and these devices are directed at satellites, not missiles.
- c) the Soviet Union has deployed phased-array radars at Krasnoyarsk, Siberia, a location deep inside their territory. Article VIb enjoins each signatory “not to deploy . . . radars . . . except at locations along the periphery of its national territory and oriented outward.” Soviet leaders argue that the radars are for tracking satellites, but these installations could also be used as part of a ballistic missile defence system.

It was clear from these last two examples that both countries were pushing at the boundaries of the Treaty, trying to exploit its ambiguities.

3. Interpretation of the Treaty

The US National Security Advisor, Robert MacFarlane, had based his claim that testing of “exotic technologies” designed for ballistic missile defence was permitted under the ABM treaty, on “Agreed Statement D”, one of the provisions appended to the ABM treaty at the time of signing. Statement “D” refers to testing of “ABM systems based on other physical principles.” However, Agreed Statement “D” is tied to Article III, referring to the modernization of the one allowed fixed, land-based ABM. Agreed Statement D states that, if new technologies are developed, “based on other physical principles,” the two parties agree *not* to proceed to the testing and deployment otherwise permitted under Article III, that is, for simple modernization using conventional technology. Rather, the country which develops these exotic technologies is obliged to