

The ABM Treaty contains no definition of the term "space-based". Furthermore, no definition or delimitation of the term "space" is contained in any other international agreement.⁸ However, it is generally understood that an object in Earth orbit is in outer space.⁹ The term "based" is more easily defined. Its ordinary meaning includes *inter alia* a starting point. The scope of the term "space-based" should therefore be confined to BMD components which are placed in Earth orbit.¹⁰

Verification of treaty compliance is to be provided by the use of "national technical means"... in a manner consistent with generally recognized principles of international law (Article XII). National technical means (NTMs) include *inter alia* satellites, aircraft, and ground systems. With this provision, not only was the legality of space-based surveillance by means of satellites formally acknowledged, but such satellites thus became an essential component of an international arms-control regime. Both parties also agreed not to interfere with each others' NTM's of verification. Interference, as used in this agreement, may be understood to encompass measures such as interception but also actions such as jamming, sensor blinding, and spurious commands.

Disputes arising over compliance with the Treaty are to be brought before the Standing Consultative Committee (SCC). The SCC was formally established by a Memorandum of Understanding between the USA and the USSR in 1972.¹¹ The SCC is a bilateral commission charged with considering questions of compliance and reconciling any misunderstandings or uncertainties regarding the SALT I Agreements. It holds annual meetings at least twice a year and at the request of either party. Proceedings of the SCC are held in private and may not be made public except with the express consent of both parties.

While the Agreement clearly prohibits ABM weapons in outer space, it does not forbid the development or testing of anti-satellite (ASAT) technology. ASAT and ballistic missile defense (BMD) technologies overlap substantially, any testing done in an ASAT mode would be permitted, except ASAT weapons which are nuclear-armed and space-based.

Those following debates on missile defense in the United States will recognize that the ABM Treaty has been widely criticized. Those advocating a National Missile Defense (NMD) view the ABM Treaty as blocking the acquisition of any meaningful missile defense. Significantly, Article XV of the Treaty provides that "[e]ach Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this treaty have jeopardized its supreme interests. It shall give notice of its decision to the other Party six months prior to withdrawal from the treaty. Such notice shall include a statement of the extraordinary events the notifying party regards as having jeopardized its supreme interests. Whether the proliferation of intercontinental ballistic missiles

⁸ See, "Treaty on Outer Space", Hearings Before the Committee on Foreign Relations, US Senate, 90th Cong., 1st Session, 1967, 17. Several theories have been proposed regarding the definition/delimitation of outer space. See Cheng, B., "The Legal Regime of Airspace and Outer Space: The Boundary Problem Functionalism versus Spatialism: The Major Premises", V *Annals of Air and Space Law* 323 (1980).

⁹ See testimony of then Secretary of State Dean Rusk during the Outer Space Treaty Hearings, *ibid.*, at 17.

¹⁰ This would raise the possibility of testing sub-orbital lasers, for example, against strategic ballistic missiles or their elements in flight trajectory. See, Jones, A.M., "Implications of Arms Control Agreements and Negotiations for Space-Based BMD Lasers", in, Payne, K.B. (ed.), *Laser Weapons in Space - Policy and Doctrine*, Western Press, Boulder, 1983, 55 *et seq.*

¹¹ Memorandum of Understanding Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding the Establishment of a Standing Consultative Commission; signed and entered in to force on 21 December 1972.