

III.

SDI AND THE ABM TREATY

1. Overview of the ABM Treaty

Abram Chayes, of Harvard Law School, made the opening presentation at the session on the 1972 Anti-Ballistic Missile (ABM) Treaty which was co-sponsored by the Canadian Council on International Law. He began by responding to comments made by President Reagan's National Security Advisor, Robert MacFarlane, in a press briefing on 9 October 1985, to the effect that the ABM Treaty allowed testing of "exotic" space-based defences. Mr. Chayes quoted relevant sections of the Treaty to indicate where, he believed, MacFarlane to be wrong.

Article I of the Treaty states that "each party undertakes not to deploy ABM systems for a defence of the territory of its country . . .". In Article V the signatories promise "not to develop, test, or deploy ABM systems or components which are sea-based, air-based, space-based or mobile land-based." From these two articles, it could be seen that the ultimate goal of a space-based ballistic missile defence, designed to defend population centres and "territory", was clearly prohibited by the Treaty.

The one fixed, land-based ABM site, permitted under Article III, can, under Article VII, be upgraded and modernized. In order to carry out that modernization, Article IV allows testing of new components at a pre-arranged test site. Research is not mentioned in the Treaty, mainly because a ban on research could not be verified. Chayes pointed out that, as with all legal documents, anything that is not explicitly prohibited is implicitly permitted. In sum, the Treaty permits:

- a) *basic research* into ABM technology;
- b) *testing of components* for modernization of the one allowed land-based missile site;
- c) *modernization* of the one allowed land-based ABM site.

The provisions of the Treaty were designed to prevent "breakout" that is, to avoid the situation wherein one side has stockpiled components and suddenly catches the other side off guard, abrogating the Treaty with the deployment of a fully operational ABM system.