Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection:
Green, Max: Files, 1985-1988
Folder Title:
World Jewish Congress
Box: 29

To see more digitized collections visit:
https://www.reaganlibrary.gov/archives/digitized-textual-material

To see all Ronald Reagan Presidential Library Inventories, visit:
https://www.reaganlibrary.gov/archives/white-house-inventories

Contact a reference archivist at: **reagan.library@nara.gov**

Citation Guidelines: https://reaganlibrary.gov/archives/research-support/citation-guide

National Archives Catalogue: https://catalog.archives.gov/

Last Updated: 04/10/2025

1

(1)

South Africa

Jerusalem

REPORT TO WORLD JEWISH CONGRESS PLENARY ASSEMBLY ON THE SOUTH AFRICAN JEWISH COMMUNITY - 29 JANUARY 1986
HILTON HOTEL - JERUSALEM

By Dr Israel Abramowitz
President
S A Jewish Board of Deputies

In the Chair: Raya Jaglom - Vice President, World Jewish Congress

Madam Chair, I welcome and thank you for the opportunity of reporting on the South African Jewish community. I shall be reporting in general terms and Mr Schwarz who follows me will deal specifically with the political dimensions.

At a time when a considerable amount of attention has been focused on the affairs of our troubled Continent, it is almost as if South Africa is at present in the centre of a vast arena with the attention of the entire world focused on events in our country.

There is a growing concern and anxiety among South African Jews regarding the contemporary situation and this has been heightened by the increasing isolation of South Africa. The current South African scene is characterised by a great fluidity and uncertainty, but let me hasten to add that we are certainly not a community in distress, notwithstanding the observations expressed by Mr Dulzin during the course of last evening's opening ceremony.

Living in a multi-racial society and confronted by a multitude of problems, it would be naive and simplistic to imagine that the problems of South African can be resolved overnight. The fate of the South African Jewish community is inextricably linked with the other whites of this country.

The latest available figures of the number of Jews in South Africa is approximately 118 000, which numerically represents the eighth largest community in the world. Demographic analyses of recent statistics clearly reveal that the community is an ageing one with a low birthrate representing virtually zero population growth. To some extent, this has been offset by an influx of Israelis in recent years. Estimates vary and a recent census figure of 6 500 has been suggested, but I suspect that it is higher.

The South African Jewish community is an urbanised one with the overwhelming majority, living in the two largest cities Johannesburg and Cape Town. Between 65 000 to 70 000 Jews live in the Johannesburg area and about 26 000 in Cape Town and its environs.

65-70
26

Jews are an integral part of the white population which numbers some 4½ million, within an overall population of some 34 million people. Among them are 26 million Blacks, 2½ million people of mixed racial origin and under a million Asians, who originally came to South Africa from India and Pakistan. In percentage terms, Jews constitute 2,5% of the White population 0,5% of the total. Despite its relatively small numbers the Jewish community is clearly identifiable with a high profile. The reason for this is the fact that it is a minority within a predominantly white Christian society and that for a relatively small group, its achievements have been remarkable. Jews have made a considerable impact on all spheres of life - from a commercial to the sporting and from the professional to the cultural. Although Jews find themselves in position of prominence in business, professions, politics and even the judiciary, their ability to influence and change the status quo appears to be a marginal one. 3

Whether South African Jews can play a meaningful role in ameliorating the complex race situation in South Africa continues to be a topic of concern and uncertainty. Nevertheless communal leadership believes that we have a duty to participate. / South African Jewry has a proud record and its talents should be made available as individuals and as a community. /

80% About 80% of the total Jewish population is of Lithuanian origin making it by and large a homogenous community. The bulk of them arrived in the country within the half century from 1880 till 1930 lured by the discovery of gold, diamonds and mineral wealth which placed South Africa on the economic map of the world.

1880-1930

On account of its Lithuanian roots, South African Jewry is a fundamentally traditional one. More than three-quarters of those who have religious affiliations belong to Orthodox congregations while 15 to 18% are members of the Reform movement. As a result, an outstanding network of Jewish day schools has been established throughout the country. More than half of all Jewish children attend these schools and in some centres such as Durban, Cape Town and Port Elizabeth the figure is as high as three-quarters and more.

75%
15-18%
50-75%

Apart from the religious and educational aspects of communal life there are also well established bodies attending to the welfare of the aged, handicapped and economically underprivileged people. In addition there are brotherhood and sisterhood organisations such as B'nai B'rith and the indigenous Hebrew Order of David, whose services range from charitable to cultural work.

The strong Zionist orientation of South African Jews is well-known throughout the Jewish world. The Zionist movement was established in 1898 - a mere two years after the first Basel Congress, was summoned into being by Theodor Herzl. The Zionist movement in South Africa today is generally regarded as one of the most effective of its kind. All Zionistic activities in the country are co-ordinated under the aegis of the Zionist Federation. The aliyah rate in South Africa is per capita among the highest from the Western world. About 15 000 former South African Jews now live, and are fully integrated, into Israeli life. Our community also has an outstanding record in the collection of funds for Israel.

1898

Many South African Jews fought in Israel during the War of Independence and in subsequent wars, some of whom gave their lives for the freedom of the Jewish State. The centrality of Israel is paramount in the minds of South African Jews and it is therefore little wonder that South African Jewry is so greatly concerned that the close and friendly links between South Africa and Israel should be retained.

Generally speaking the South African Jewish community has been less prone to the ravages of assimilation and intermarriage than most other Diaspora communities. This could be well due to the fact that South Africa is a stratified society, a mixture of First and Third World people dominated by the white section of the population. And even that section is not a uniform one. It consists of English and Afrikaans speaking people bearing a memory of historical antagonism towards each other. Instead of the American experience of the melting pot, South Africans of all races tend towards the maintenance of separate identities.

On account of their insecure situation at the beginning of the century, the Jewish community formed a single body to safeguard their civic and political rights. Known as the South African Jewish Board of Deputies, it has retained that function for over 80 years. It played a vital role during the thirties and forties in combating an anti-Semitism with strong pro-Nazi overtones prevalent among a section of the Afrikaans speaking population at the time.

Since anti-Semitism in South Africa has lost much of its virulence, although it certainly does still exist, it is no longer the core issue that it was in the 1930's. The Board has been able to focus its attention in other directions. These include the enhancement of cultural life, efforts towards an overall strengthening of Jewish identity and fostering of a better understanding between the Jewish and other sections of the population of all colours and races.

It would be a distorted reflection of South African history to believe that racial discrimination in its manifold forms only saw the light of day during the last four decades or so.

The issue of racial discrimination has been one of concern for the South African Jewish Board of Deputies for many years. On account of Jewish ethical and moral values and also because Jews have been the most cruelly affected victims of discrimination, the Board of Deputies has for a long time unequivocally condemned racially discriminatory practices.

At successive conferences and on appropriate occasions we have expressed ourselves with increasing intensity regarding our concern for the perplexities and problems of South African society.

The/...

The Board of Deputies has publicly condemned and criticised evictions and forced removals, detention without trial, university quotas and the controversial prohibition of Mixed Marriages Act. These latter two, have since been removed from the Statute Book.

We have condemned acts of violence whether emanating from those stirring up unrest or from the authorities. We have repeatedly expressed our abhorrence of discriminatory practices and resolve, to strive for a dispensation in which all sectors of South African society can live in harmony and peace.

And this culminated in the Board of Deputies expressing its most forthright condemnation of racial discrimination and commitment to justice and equal opportunity in a resolution which was adopted at its last national congress towards the end of May last year. The "resolution rejected apartheid" which represents the entire structure of racial discrimination.

We note with satisfaction that our action has been welcomed and endorsed in the draft resolution which is to be moved on behalf of the Human Rights Commission during the proceedings of this Congress.

But ladies and gentlemen to condemn apartheid in South Africa today does not require great courage - everyone is doing so including voices in the government .

A folder with material on the South African Jewish community, which has been made available to delegates at this Assembly contains a document dealing with the subject of racial discrimination in detail.

The/...

The great challenge now facing the Board of Deputies as the representative body of the South African Jewish community is to seek ways of giving practical effect to its resolution and to translate words into deeds. This is no easy task particularly when it is borne in mind that Jews exercise minimal political influence in white South Africa and which is firmly entrenched in the hands of the dominant Afrikaans speaking section. Nevertheless the South African Jewish Board of Deputies will continue wrestling with the problem. Individual Jews of high standing in all areas of social, political and economic activity have gone on record in no uncertain terms for the crucial need to abolish apartheid.

The current situation of unrest and violence in South Africa has evoked a mood of uncertainty in the Jewish community as it has also done among other sections of the population.

A substantial number of young people with talent, upward mobility and considerable ableness have turned their attention to new horizons or are seriously considering to do so. Regrettably Israel has no exclusivity in this regard. Not much imagination is required to become aware of the detrimental effect this will have on the numerical strength of the remaining community. Despite this, however, the solid Jewish infrastructure which South African Jewry have built up for well over a century will not be allowed to disintegrate as many Jews will remain in South Africa for the foreseeable future, unless any new dispensation will make that intolerable. Our concern is what will follow when the infrastructure of apartheid is dismantled. There are some hopeful signs on the horizon that could bring about a better future for all.

As a Jewish community we believe that South African Jews, and for that matter Jews throughout the world should act in accord with Judaism's traditional commitment to freedom and justice for all mankind. Our approach must be pragmatic and tempered with a need to face each and every challenge with a guarded sense of optimism.

We have and will continue to add our voice to the call for negotiated change between white and black interests coming at this moment from a wide spectrum of South Africans.

It is our intention as a community to pursue this with the authorities and with all sectors of the community with alacrity, vigour and urgency.

It is our earnest hope and fervent prayer that reform and change and the avoidance of conflict and unnecessary violence in South Africa will come speedily and peacefully in our time.

In conclusion I would like to say how much we value our links with all sectors of the international Jewish community and in particular the World Jewish Congress and what great store we set on our deep emotional attachment to Israel. Together with my colleagues at this Assembly we pray and trust that this situation will not only continue, but will also grow in strength.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Criminal Division

UNITED STATES OF AMERICA	:	
v.	:	M-1218-85
VANNA OM STRINKO	:	

ORDER

Charged with a violation of 22 D.C. Code §1115 (1981),[1/] defendant challenges the prosecution on two grounds: (1) that she has been unfairly singled out for prosecution and that this proceeding amounts to an improper selective prosecution;[2/] and (2) that the statute upon which the prosecution rests violates guarantees provided in the First and Fifth amendments to the Constitution.

1/ 22 D.C. Code § 1115 (1981) provides:

It shall be unlawful to display any flag, banner, placard, or device designed or adapted to intimidate, coerce, or bring into public odium any foreign government, party, or organization, or any officer or officers thereof, or to bring into public disrepute political, social, or economic acts, views, or purposes of any foreign government, party, or organization, or to intimidate, coerce, harass, or bring into public disrepute any officer or officers or diplomatic or consular representatives of any foreign government, or to interfere with the free and safe pursuit of the duties of any diplomatic or consular representatives of any foreign government, within 500 feet of any building or premises within the District of Columbia used or occupied by any foreign government or its representative or representatives as an embassy, legation, consulate, or for other official purposes, except by, and in accordance with, a permit issued by the Chief of Police of the said District; or to congregate within 500 feet of any such building or premises, and refuse to disperse after having been ordered so to do by the police authorities of the said District.

2/ In conjunction with this claim defendant has filed a discovery motion which the government opposes and has served a subpoena upon both the United States Attorney and a State Department official. The government has moved to quash both of those subpoenas.

The defendant, an American citizen who is a native Cambodian,[3] was arrested on January 28, 1985, along with seventeen other adults outside of the Embassy of the Union of Soviet Socialist Republics (Soviet Embassy) and charged with a violation of the second clause of Section 1115.[4] Specifically, the information charges that on or about January 28, 1985,

> she congregated within five hundred (500) feet of the Embassy of the Union of Soviet Socialist Republic, a building or premises within the District of Columbia, used or occupied by representatives of the Union of Soviet Socialist Republic as an embassy, and refused to disperse from said embassy after being ordered to do so by police authorities of the District of Columbia, in violation of Section 22-1115, District of Columbia Code.

Formal charges were not filed against the other seventeen adults arrested.

The prosecution of the defendant commenced during a period in which persons were being arrested for violation of Section 1115 in the vicinity of the Embassy of the Union of South Africa (South Africa Embassy). Those arrests commenced in late November, 1984, and at the time of the hearing on these motions four months later, approximately 1680[5] persons had been arrested for violating

---

3/ See defendant's Motion to Dismiss.

4/ The statute contains two separate and distinct prohibitions. The first clause which includes all language preceeding the semicolon is sometimes referred to as the "flag and banner" clause. The second clause which includes the language following the semicolon is known as the "congregating" clause. Defendant is charged with violating the congregating clause.

5/ Although the number actually arrested is not precisely known, the parties agree that the number cited in the text is a reasonably accurate estimate. Further arrests have occurred throughout the spring and summer. It has been reported that by mid-July, 1985, approximately 2900 had been arrested. Washington Post, July 24, 1985, at A25.

this provision. None of those arrested at the South Africa Embassy have been formally charged in court by the United States Attorney. It is in that context that the defendant seeks dismissal of the information on "selective prosecution" grounds. In addition she challenges her prosecution on First and Fifth amendment grounds. These two contentions will be dealt with separately.

I. Selective Prosecution Claim

Earlier this year the Supreme Court addressed the issue of alleged selective prosecution in Wayte v. United States, _____ U.S. _____, 105 S. Ct. 1524 (1985) where it upheld the government's enforcement of Selective Service registration requirements against only those young men who advised the government that they had failed to register (or were reported by others as having failed to register) and who also persisted in their refusal to register after being advised that continued refusal might result in prosecution.

In reviewing the authorities relating to previous claims of selective prosecution, the Court noted that the prosecutor possesses broad discretion concerning whom to prosecute, and that discretion rests largely on the recognition that the decision to prosecute is not particularly suited to judicial review. Courts are simply not competent to undertake an analysis of such factors as strength of the case, a particular prosecution's general deterrence value, enforcement priorities, or the relationship of a case to overall enforcement plans.

Moreover, if courts were routinely to examine the bases of prosecutions, delays would inevitably result and law enforcement might be unnecessarily chilled by the threat that the prosecutor's motives and decision making would be repeatedly subject to outside inquiry.

Because of these considerations, courts generally do not undertake the process of examining the decision by the prosecutor to proceed with a particular case. This does not mean, of course, that courts will never make such an inquiry, however, such a course should be undertaken only when, applying ordinary equal protection standards, a defendant can demonstrate that the particular prosecution had a discriminatory effect and that it was motivated by a discriminatory purpose. Wayte, supra at 1531. In short, the defendant must show that the prosecution was "deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification." Id. (quoting, Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) and Oyler v. Boles, 368 U.S. 448, 456 (1962)).

political candidates

The principles enunciated by the Supreme Court in Wayte underlie the most recent selective prosecution case decided in this jurisdiction, Smith v. United States, 460 A.2d 576 (D.C. 1983). There the Court of Appeals rejected a selective prosecution claim brought by defendants convicted of creating a disturbance at a Senate subcommittee hearing. The Court reiterated what has been previously said here: a party charging discriminatory enforcement of a statute carries a heavy burden of proof. The defendant must make a prima facie showing that:

> (1) others similarly situated were not prosecuted, and (2) the selective prosecution being complained of was improperly motivated, i.e., it was based on an impermissable consideration such as race or on a desire to prevent the exercise of constitutional rights.

Smith, 460 A.2d at 578. It bears emphasizing that it is not enough for the defendant to establish one or the other of these requirements, rather, a defendant must make a colorable showing as to both prongs of the test in order to successfully invoke a claim of improper selective prosecution.[6/] See Attorney General of the United States v. Irish People, Inc., 221 U.S. App. D.C. 406, 684 F.2d 928 (1982).

Before turning to the application of the above principles to the facts of this case, it is necessary to discuss briefly the requests for discovery that have been made by defendant. Specifically, she has subpoenaed both the United States Attorney and a representative from the State Department in order to obtain both their testimony, and certain specified documents. In addition, the defendant has moved for production of certain information assertedly in the possession of the government in the event that information is not provided by the officials who have been subpoenaed.

6/ If the defendant is able to make a colorable showing as to both prongs of the test she does not automatically prevail on her claim. As noted in the text following the material associated with this note, such a showing entitles defendant to discovery which she would not ordinarily be entitled to receive. In addition, once defendant establishes a prima facie case of selective prosecution, the burden then shifts to the government to prove that the prosecution was free of discriminatory taint. United States v. Berrios, 510 F.2d 1207, 1212 n.4 (2d Cir. 1974).

As a general rule, discovery in criminal cases is limited[7/] and the defendant may not expand the scope of discovery simply by claiming that she is being selectively prosecuted. The overwhelming weight of authority holds that unless the defendant can make a colorable claim under both prongs of the selective prosecution test set forth in Smith, then the defendant will be entitled to no more discovery than she ordinarily would be in any other criminal case. Smith, 460 A.2d at 579; Irish People, 221 U.S. App. D.C. at 425, 684 F.2d at 947; See also Davis v. United States, 390 A. 2d 976, 981 (D.C. 1978). Accordingly, the analysis that follows applies both to the selective prosecution claim and defendant's request for discovery to establish that claim.

The crux of the defendant's claim is: that she presented herself at the Soviet Embassy to protest the Soviet sponsored occupation of Cambodia; that the position taken by her is generally regarded as "conservative"; and that a conservative viewpoint is not popular or widely shared in the District of Columbia. On the other hand, she argues, hundreds of people both before and since her arrest have protested South Africa's apartheid policy within 500 feet of that embassy; that an anti-apartheid position is generally regarded as "liberal"; and that such a position is looked upon with favor by those who reside in the District of Columbia. Since she was formally charged in this case while none of the anti-apartheid demonstrators were charged,

---

7/ See, e.g., Super. Ct. Crim. R. 16.

she claims that she is being prosecuted because she espouses a conservative point of view while those who have taken a liberal position are not. As a result she argues she has been unfairly singled out and is entitled to a dismissal of the information on the grounds that it constitutes an improper selective prosecution.

In effect the defendant has defined the class of persons similarly situated for selective prosecution analysis as all persons who protest the policy of any foreign nation within five hundred feet of that nation's embassy, and that all embassy protestors, regardless of the nation involved, must be considered as members of the same class. Further, if those who espouse a liberal point of view are not prosecuted, then the government exceeds its authority when it prosecutes another protestor for espousing a conservative viewpoint.[8/]

In response, the government contends that the defendant has defined the class for selective prosecution analysis too broadly. In the government's view the defendant should be considered similarly situated only to those who protest at the Soviet Embassy rather than to those who protest at all embassies, including the South Africa Embassy. This Court agrees that the more narrowly defined class identified by the government accurately reflects the defendant's true class for equal protection analysis.

8/ As noted earlier, seventeen other adults, apparently all native Cambodians, were arrested with the defendant but not formally charged. The defendant conceded at the hearing on these motions that there were legitimate reasons for not prosecuting the other seventeen arrestees. The reason suggested related to the other arrestees' difficulty with the English language and the real possibility that they may not have understood the dispersal warning claimed to have been given by the police.

The legislative history of 22 D.C. Code § 1115 clearly shows concern for the safety of American diplomatic personnel and citizens abroad. See, Frend v. United States, 69 App. D.C. 281, 283, 100 F. 2d 691, 693 (1938), cert. denied, 306 U.S. 690 (1939). Senator Key Pittman, Chairman of the Senate Committee on Foreign Relations, noted with particularity the then current difficulties in protecting American citizens and diplomatic personnel in China.9/ A major purpose of Section 1115 was to provide protection for diplomatic sanctuaries here in the expectation of securing reciprocal protection for our own diplomatic representatives in other countries. Id.; Zaimi v. United States, 155 U.S. App. D.C. 66, 74, 476 F.2d 511, 519 (1973). In urging adoption of this provision, Secretary of State Cordell Hull advised Senator Pittman that if "we are to obtain for our representatives in foreign countries that degree of protection to which they are entitled, we should be in a position to show a like consideration for representatives in this country."10/

It certainly cannot be doubted that the nature of our government's relationship varies significantly from country to country amongst those with which we enjoy diplomatic relations. Events in recent years clearly demonstrate that our diplomatic personnel and citizens require different degrees of protection in different

9/ 81 Cong. Rec. 8484, 8485 (1937).

10/ Letter from Cordell Hull, Secretary of State, to Senator Key Pittman, reprinted at 81 Cong. Rec 8486 (1937).

countries. For example, we have seen attacks upon our embassies or diplomatic personnel in Iran, Lebanon, the Sudan and Kuwait, while in scores of other countries our embassies and personnel have had no known or reported incidents of a violent nature. Therefore, it is not at all unreasonable to conclude that the status of our diplomatic relations with each country may call for varying approaches in this country with respect to the safety of any one nation's representatives in order to ensure reciprocal protection for United States representatives abroad.[11/] Accordingly, the extent of enforcement of Section 1115 at any one country's embassy could justifiably differ, because of foreign relations reasons, from the extent of enforcement at some other country's embassy. Thus, when considering a selective prosecution claim such as the one made by the defendant, courts should examine the extent of enforcement at the embassy in question rather than enforcement practices at other embassies.

That conclusion is in accord with the analysis of the Circuit Court in Attorney General v. Irish People. There the defendant, a newspaper espousing the cause of the Irish Republican Army, claimed it was being selectively prosecuted for failing to register as required by the

---

11/ In 1972 Congress enacted Pub. L. 92-539 which, *inter alia*, provided criminal penalties for the killing of a foreign official or any official guest as well as other protection for foreign officials. In enacting that statute the Congress found that -

> harassment, intimidation, obstruction, coercion and acts of violence committed against foreign officials or their family members in the United States or against official guests of the United States adversely affect the foreign relations of the United States.

Act of October 24, 1972. Pub. L. 92-539, Sec 2, 86 Stat. 1070, 1071.

Foreign Agents Registration Act[12/] because of the cause it espoused. All eligible foreign agents are required to register under the Act, but for purposes of selective prosecution analysis the Court held that the defendant's class included those foreign agents representing Irish political interests, not all foreign agents. 221 U.S. App. D.C. at 426, 684 F.2d at 948.

This "country specific" class identification finds further support in Zemel v. Rusk, 381 U.S. 1 (1965), which upheld the Secretary of State's withholding of passport validation for travel to Cuba. The Court noted that the "Secretary has refused to validate appellant's passport not because of any characteristic peculiar to appellant, but rather because of foreign policy considerations affecting all citizens." Id. at 13. The Court also noted that similar restrictions have been imposed with respect to travel to a number of countries since the 1930's (e.g. Spain, Ethiopia and China in the mid-1930's, all of Europe after 1939, and Yugoslavia, Hungary and other Eastern European countries in the late 1940's and early 1950's) based upon the circumstances existing at the time. The Court ultimately upheld restrictions that applied specifically to Cuba because the Secretary of State had "justifiably concluded that travel to Cuba by American citizens might involve the Nation in dangerous international incidents". Id. at 15.

Within the class so defined, the defendant can make no showing under the first prong of the Smith test since she is unable to point to any instance of

---

12/ 22 U.S.C. §611 (1982) et seq.

non-prosecution of demonstraters in the vicinity of the Soviet Embassy, with the exception of those arrested at the same time she was.[13/] Indeed reported cases demonstrate that prosecution, or the threat of prosecution, for demonstrating at the Soviet Embassy is essentially taken for granted.[14/] Further, since Mrs. Strinko's arrest in this case, over fifty other people have been formally charged under the same statutory provision as she has, for demonstrating in the vicinity of the Soviet Embassy. For example, on March 29, 1985, ten Ukranian Americans were charged,[15/] and on May 1, 1985, and again on June 10, 1985, at least thirty-five rabbis were arrested and charged with violations of 22 D.C. Code §1115.[16/] Reportedly, the rabbis were protesting the Soviet Union's treatment of Jews in the Soviet Union.[17/] Finally, on May 29, 1985, at least twelve members of a group known as the Sojourners were charged with violations under this statute.[18/] It is clear, therefore, that demonstrators at the Soviet Embassy are routinely prosecuted. Accordingly, since defendant is unable to show that others similarly situated were not prosecuted, she is unable to satisfy the first prong of the Smith test and her challenge on selective prosecution grounds must therefore fail.

13/ See note 8, *supra*.

14/ See cases cited in the text *infra* at 17-18.

15/ Misdemeanor case number M-5664-85 to M-5673-85.

16/ Misdemeanor Case Nos. M-8158-85 to M-8169-85, M-8173-85 to M-8185-85, M-9562-85 to M-9566-85, M-9568-85 to M-9580-85, M-9582-85 and M-9583-85.

17/ *Washington Post*, June 11, 1985, at B3.

18/ Misdemeanor Case Nos. M-8880-85, M-8885-85, M-8887-85, M-8890-85 to M-8892-85, M-8894-85, M-8897-85, M-8900-85, M-8902-85, M-8906-85 and M-8908-85.

In order to invoke the selective prosecution claim, defendant must make a colorable showing as to both prongs of the Smith test. Her failure to make any showing on the first prong would ordinarily end the Court's inquiry since analysis as to the second prong would be unnecessary. As discussed earlier, Mrs. Strinko argues, however, that she has satisfied the first prong of the test because all embassy demonstrators, not just those at the Soviet Embassy, must be considered to constitute the class. This Court has rejected that classification. However, assuming for purposes of further analysis defendant's broader definition of the class is correct, then her challenge still must fail since she cannot make the required showing with respect to the second prong of the Smith test, i.e. the requirement that defendant make a colorable showing that any selective prosecution was improperly motivated.

In support of her position, defendant relies heavily upon a public comment[19/] made by the Corporation Counsel concerning the reason for dropping charges against some defendants that arose out of an incident at the South Africa Embassy which is within the prosecution authority of that office. Nothing has been presented, however, that would permit a conclusion that the Corporation Counsel's motive for not proceeding in any case can be

---

19/ The Corporation Counsel stated, "it would be untenable for the Office of the Corporation Counsel to prosecute these five individuals who demonstrated peaceably to call attention to the gross injustices which result from the South African policy of apartheid." News Release, The District of Columbia Office of the Press Secretary. January 8, 1985.

attributable to the United States Attorney.[20] The two offices are separate in virtually every way; one is a local official and one federal, with the Corporation Counsel being appointed by the Mayor[21] and the United States Attorney by the President.[22] Further, each office has its own distinct responsibility with respect to the prosecution of cases in violation of the District of Columbia Code. See 23 D.C. Code § 101 (1982), Conduct of Prosecutions.

The only other basis that has been advanced by the defendant going to the issue of improper motivation is the "conservative/liberal" argument that was discussed earlier. There is not a shred of evidence however, that supports a claim that either the decision to charge the defendant or anyone else, or the decision not to charge others, is based in any way upon political philosophy. Consider, for example, the fifty or so other Soviet Embassy defendants who have been arrested and charged since March of this year.[23] Included are groups protesting Soviet policy with respect to Jews, the Ukraine and Afghanistan.[24] Are the views espoused by any of these groups "liberal" or "conservative"?

20/ The only public comment by the United States Attorney that has been brought to the Court's attention is one in which he is reported to have stated that the South Africa cases were dropped because they lacked "prosecutive merit", Washington Times, January 5, 1985, at 10A.

21/ See 1 D.C. Code § 101 (1981).

22/ See 28 U.S.C. § 541 (1982).

23/ See notes 15, 16, and 18, supra, and accompanying text.

24/ The group arrested and charged on May 28, 1985, is reported to mix "a Christian message with political stands against nuclear arms, apartheid in South Africa, the death penalty, the Soviet invasion of Afghanistan and U.S. military involvement in Central America." It also opposes abortion. Washington Post, May 29, 1985, at C5.

There is of course no real answer to that question and since there is no answer it must be concluded that defendant's claim that she is being singled out because of her conservative viewpoint cannot be supported.[25] As a result, even if a broad class is considered for this analysis, defendant's claim must still fail because she is unable to satisfy the other prong of the Smith test.

Finally, defendant's selective prosecution claim must be evaluated in the context of the history of prosecutions for violating this section. The reported cases would seem to indicate,[26] and defendant does not claim otherwise, that since this statute was enacted nearly fifty years ago violators have apparently been prosecuted as a matter of course except for the recent non-prosecution of the South Africa Embassy demonstrators. This raises the question of whether, given this history, the decision *not* to prosecute

---

25/ One possible explanation for non-prosecution of the South Africa Embassy cases is one of sheer volume. Violations of Section 1115 are tried by the Court without a jury and are assigned to the Misdemeanor Nonjury Calendar as are other nonjury offenses such as shoplifting, soliciting prostitution, and taking property without right. One judge and the equivalent of one other judicial officer (either judge, commissioner or combination) are necessary to maintain that calendar and avoid backlogs. As noted earlier, nearly 1700 people had been arrested in violation of Section 1115 near the South Africa Embassy from late November until late March, 1985. During approximately the same time period (actually December 1, 1984 to March 31, 1985) slightly more than 1200 regular nonjury cases were filed in Court. See report of Deputy Clerk, Criminal Division for December, 1984 and January, February, and March, 1985. As can readily be seen, if the South Africa cases had been prosecuted, the case-load on the nonjury calendar would have increased by approximately 140%. The drain on court resources would have been substantial.

26/ See cases cited in the text at pp 16-18, *infra*.

some demonstrators renders invalid, on selective prosecution grounds, those prosecutions which actually are brought. Defendant has cited no authority to support such a conclusion and the Court is aware of none that does. At a minimum it would appear that defendant would be required to show that the decision to prosecute her as well as the others who have been prosecuted was based upon some "impermissable consideration".27/ As demonstrated above, she has not made such a showing and for that reason, and the other reasons set forth above, defendant's Motion to Dismiss on selective prosecution grounds must be denied. For the same reasons, her request for discovery must also be denied.

II. Constitutionality of Section 1115

Defendant also challenges her prosecution on the grounds that the statue violates the First and Fifth amendments. Mrs. Strinko's challenge on those grounds is not the first directed at Section 1115 since its enactment in 1938. On at least seven previous occasions judges from four different courts in this jurisdiction have issued opinions upholding either the flag and banner clause or the congregating clause in the face of constitutional challenges like the one made by the defendant in this case. The first challenge came shortly after the

27/ United States v. Smith, 460 A.2d 576, 578 (D.C. 1983).

provision was enacted when four defendants were convicted for violating the flag and banner clause outside of the German and Austrian embassies. On appeal a panel of the Circuit Court unanimously affirmed. Frend v. United States, 69 App. D.C. 281, 100 F.2d 691 (1938), cert. denied, 306 U.S. 640 (1939).

The next reported challenge did not come until nearly thirty years later. On June 12, 1968, Siamack Zaimi, an Iranian national, and a companion were arrested for verbal remarks critical of the Shah of Iran uttered within 500 feet of the Shah's official residence in the District. Zaimi's constitutional claim was rejected by the Honorable William Pryor[28/] of this court (then known as the Court of General Sessions) and the District of Columbia Court of Appeals. Zaimi v. United States, (Zaimi I), 261 A.2d 233 (D.C. 1970). On appeal from that decision the Circuit Court declined to reach the constitutional question, but reversed Zaimi's conviction on the grounds that his conduct did not violate the flag and banner clause as interpreted by that Court. Zaimi v. United States (Zaimi II), 155 U.S. App. DC. 66, 476 F.2d 511 (1973).

Shortly after the Court of Appeals ruling in Zaimi I, Chief Judge Harold Greene of this Court rejected a challenge to the congregating clause in a case involving nineteen people arrested outside of the Japanese Embassy. United States v. Travers, 98 W.L.R. 1505 (D.C Ct. Gen Sess. Aug. 26, 1970). Judge Greene held that the congregating

---

28/ Now Chief Judge of the District of Columbia Court of Appeals.

clause of Section 1115 does not offend constitutional provisions in barring meetings held within five hundred feet of any building occupied by a foreign nation for official purposes, "which have a direct relationship to that nation , including meetings which have as their purpose an expression of views concerning the government involved, its personnel or its policies". Id. at 1508.

Later the same year, Judge June Greene of the United States District Court denied a request for a temporary restraining order which sought to prevent enforcement of the congregating clause by the Chief of Police. Some twenty-five petitioners indicated an intention to assemble on the public sidewalk in front of the Soviet Embassy in order to focus attention upon discrimination against Jews in the Soviet Union. Citing Frend, the Court noted that Section 1115 "makes unlawful such protest nearer to an Embassy than five hundred feet when such protest, as the proposed one, is directed against the foreign government operating the Embassy". Jews for Urban Justice v. Wilson, 311 F. Supp. 1158, 1159 (D.D.C. 1970).

Two years later an attack, which focused principally on the flag and banner clause, was rejected by a three-judge court.[29/] in the face of a claim that since 22 D.C. Code §1116 exempts picketing as a result of a labor dispute

29/ The panel included the Honorable Malcolm Wilkey of United States Court of Appeals, and the Honorables John Lewis Smith, Jr., and Charles R. Richey of the United States District Court.

from the reach of Section 1115, then the latter must be found unconstitutional as was an assertedly similar local ordinance in Police Department of Chicago v. Mosley, 408 U.S. 92 (1972).[30/] Jewish Defense League v. Washington, 347 F. Supp 1300 (D.D.C. 1972) (three-judge court).

Finally, last year a judge in this Court and a judge in the District Court rejected constitutional challenges directed at the flag and banner clause. United States v. Brown, No. M-10901-83, (D.C. Super. Ct. January 19, 1984); Finzer v. Barry, No. 84-0899, (D.D.C. May 17, 1984). In Brown, the defendant and a companion were arrested for conduct that occurred near a chancery of the Soviet Union, while in Finzer, petitioner sought to demonstrate near the embassies of both the Soviet Union and of Nicaragua.

In short, constitutional challenges to Section 1115 have been often made and always rejected by the judges considering the issue in this jurisdiction. Defendant cites no authority that persuades this Court that it should disregard the binding precedent of Frend and Zaimi I , and the very persuasive authority of Travers.

30/ The Court asked the parties to brief the issue of whether Carey v. Brown, 447 U.S. 455 (1980) required a different conclusion from that reached by the three-judge court in Jewish Defense League. In Carey the Supreme Court struck down an ordinance similar to the one invalidated in Police Department v. Mosley. After carefully reviewing the material provided by the parties, this Court is satisfied that Carey made no significant change in the law and that the holding of the three-judge court in Jewish Defense League is still sound. Accord, United States v. Brown, No. M-10901-83, (D.C. Super. Ct., January 19, 1984).

Defendant claims, however, that Frend and Zaimi I apply only to the flag and banner clause, and therefore are not binding in this case which involves an alleged violation of the congregating clause. The short answer is that the principles underlying the Frend and Zaimi I courts' rejection of constitutional challenges to the flag and banner clause apply with equal force to like challenges to the congregating clause. Section 1115 was enacted to ensure protection for representatives of foreign nations in the course of their official duties.[31/] And although it imposes some limitations upon speech and assembly -

> [i]n view of the interest of the United States in the protection of the security and tranquilty of diplomats and official visitors, and the potential harm from demonstrations against foreign dignitaries which become uncontrollable, the minimal restriction imposed by Section 1115 are reasonable and proper.

Travers, at 1509.

In sum, this Court rejects defendant's constitutional challenge and adopts the interpretation of the congregating clause of Section 1115 set forth fifteen years ago in Travers. Thus the government must show: that defendant

---

31/ The history and purpose of Section 1115 are set out in considerable detail in Zaimi II and need not be repeated here.

congregated[32/] within five hundred feet of a premise used or occupied by the Union of Soviet Socialist Republic (USSR) as an embassy; that the congregation had a direct relationship to the USSR or its personnel; and, that she refused to disperse after being ordered to do so by police authorities of the District of Columbia.

Conclusion

In light of these findings, the Court makes the following rulings on the motions in this case:

That the defendant's Motion to Dismiss the information on the Grounds of Selective and Discriminatory Prosecution is denied;

That the defendant's Motion to Dismiss the information on the Grounds that the Second Clause of 22 D.C. Code §1115 is Unconstitutional is denied;

That the government's Motions to Quash Subpoena for Production of Documents and the Testimony of the United States Attorney are granted;

That the government's Motion to Quash Subpoena for Appearance with Documents of James E. Nolan, Jr. is granted; and

That the defendant's Motion for Discovery is denied.

The parties are directed to appear before the Misdemeanor nonjury Calendar Control Judge within two weeks of this Order to set a date for trial.

32/ A congregation requires at least three persons, Kinoy v. District of Columbia, 130 U.S. App. D.C. 290, 298, 400 F.2d 761, 769 (1968).

hearing for these cases, counsel for the defendants announced their intention to use the common law defense of necessity at the trial scheduled for December 11, 1985. Government counsel stated its belief that the defendants could not make out a prima facie case for the defense of necessity and therefore this court should prohibit all defense testimony at the trial relating to this issue.

The District of Columbia Court of Appeals, in Griffin v. United States, 447 A.2d 776, 778 (1982), recently explained the requirements for use of this defense.

> In essence, the necessity defense exonerates persons who commit a crime under the "pressure of circumstances," if the harm that would have resulted from compliance with the law would have significantly exceeded the harm actually resulting from the defendants' breach of the law. State v. Marley, 54 Haw. 450, 471-72, 509 P.2d 1095, 1109, (1973). See also United States v. Lewis, 628 F.2d 1276 (10th Cir. 1980), cert. denied, 450 U.S. 924 (1981); United States v. Micklus, 581 F.2d 612 (7th Cir. 1978); State v. Dorsey, 118 N.H. 844, 395 A.2d 855 2249(1978); United States v. Randall, 104 Wash.D.L.Rep. (Dec. 28, 1976); La Fave & Scott, Criminal Law §50 (1972). The defense is not available where: (1) there is a legal alternative available to the defendants that does not involve violation of the law, United States v. Bailey, 444 U.S. 394 (1980); La Fave & Scott supra at 387; (2) the harm to be prevented is neither immient, nor would be directly affected by the defendants' actions, State v. Marley, supra, 54 Haw. at 472, 509 P.2d at 1109, and (3) the defendants' actions were nto reasonably designed to actually prevent the threatened greater harm.

Under the circumstances of this case the defendants should be precluded from utilizing the defense as they fall under all three requirements. See also United States v. Gant, 691 F.2d 1159 (5th Cir. 1982)(defendant must demonstrate each element of necessity defense before he may sucessfully raise such an affirmative defense).

For these very reasons courts have consistently denied defendants the use of the necessity defense in political and social protest cases. See Griffin v. United States, 447 A.2d 776 (D.C. 1982)(activists convicted of unlawful entry for opening doors of St. Matthew's Cathedral to the homeless); United States v. Cassidy, 616 F.2d 101 (4th Cir. 1979)(anti-nuclear demonstrators convicted of depredation of government property for throwing blood and ashes on the walls of the Pentagon); United States v. Lowe, 654 F.2d 562 (9th Cir. 1981)(anti-nuclear protesters at naval submarine base convicted of illegal entry); United States v. May, 622 F.2d 1000, (9th Cir.) cert. denied, Phipps v. United States, 449 U.S. 984 (1980)(anti-nuclear demonstrators at submarine base convicted for illegal entry); State v. Marley, 54 Haw 450, 509 P.2d 1095 (1973)(anti-war demonstrators convicted of trespassing at defense contractor's office); State v. Warshow, 138 Vt. 22, 410 A.2d 1000 (1979)(anti-nuclear demonstrators convicted of unlawful trespass at nuclear power plant).

Should the defendants in their answer to this motion proffer a specific factual predicate to establish a prima facie case for this defense, the government will give a detailed response to such a proffer. However, there is now no imaginable set of facts the defendants could proffer which would satisfy the requirements for utilizing the necessity defense. See Griffin v. United States, supra.

WHEREFORE, the government requests that this motion in limine be granted.

RESPECTFULLY SUBMITTED,

JOSEPH E. DIGENOVA
UNITED STATES ATTORNEY

KATHERINE WINFREE
ASSISTANT UNITED STATES ATTORNEY
CHIEF, MISDEMEANOR TRIAL SECTION

BY: Lynn L Sarko/SLB
LYNN L. SARKO
ASSISTANT UNITED STATES ATTORNEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by mail upon the attorney for the defendant, Henry W. Asbill, Esquire, 1302 18th Street, N.W., #603, Washington, D.C., 20036, this 5th day of November, 1985.

[signature]
ASSISTANT UNITED STATES ATTORNEY

mp

SUPERIOR COURT
OF
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	*	Non-Jury (Judge Kotelly)
v.	*	T.D. 12-11-85
MENDEL ABRAMS	*	Criminal Nos. M8158-85
MARK LEVIN		M8159-85
MATHEW CLARK		M8160-85
SHELDON ELSTER		M8161-85
GORVAN MORRIS		M8162-85
MICHAEL BEBEUBAUM		M8163-85
ROBERT KLENSKI		M8164-85
JARY HEYMAN		M8165-85
SAMUEL VULKMAN		M8166-85
GARY FINK		M8167-85
ISREL OLER		M8168-86
LEONARD LAHAN		M8173-85
HAROLD BAYAR		M8174-85
GERALD SEROHA		M8175-85
DAVID SCHUDRICH		M8176-85
MARK DIAMOND		M8177-85
JAN KAUFMAN		M8178-85
MINDY PORTROY		M8179-85
JACK LUXEMBURGE		M8180-85
JACOB HALPERN		M8181-85
JOHN STEINBRUER		M8182-85
REDBEN LANDMAN		M8183-85
HOWARD GOIN		M8184-85
ARNOLD FINK		M8185-85

GOVERNMENT'S RESPONSE TO DEFENDANTS' OPPOSITION
TO GOVERNMENT'S MOTION IN LIMINE

The United States, by its attorney, the United States Attorney for the District of Columbia, respectfully submits the following response to the defendants' opposition to the government's motion in limine.

It is well settled that a motion in limine is the appropriate means by which to prevent encumbering the record with irrelevant matters, thereby insuring that there will not be a waste of valuable judicial resources. See 60 C.J.S. Motions & Orders § 2 (1969). Indeed, it was by way of a motion in limine that the trial court in Griffin v. United States, 447 A.2d 776, 777 (D.C. 1982), prevented the defendants from presenting a defense of necessity. See also United States v. Bailey, 444 U.S. 394, 416-17(1980)(the trier of fact need not be burdened with testimony supporting all elements of an affirmative defense once it becomes apparent that an essential element can not be established as such cases present a good example of the potential for wasting valuable trial resources). Defendants' proposal that they be permitted to present a necessity defense in the instant case must necessarily be denied since the proffered defense is inapplicalbe to this case as a matter of law.

In deciding whether the defendants can properly be permitted to assert the defense of necessity to a violation of D.C. Code §22-1115, this Court must consider the purpose of the statute--to protect diplomatic sanctuaries in the United States in order to secure reciprocal protection for United States representatives in foreign countries. See generally Zaimi v. United States, 155 U.S. App. D.C. 66, 476 F.2d 511, 519 (1973); Frend v. United States, 693, U.S. App. D.C. 281, 100 F.2d 691, 693 (1938). The statute's special role in insuring corresponding protection for our diplomatic personnel overseas should preclude political groups from relying on the necessity defense when committing crimes against foreign embassies or crimes that impede our efforts to protect their sovereignty. In Frend, the court recognized the vital purpose of D.C. Code §22-1115 when ruling that the statute did not violate the constitutional right of assembly or of free speech. Id at 693. Certainly the right to invoke the common law necessity defense is not more powerful than our valued rights to assemble and speak freely.[1] The tragic events at our embassy in Tehran, Iran, demonstrate the vital importance of government efforts to protect foreign embassies. The grave consequences of impeding our efforts to protect diplomatic personnel against terrorism or violence must take precedence over this particular

[1] The Supreme Court has long recognized a legitimate state interest in regulating the location of demonstrations to maintain public order. See Cameron v. Johnson, 390 U.S. 611 (1968)(upheld statute designed to restrict demonstrations near a courthouse). It would certainly be an anomoly if a statute designed to maintain order and which has passed constitutional challenges could easily be usurped through use of the affirmative defense of necessity.

form of social protest. The United States submits that under the circumstances, the defendants must be required to confine their protests to areas located more than 500 feet from the Soviet Embassy.

The facts involved here and the necessity defense arguments raised by the defendants are very similar to those faced by the trial court in State v. Marley, 509 P.2d 1095 (Haw. 1973), on which the District of Columbia Court of Appeals relied in Griffin v. United States, supra, 447 A.2d 776, 777-78 (D.C. 1982). In Marley, the defendants were convicted of criminal trespass at the Honolulu branch of the Honeywell Corporation. The defendants, who were protesting Honeywell's manufacture and sale of "anit-personnel" weapons used by the United States and foreign governments in Indochina, sought to raise the affirmative defense of necessity. In defining the defense, the Supreme Court of Hawaii stated:

> The "necessity defense" which is another of the justification defenses, has sometimes been called the "choice of evils" defense. The latter phrase is very descriptive of the defense, yet fails to include, even by implication, all of its elements. Several of the crucial elements of the "necessity" or "choice of evils" defense are absent from this case, and thus it is impossible for defendants to rely on the defense to exonerate them.
>
> In essense, the "necessity" defense exonerates persons who commit a crime under the "pressures of circumstances", if the harm that would have resulted from compliance with the law would have significantly exceeded the harm actually resulting from the defendants' breach of the law.

Id. at 1109. The court then cited three situations in which the defense is not available.

First, defendants are not justified in violating the law when there exist alternative forms of noncriminal protest that would enable them to dramatize, and hopefully terminate, the conduct they view as harmful. The defendants here had a variety of such non-criminal means of protest available to them, the most apparent being the alternative of demonstrating more than 500 feet away from the

Soviet Embassy to publicize their cause. Second, defendants may not be excused for violating the law where the harm to be prevented is not imminent. "Where ... the harmful acts to be prevented by defendants' actions are, at best, only tenuously connected with the situs of the crime, and would be only tenuously affected by defendants' acts, [a court] cannot find any real 'necessity' for defendants to act." Marley, supra, 509 P.2d at 1109. In this case, the human rights violations against which the defendants demonstrated occurred in the Soviet Union. As was true in Marley, these acts by a foreign government on its own soil would be only tenuously connected with the situs of the instant crime. Third, defendants are precluded from utilizing the defense when they cannot show that "their actions were ... reasonably designed to actually prevent the threatened greater harm." Id. (emphasis supplied). In Marley, the court stated: "[A]n essential element of the [defense] is that a direct casual relationship be reasonably anticipated to exist between the defender's actions and the avoidance of harm". Id. (emphasis supplied). In the instant case, the defendants cannot reasonably hope to show that their demonstration at the Soviet Embassy in Washington, D.C., on May 1, 1985, would directly cause a cessation of human rights violations in the Soviet Union. As the court in Marley stated, "[u]nder any possible set of hypotheses, defendants could foresee that their actions would fail to halt "the conduct against which they protested. Id. It is therefore not sufficient that the defendants in the instant case hoped, or even believed, that their actions would have an effect on the Soviet government. In order to raise the necessity defense, they must be able to show that their actions would have directly prevented the perceived greater harm. See United States v. Cassidy, 616 F.2d 101, 102 (4th Cir. 1979). This they simply cannot do.

Under any possible set of hypotheses, defendants can not make such a showing. Obviously, defendants hoped their conduct would be noticed by personnel of the Soviet Embassy and that such personnel would be persuaded to their cause, or that representatives of the press, or others, would note their activities. Then, defendants apparently hoped, Soviet Embassy personnel, and/or the press, and/or others, would communicate or cause to be communicated to officials of the Soviet government, the fact of their activities and, perhaps, the merits of their cause. Thereafter, the defendants hoped officials of the Soviet government would be pressured and/or persuaded to undertake discretionary political acts tending to alleviate the circumstances in the Soviet Union which offend the defendants. By no stretch of anyone's imagination may this sequence be characterized as "direct", "causal", or "certain" to occur.

Finally, the government submits that the necessity defense can have no application in a prosecution under 22 D.C. Code §1115. The admissibility of defendants' proferred evidence is

> governed, except when an Act of Congress or these rules otherwise provide, by the principles of common law as they may be interpreted by the courts in the light of reason and experience.

S.C.R.-- Criminal 26. "Reason and experience," particularly recent tragic experiences, relating to diplomatic sanctuaries and personnel, compel the conclusion that the common law defense of necessity can have no application in a prosecution under §1115. It defies reason and experience to suppose that the very activities at which §1115 is directed may be justified on the basis that the accused were motivated by concerns relating to conduct or circumstances in a foreign country. Were such a defense allowed, §1115 would have no vitality whatsoever with respect to the embassies, legations, and consulates of those countries which violate (or are alleged to violate) human rights and generally accepted norms of conduct. It is preposterous to suppose that Congress intended to confer the benefit of §1115 on fewer than all embassies, legations and consulates.[2]

If defendants' theory is accepted, only some countrys' embassies, legations, and consulates would be within the protection of §1115. Strangely, under defendants' theory, the countries whose facilities here would be without benefit of §1115 are the very ones with respect to which the unfettered conduct of diplomatic relations may be most important. In some such countries, reason and experience dictate that there is greater concern than in other countries for the welfare of American diplomatic personnel and facilites. With respect to such countries, it seems especially important that the conduct of diplomatic relatons be free of activities which are within the reach of §1115. When the United States elects to establish diplomatic relations with another sovereignty, and elects to permit it to establish an embassy, legation or consulate here, reason and experience compel the conclusion that such facility is, without exception, protected by §1115. A fundamental aspect of the United States' sovereignty is the right to establish and to provide for the safe, secure, and orderly conduct of diplomatic relations with other nations. No individual has the right, under the common law or otherwise, in the face of §1115, to interfere with this aspect of the United States sovereignty.

WHEREFORE, the government requests that its motion in limine be granted.

RESPECTFULLY SUBMITTED,

JOSEPH E. DIGENOVA
UNITED STATES ATTORNEY

KATHERINE WINFREE
ASSISTANT UNITED STATES ATTORNEY
CHIEF, MISDEMEANOR TRIAL SECTION

Lynn Sarko

LYNN LINCOLN SARKO
ASSISTANT UNITED STATES ATTORNEY

---

[2] By its very terms the statute applies to "any building or premises ... used or occupied by <u>any</u> foreign government ... [emphasis supplied]. 22 D.C. Code §1115.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by mail upon the attorney for the defendants, Hank Asbill, Esq., Asbill, Junkin, Myers, Buffone, Chtd., 1607 New Hampshire Avenue, N.W., Washington, D.C., this 4 day of December, 1985.

ASSISTANT UNITED STATES ATTORNEY

U.S. Department of Justice

United States Attorney
District of Columbia

United States Courthouse, Room 2800
Constitution Avenue and 3rd Street N.W.
Washington, D.C. 20001

Soviet
Embassy

July 12, 1985

Honorable Robert W. Kastenmeier
Chairman, Subcommittee on
Courts, Civil Liberties and
the Administration of Justice
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Attorney General has asked me to respond to your June 11, 1985 letter concerning members of the clergy who were arrested on May 1, 1985 for illegally demonstrating at the Soviet Embassy here in Washington. We greatly appreciate the seriousness of the questions you raise, the manner in which you have done so, and the opportunity to respond to them. The issues underlying the demonstrations are as substantively compelling as they are emotionally charged. Therefore, it is most natural to question the process by which demonstrators at one embassy are prosecuted while those at another are not, when the characteristics of both demonstrations appear "identical." We are most sensitive to such a concern. Moreover, while we are prohibited from specifically commenting on a pending criminal case, we believe we can still demonstrate that federal prosecutive policy in the area is neither arbitrary nor impermissibly discriminating. This is essentially because demonstrators at one embassy cannot, as a legal term of art, be said to be "similarly situated" to those at another embassy.

I should add at the outset that, notwithstanding the "pending case" impediment, it would be unwise in any case at any time to discuss the basis for prosecution since that could undermine the ability of the executive to enforce the law, because it would give important information to would-be violators. (*See*, *Wayte v. United States*, ___ U.S.___, No. 83-1212, decided March 19, 1985, slip op. at 8.) Such a discussion would clearly not be in the public interest.

However, what we can do is make exposition of some of the general considerations that govern the decision to prosecute, vel non, in any criminal case. Indeed, these factors were recently addressed by the Supreme Court quite aptly in the Wayte case, a significant opinion involving an allegation of unconstitutional selective prosecution of a draft-registration evader. The Wayte Court explained:

> In our criminal justice system, the Government retains "broad discretion" as to whom to prosecute. United States v. Goodwin, 457 U.S. 368, 380, n. 11 (1982); accord, Marshall v. Jerrico, Inc., 446 U.S. 238, 248 (1980). "[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978). This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake. Judicial supervision in this area, moreover, entails systemic costs of particular concern. Examining the basis of a prosecution delays the criminal proceeding, threatens to chill law enforcement by subjecting the prosecutor's motives and decisionmaking to outside inquiry, and may undermine prosecutorial effectiveness by revealing the Government's enforcement policy. All these are substantial concerns that make the courts properly hesitant to examine the decision whether to prosecute. Id. slip op. at 8. (Emphasis supplied.)

Further, the wishes of a complaining witness, be it a person or country, as to whether to prosecute are important, although they are not necessarily dispositive considerations. Of course, when foreign policy considerations are involved in a case, they may play a proper and major role in the judgment process. There are, of course, other factors appropriate for a prosecutor, as law enforcer, to consider of which the members are no doubt aware due to their service on the Judiciary Committee.

The Department of Justice enforces laws in the District of Columbia and throughout the United States fairly and in a non-discriminatory fashion. More particularly, in demonstration cases, each prosecutive decision is "content-neutral"; that is, the content of the speech of an individual or group of demonstrators cannot effect the decision on whether to prosecute. Indeed, to allow it to do so would be constitutionally impermissible.*

The fact that the United States Attorney for the District of Columbia is prosecuting the clergymen for their May 1, 1985 demonstration does not, as you suggest, support a claim of "arbitrary and discriminatory" prosecution. The Soviet/South African situations to which you allude are not at all legally "identical." From information that is a matter of public record, it is clear that the demonstrations occurred at two different locations in the Nation's Capital, involved different demonstrators, and most pertinently different embassies, and different countries. "Arbitrary" or "discriminatory" prosecution or "selective prosecution" as it is called, exists at law only when, because of improper motive, an individual or individuals are singled out for prosecution among those "similarly situated." The clergymen arrested at the Soviet Embassy on May 1 are "similarly situated" to other protestors arrested at the

---

* I was, therefore, appalled when the locally-appointed D.C. Corporation Counsel, Inez Reid, announced that she would not prosecute demonstrators at the South African Embassy for violating the police line (a charge over which the United States Attorney has no jurisdiction), and not do so <u>because</u> she agreed with the content of their speech and disagreed with the policies of the government of South Africa. This unfortunate articulation of a content-based reason not to prosecute was clearly wrong, indeed, apparently unconstitutional. I would note that Ms. Reid is an appointee of the District of Columbia city government and is not a federal employee. She is not answerable to me or the Department of Justice. This office has never based its exercise of prosecutorial discretion in any case on such constitutionally impermissible reasons.

Soviet Embassy and not to those at the South African Embassy. The relationship of the United States to each country with which it has diplomatic relations is a unique one. Consequently, attempts to fuse separate incidents at separate embassies into one situation for purposes of alleging unconstitutionally discriminatory treatment must, by both law and logic, fail. If the clergymen's situation is "identical" to anything, it is to the status of the Cambodians, Ukrainians, opponents of the Soviet invasion of Afghanistan and others who have demonstrated at the Soviet Embassy and been prosecuted by the United States Attorney for the District of Columbia within recent months. Also, there have been many other prosecutions for illegal demonstrations at other embassies. For example, over the years, there have been prosecutions of demonstrators at the German, Iranian, Chinese, and other embassies.

The defendants about whom you write in these cases are charged with congregating within 500 feet of an embassy, in violation of 22 D.C. Code §1115. Congress passed this statute in 1937. Subsequently, courts, in upholding its constitutionality, have recognized that the statute serves a vital governmental interest: to enhance the safety and well-being of American diplomatic personnel living abroad by providing reciprocal protection to foreign emissaries in the District of Columbia.

In Finzer v. Barry, Civil Action No. 84-0899 (D.D.C., May 17, 1984) appeal pending, a recent case upholding the constitutionality of §1115, several government officials submitted uncontradicted declarations emphasizing the importance of the continued use of the statute. The Deputy Chief of the Metropolitan Police Department, stated that §1115 is necessary to afford appropriate protection to embassies and diplomatic buildings especially because a number of them are located in a fairly confined area of ten to fifteen city blocks. Based on his years of experience, including nearly four years of direct experience as Commander of the Special Operations Division, he expressed his professional judgment that §22-1115 is a necessary police tool, and its continued enforcement would be necessary to maintain appropriate protection of diplomatic personnel and buildings.

The Deputy Assistant Secretary of State for Security, stated that the continued enforcement of §22-1115 is "important to the foreign policy interests of the United States" and that security both in the United States and abroad is furthered by its enforcement. Pointing to a recent demonstration by a group protesting the Soviet invasion of Afghanistan at the Soviet Embassy, he stated that the 500-foot buffer created by the statute enabled the police to make arrests and restore order when the demonstrators broke the police line before they were able to enter the embassy itself. The Director of the Office of Foreign Missions at the Department of State, stated that the continued enforcement of the statute is "essential to the foreign policy interests of the United States government and the effective operation of the Office of Foreign Missions." He added that our conduct in the United States has a direct impact on the protection afforded our missions and personnel abroad, and that any limit on the enforcement of the statute would create a potential for injury to our citizens and property in foreign countries.

It is against this background of practice and purpose that we apply the general principles of prosecutorial discretion on a case-by-case, demonstration-by-demonstration basis. As we have stated, an important consideration in deciding whether to prosecute any case is the wish of the complaining witness, be it a person or a country. While it is true that this consideration may not always be dispositive, in matters of foreign policy where the need for reciprocity is so compelling, the view of the foreign ambassador can play a major role in our determination of whether to prosecute. In this regard, the constitutional duty of the President to conduct our foreign policy is inextricably intertwined with the proper exercise of prosecutorial discretion.

Accordingly, in our prosecution policy in regard to 22 D.C. Code § 1115, we have, over the years, considered the wishes of the ambassador of the country whose embassy was the target of the illegal demonstration. Reciprocity is the goal of §1115. Because we desire fair and sympathetic treatment of our diplomatic embassies, missions and personnel overseas, in return for similar, sympathetic treatment of their diplomats and property in our nation's capital, we must necessarily consider the view, if expressed, of the foreign government.*

*/ This issue of reciprocity arose recently in another context. According to published reports, the Department of State was concerned about a news article which said it was issuing new foreign diplomatic license plates coded to identify the nationality of the drivers. The article gave the country keys

(continued on next page)

The subcommittees, however, would have us ignore the position of the foreign government. Instead, you contend that prosecution "should not depend upon the requests of representatives of foreign governments" in cases involving persons "exercising their First Amendment rights to demonstrate." Such a tautology possesses no relevance to our prosecutions under § 1115. The constitutionality of this statute has been consistently upheld by the courts in the District of Columbia. In upholding it, the courts have found that there is no First Amendment right to demonstrate within 500 feet of an embassy. In any event, surely the subcommittees are not suggesting that we ignore our responsibilities to comity and reciprocity which are basic principles of international law. Indeed, the instances of terrorism in recent weeks underscore the continued need to maintain the vitality of the statute.

As the subcommittees know, our prosecutorial responsibilities must be performed under the law and the constitution. We do not always relish that duty. Some of our complainants may be less than sympathetic. However, it remains our duty to assist in providing reciprocal protection as a host country to foreign embassies and their personnel. We attach hereto one additional important source of information for the committee on this matter which is already found in the public record in the form of our pleadings filed in the Superior Court of the District of Columbia in extant §1115 cases - including both the case which stimulated this letter (United States v. Abrams, et al.) and a case involving a Cambodian demonstrator at the Soviet Embassy (United States v. Strinko).

In conclusion, I do deeply appreciate the subcommittees' concern in this matter. Further, I am confident that despite the ethical limitations on our ability to discuss pending cases,

---

(continued from preceding page)
to this code and the State Department feared the publication of this information might jeopardize the security of those foreign diplomats here in Washington, D.C. and elsewhere. In explaining the reasons for their concern, State Department spokesman Edward Djerejian said, significantly: "Under international law, it is the duty of the host country to assure the security of foreign diplomats. The United States relies heavily on other countries to help protect American diplomats, and we do everything we can to assure the security of diplomatic personnel here."

your consideration of this letter and its attachments will, nonetheless, lead you to conclude that the clergymen about whom you have written are the victims neither of unequal treatment nor "selective prosecution."

I hope our response will be helpful to you.

Sincerely,

J. E. diGenova

JOSEPH E. DIGENOVA
United States Attorney

JED:rm

Encl:

SOVIET STRATEGIC DEFENSE PROGRAMS

Released by the Department of Defense and Department of State, October 1985
Second Printing

SOVIET STRATEGIC DEFENSE PROGRAMS

The United States Government has not recognized the incorporation of Estonia, Latvia, and Lithuania into the Soviet Union. Other boundary representations on the maps are not necessarily authoritative.

The illustrations of Soviet strategic defense facilities and systems included in this publication are derived from various U.S. sources; while not precise in every detail, they are as authentic as possible.

Preface

In March 1983, President Reagan presented a dramatic new vision of a world in which we would no longer have to depend on nuclear weapons to prevent nuclear conflict. He presented that vision, and that challenge, in this way:

> What if free people could live secure in the knowledge that their security did not rest upon the threat of instant U.S. retaliation to deter a Soviet attack, that we could intercept and destroy strategic ballistic missiles before they reached our own soil or that of our allies?

The Strategic Defense Initiative (SDI), which the President announced that night, marks the first, essential step toward the realization of his ultimate goal. The SDI is a research program, designed to examine the promise of effective defenses against ballistic missiles based on new and emerging technologies. If such defenses prove feasible, they would provide for a more stable and secure method of preventing war in the future, through the increasing contribution of non-nuclear defenses which threaten no one.

The Strategic Defense Initiative has been the subject of much discussion within the United States and allied countries since its initiation. Such exchanges are essential in our free societies and can only help ensure that the vision behind the research program can be achieved. There has been comparatively little public discussion, however, about the trend in Soviet defensive as well as offensive forces which provides the essential backdrop to the SDI. Indeed, the Soviet Union has intentionally tried to mislead the public about its strategic defense activities.

As this publication documents, Soviet efforts in most phases of strategic defense have long been far more extensive than those of the United States. The USSR has major passive defense programs, designed to protect important assets from attack. It also has extensive active defense systems, which utilize weapons systems to protect national territory, military forces, or key assets. Soviet developments in the area of active defenses fall into three major categories: air defense; ballistic missile defense based on current technologies; and research and development on advanced defenses against ballistic missiles.

Important recent Soviet activities in strategic defenses include:

- Upgrading and expansion of the world's only operational Anti-Ballistic Missile (ABM) system around Moscow;
- Construction of the Krasnoyarsk ballistic missile detection and tracking radar that violates the 1972 ABM Treaty;
- Extensive research into advanced technologies for defense against ballistic missiles including laser weapons, particle beam weapons, and kinetic energy weapons;
- Maintenance of the world's only operational antisatellite (ASAT) system;
- Modernization of their strategic air defense forces; and
- Improvements in their passive defenses by maintaining deep bunkers and blast shelters for key personnel, and enhancing the survivability of some offensive systems through mobility and hardening.

The following pages examine in detail Soviet programs in defenses against ballistic missiles, air defense, and passive defense. A summary of key Soviet offensive force developments is presented in the annex to this document, since those are critical to an understanding of the impact of Soviet strategic defense programs. Soviet offensive forces are designed to be able to limit severely U.S. and allied capability to retaliate against attack. Soviet defensive systems in turn are designed to prevent those retaliatory forces which did survive an attack from destroying Soviet targets.

Given the long-term trend in Soviet offensive and defensive force developments, the United States must act in three main areas to maintain security and stability both in the near term and in the future.

First, we must modernize our offensive nuclear forces in order to ensure the essential military balance in the near term, and to provide the incentives necessary for the Soviet Union to join us in negotiating significant, equitable, and verifiable nuclear arms reductions.

Second, we must act now to start constructing a more reliable strategic order for the long term by examining the potential for future effective defenses against ballistic missiles. The Strategic Defense Initiative is a prudent and necessary response to the ongoing extensive Soviet anti-ballistic missile effort, including the existing Soviet deployments permitted under the ABM Treaty. The SDI provides a necessary and powerful deterrent to any near-term Soviet decision to expand rapidly its ABM capability beyond that permitted by the ABM Treaty. The overriding importance of the Strategic Defense Initiative, however, is the promise it offers of moving to a better, more stable basis for deterrence in the future and of providing new and compelling incentives to the Soviet Union to agree to progressively deeper negotiated reduction in offensive nuclear arms.

The third approach is one of negotiation and diplomacy. We are even now looking forward to a transition to a more stable world, with greatly reduced levels of nuclear arms and enhanced ability to deter war based upon the increasing contribution of non-nuclear defenses against offensive nuclear arms. Toward those ends, we are endeavoring at the negotiations in Geneva to achieve significant, equitable, and verifiable reductions in existing nuclear arsenals and to discuss with the Soviets the relationship between offensive and defensive forces and the possibility of a future transition to a more defense-reliant deterrence.

Caspar W. Weinberger

CASPAR W. WEINBERGER
Secretary of Defense

George P. Shultz

GEORGE P. SHULTZ
Secretary of State

Introduction

In the late 1960s, given the state of defensive technology at the time, the United States came to believe that deterrence could best be assured if each side were able to maintain the ability to threaten retaliation against any attack and thereby impose on an aggressor costs that were clearly beyond any potential gains. That concept called for a reduction by both the Soviet Union and the United States in their strategic defensive forces, the maintenance of a balance between the two sides' offensive nuclear forces, and negotiated nuclear arms reductions which would maintain the balance at progressively lower levels.

In accordance with those principles, the United States exercised great restraint in offensive nuclear arms and at the same time dramatically lowered its defensive forces. Thus, we removed most of our defenses against Soviet bombers; decided to maintain a severely limited civil defense program; ratified the 1972 Anti-Ballistic Missile (ABM) Treaty, which placed strict limits on U.S. and Soviet defenses against ballistic missiles; and then deactivated the one ABM site which we were allowed under that Treaty. The basic idea that stability and deterrence would be maintained if each side had roughly equal capability to retaliate against attack also served as the foundation for the U.S. approach to the Strategic Arms Limitation Talks (SALT) process of the 1970s.

The Soviet Union, however, failed to show the type of restraint, in both strategic offensive and defensive forces, that the United States hoped for when the SALT process began. The USSR has consistently refused to accept meaningful and verifiable negotiated reductions in offensive nuclear arsenals. Since the late 1960s, the Soviets have greatly expanded and modernized their offensive nuclear forces and invested an approximately equal sum in strategic defenses. The USSR has an extensive, multifaceted operational strategic defensive network which dwarfs that of the United States as well as an active research and development program in both traditional and advanced defenses against ballistic missiles. Soviet noncompliance with arms control agreements in both the offensive and defensive areas, including the ABM Treaty, is a cause of very serious concern. The aggregate of current Soviet ABM and ABM-related activities suggest that the USSR may be preparing an ABM defense of its national territory — precisely what the ABM Treaty was designed to prevent.

Soviet offensive and defensive force developments pose a serious challenge to the West. If left unchecked and unanswered, they would undermine our ability to retaliate effectively in case of Soviet attack. The situation would be even more severe if the Soviet Union were to have a monopoly on advanced defenses against ballistic missiles in addition to its sizable offensive and defensive forces. In that case, the USSR might come to believe that it could launch a nuclear attack against the United States or our allies without fear of effective retaliation. At the very least, it might see a realistic chance of successful nuclear blackmail.

Soviet Strategic Defense Programs

The Soviet Approach

The Soviet emphasis on strategic defense is firmly grounded in Soviet military doctrine and strategy, which call for the following actions in the event of nuclear war:

- destruction and disruption of the West's nuclear-associated command, control, and communications;
- destruction or neutralization of as many of the West's nuclear weapons as possible on the ground or at sea before they could be launched;
- interception and destruction of surviving weapons — aircraft and missiles — before they reached their targets; and
- protection of the Party, the State, military forces, industrial infrastructure, and the essential working population against those weapons that survived attacks by Soviet offensive forces.

In pursuit of these goals the USSR puts considerable stress on a need for effective strategic defenses as well as offensive forces. In the Soviet view, the USSR could best achieve its aims in any nuclear war if it attacked first, destroying much of the U.S. and allied capability for retaliation. Defensive measures, both active and passive, would in turn prevent those enemy forces that survived a Soviet first-strike from destroying targets in the USSR.

Marshall V. D. Sokolovskiy, in *Military Strategy* — the basic Soviet strategic treatise, originally published in 1962 — defined the aim of Soviet strategic defenses in this way: "They have the task of creating an invincible system for the defense of the entire country. ... While, in the last war, it was sufficient to destroy 15-20 percent of the attacking air operation, now it is necessary to assure, essentially, 100 percent destruction of all attacking airplanes and missiles."

Soviet offensive and defensive force developments over the past 25 years demonstrate that the strategy articulated by Sokolovskiy still applies. The following pages present a detailed description of the actions undertaken by the Soviets in the area of strategic defenses. In order to explain the totality of the Soviet strategic military effort, a description of offensive force developments is provided in the annex to this document.

Defensive Forces

Over the last 25 years the Soviets have increased their active and passive defenses in a clear and determined attempt to blunt the effect of U.S. and allied retaliation to any Soviet attack. Passive defenses are non-weapons measures — such as civil defense and hardening — which protect important assets against attack. Active defenses utilize weapon systems to protect national territory, military forces, or key assets.

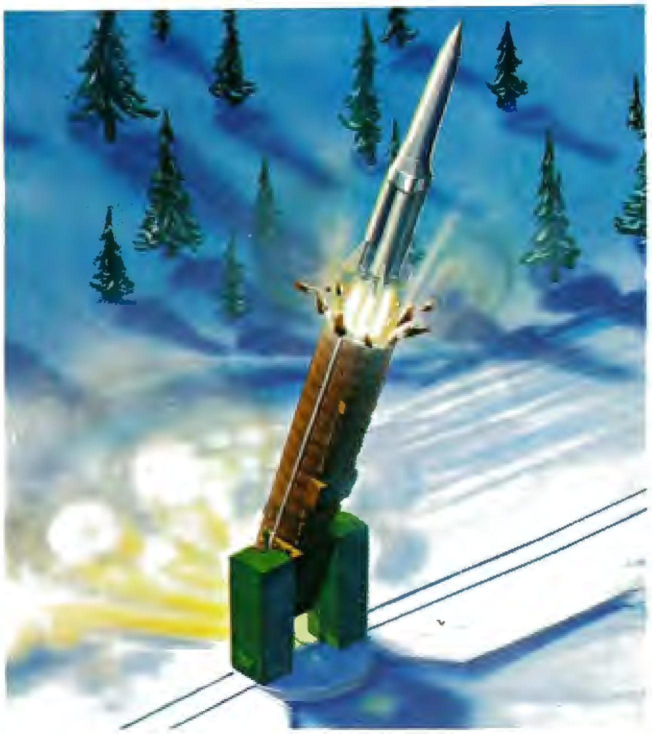
Evidence of the importance the Soviets attach to defensive damage-limitation can be traced back to the beginning of the nuclear age. National Air Defense became an independent service in the late 1950s and since 1959 has generally ranked third in precedence within the Soviet Armed Forces, following the Strategic Rocket Forces and the Ground Forces.

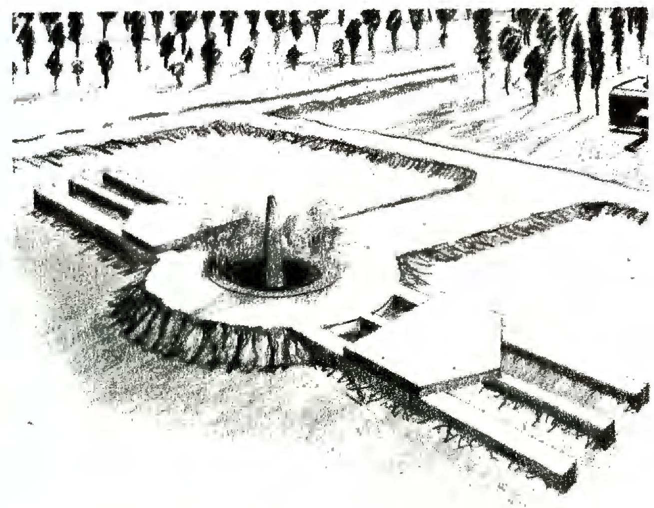
By the mid-1960s, two new mission areas — antisatellite defense and anti-missile defense — were added to the National Air Defense mission. As a result, the Soviet Union has the world's only operational anti-satellite (ASAT) system, which has an effective capability to seek and destroy critical U.S. satellites in low-earth orbit. In addition, Soviet efforts to attain a viable strategic defense against ballistic missiles have resulted in the world's only operational ABM system and a large and expanding research and development program.

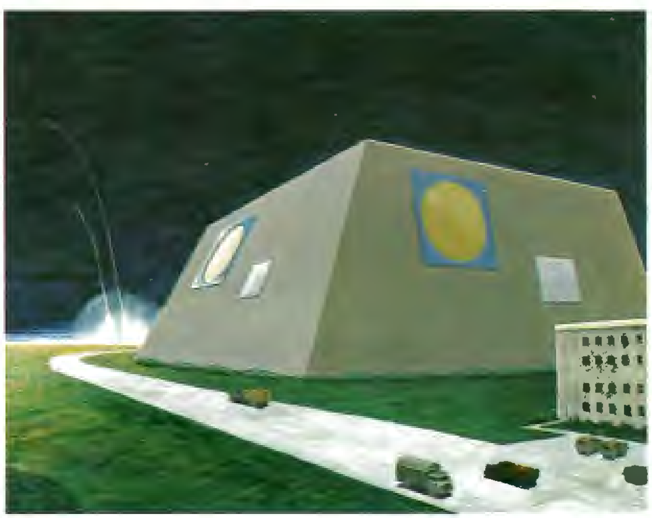
The Soviet emphasis on the necessity of research into defenses against ballistic missiles was demonstrated by then-Minister of Defense Grechko shortly after the signing of the ABM Treaty in 1972, when he told the Soviet Presidium that the Treaty "places no limitations whatsoever on the conducting of research and experimental work directed towards solving the problem of defending the country from nuclear missile strikes."

Ballistic Missile Defense

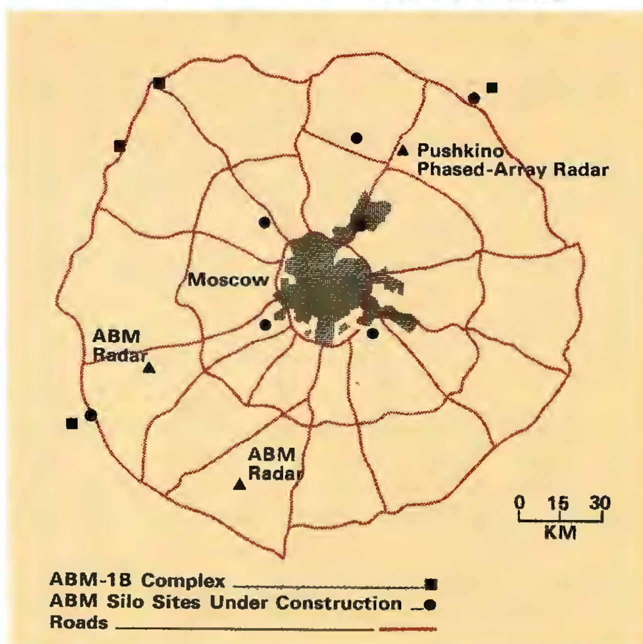
The Soviets maintain the world's only operational ABM system around Moscow. In 1980, they began to upgrade and expand that system to the limit allowed by the 1972 ABM Treaty. The original single-layer Moscow ABM system included 64 reloadable above-ground launchers at four complexes and DOG HOUSE and CAT HOUSE battle management radars south of







Moscow Ballistic Missile Defense

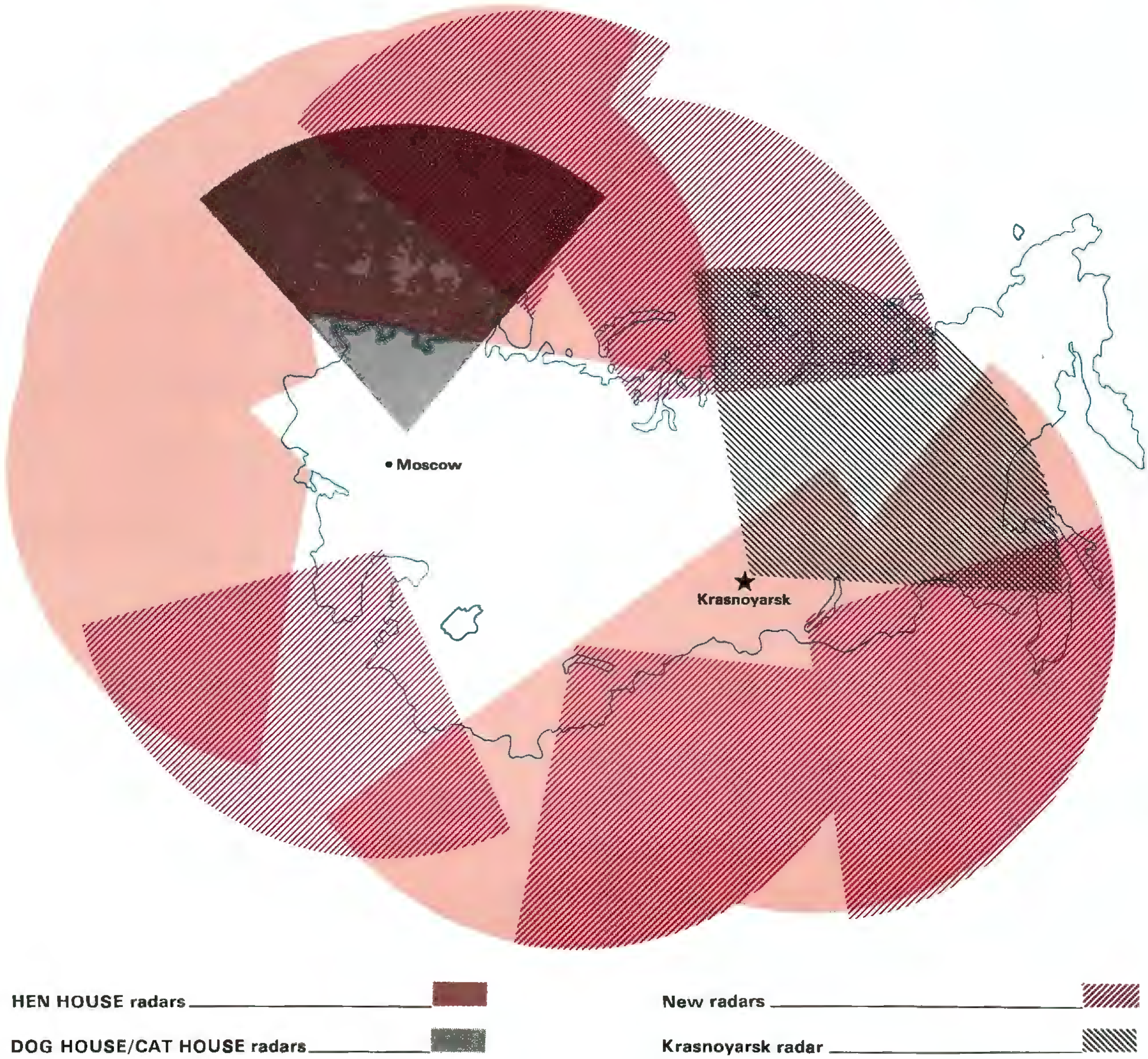


The Moscow ballistic missile defenses identified in map at right include the Pushkino ABM radar, above, GALOSH anti-ballistic missile interceptors, top left, and new silo-based high-acceleration interceptors, top right.

Moscow. Each complex consisted of TRY ADD tracking and guidance radars and GALOSH interceptors (nuclear-armed, ground-based missiles designed to intercept warheads in space shortly before they reenter the Earth's atmosphere).

When completed, the modernized Moscow ABM system will be a two-layer defense composed of: silo-based, long-range, modified GALOSH interceptors; silo-based, high-accelertion interceptors designed to engage targets within the atmosphere; associated engagement and guidance radars; and a new large radar at Pushkino designed to control ABM engagements. The silo-based launchers may be reloadable. The new system will have the 100 ABM

Ballistic Missile Early Warning, Target-Tracking, and Battle Management

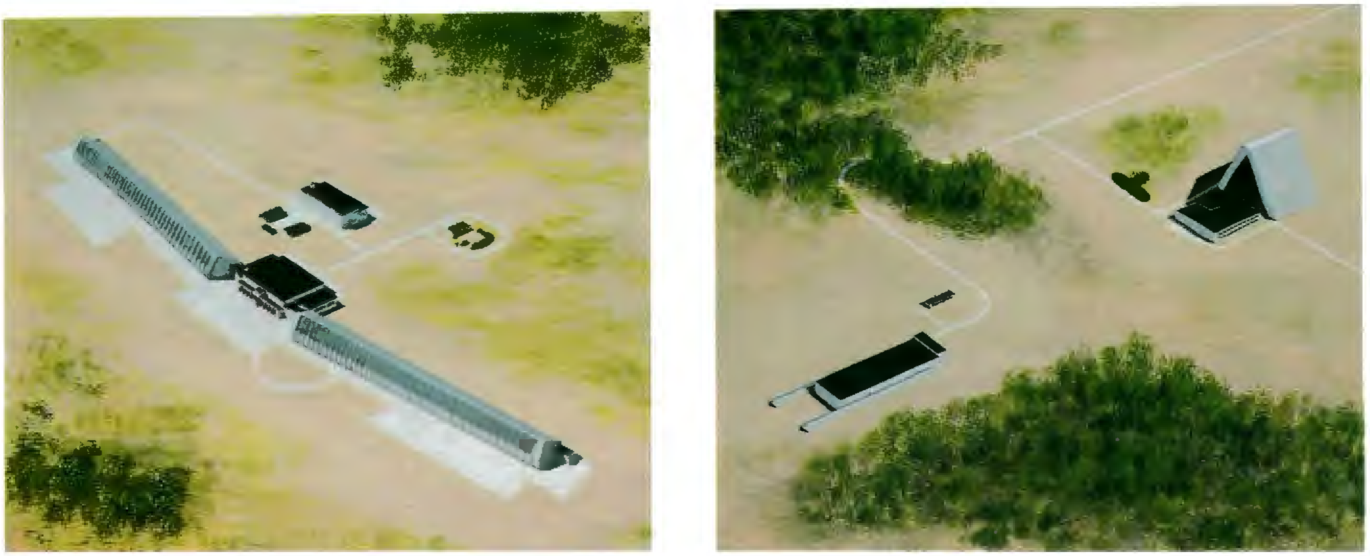


launchers permitted by the ABM Treaty and could be fully operational by 1987.

The Soviet system for detection and tracking of ballistic missile attack consists of a launch-detection satellite network, over-the-horizon radars, and a series of large phased-array radars.

The current launch-detection satellite network can provide about 30 minutes warning of any U.S. ICBM launch and determine the general origin of the missile. Two over-the-horizon radars directed at the U.S. ICBM fields also could give 30 minutes warning.

The next operational layer of ballistic missile detection consists of 11 large HEN HOUSE ballistic missile early warning radars at six locations on the periphery of the USSR. These radars can distinguish the size of an attack, confirm the warning from the satellite and over-the-horizon radar systems, and provide target-tracking data in support of anti-ballistic missile forces.



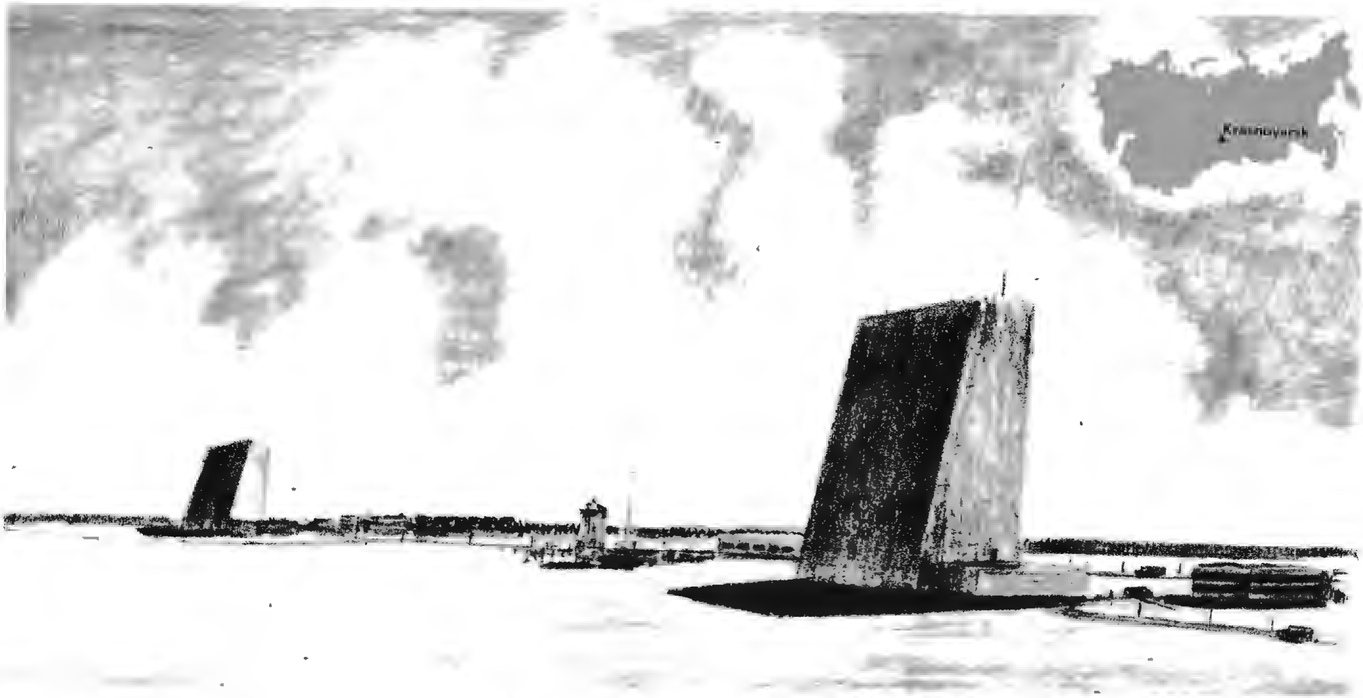
The 11 large HEN HOUSE ballistic missile early warning radars, at left, at six locations on the periphery of the USSR provide warning and target-tracking data in support of the Soviet ABM system. The DOG HOUSE radar, at right, provides battle management for the anti-ballistic missile interceptors around Moscow.

The Soviets are now constructing a network of six new large phased-array radars that can track more ballistic missiles with greater accuracy than the existing HEN HOUSE network. Five of these radars duplicate or supplement the coverage of the HEN HOUSE network, but with greatly enhanced capability. The sixth, under construction near Krasnoyarsk in Siberia, closes the final gap in the Soviet early warning radar coverage against ballistic missile attack. Together, the six new large phased-array radars form an arc of coverage from the Kola Peninsula in the northwest Soviet Union, around Siberia, to the Caucasus in the southwest.

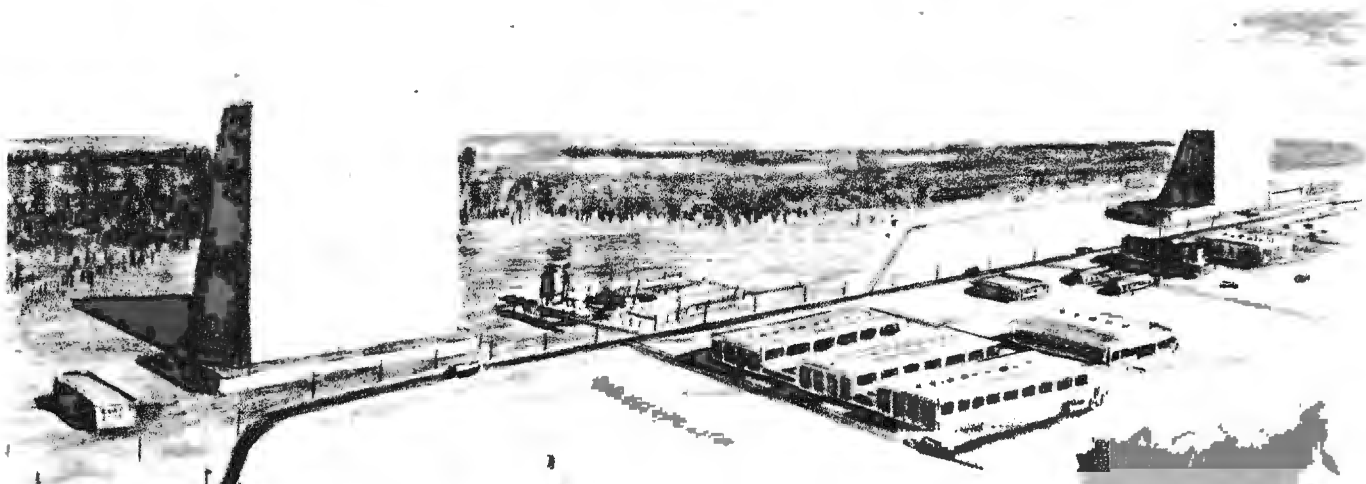
The United States is now constructing new ballistic missile early warning radars, known as PAVE PAWS, that are located on the periphery of our territory and oriented outward. Both the U.S. and the USSR, in signing the ABM Treaty, recognized the need for ballistic missile early warning radars. At the same time, they recognized that ballistic missile early warning radars can detect and track warheads at great distances and therefore have a significant anti-ballistic missile potential. Such an ABM capability would play an important role in a nationwide ABM defense, which the Treaty was designed to prevent. As a result, the U.S. and the Soviet Union agreed that future ballistic missile early warning radars must be located on a nation's periphery and oriented outward. In that way, the desirable and legitimate goal of early warning could be advanced while minimizing the danger that an effective nationwide battle management network could result.

The Krasnoyarsk radar is designed for ballistic missile detection and tracking, including ballistic missile early warning, and violates the 1972 ABM Treaty. It is not located within a 150-kilometer radius of the national capital (Moscow) as required of ABM radars, nor is it located on the periphery of the Soviet Union and pointed outward as required for early warning radars. It is 3,700 kilometers from Moscow and is situated some 750 kilometers from the nearest border — Mongolia. Moreover, it is oriented not toward that border, but across approximately 4,000 kilometers of Soviet territory to the northeast.

The Soviet Union has claimed that the Krasnoyarsk radar is designed for space tracking, rather than ballistic missile early warning, and therefore does not violate the ABM Treaty. Its design, however, is not optimized for a space-tracking role, and the radar would, in any event, contribute little to the existing Soviet space tracking network. Indeed, the design of the Krasnoyarsk radar is essentially identical to that of other radars that are known — and acknowledged by the Soviets — to be for ballistic missile detection and tracking, including ballistic missile early warning. Finally, it



The Soviet Union is violating the ABM Treaty through the siting, orientation and capability of the large phased-array, ballistic missile detection and tracking radar at Krasnoyarsk.



The receiver and transmitter of the large phased-array, ballistic missile detection and tracking radar at Pechora. The design of the Krasnoyarsk radar is essentially identical to that of the Pechora radar. Unlike the Pechora radar, however, the Krasnoyarsk radar does not meet the ABM Treaty requirement that early warning radars be located on the periphery of the Soviet Union and be oriented outward.

closes the last remaining gap in Soviet ballistic missile detection coverage. The Krasnoyarsk radar, therefore, is being constructed in direct violation of the ABM Treaty.

The growing Soviet network of large phased-array ballistic missile detection and tracking radars, of which the Krasnoyarsk radar is a part, is of particular concern when linked with other Soviet ABM efforts. Such radars take years to construct; their existence might allow the Soviet Union to move rather quickly to construct a nationwide ABM defense if it chooses to do so. The Soviets are also developing components of a new ABM system which apparently are designed to allow them to construct individual ABM sites in a matter of months, rather than the years that are required for more traditional ABM systems. Soviet activities in this regard potentially violate the ABM Treaty's prohibition on the development of a mobile land-based ABM system or components. We estimate that by using these components, the Soviets could undertake rapidly-paced ABM deployments to strengthen the defenses of Moscow and defend key targets in the western USSR and east of the Urals by the early 1990s.

In addition, the Soviets have probably violated the prohibition on testing surface-to-air missile (SAM) components in an ABM mode by conducting tests involving the use of SAM air defense radars in ABM-related testing activities. Moreover, the SA-10 and SA-X-12 SAM systems may have the potential to intercept some types of strategic ballistic missiles.

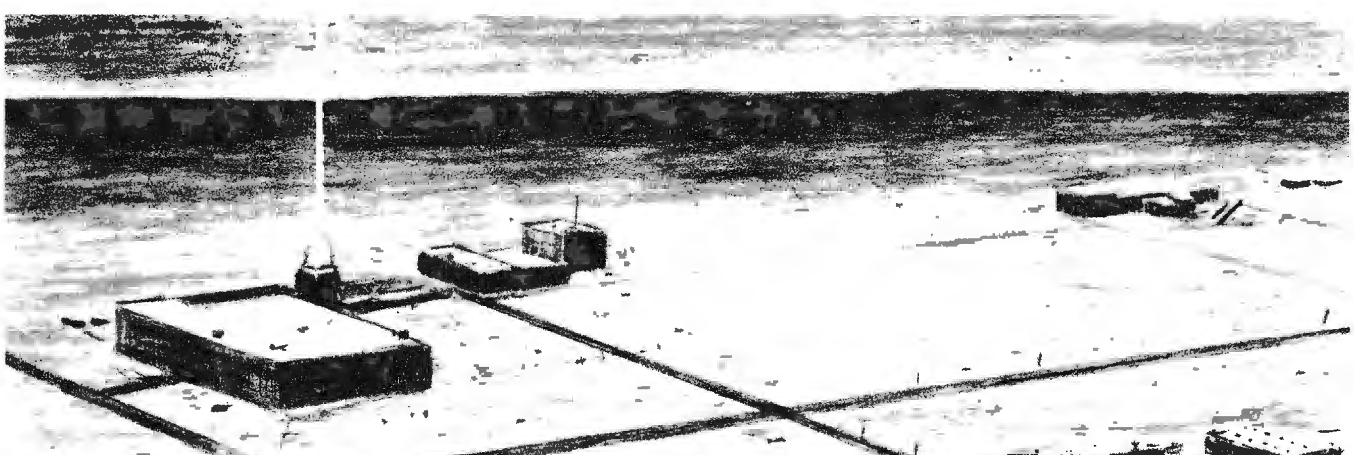
Taken together, all of the Soviet Union's ABM and ABM-related activities are more significant — and more ominous — than any one considered individually. Cumulatively, they suggest that the USSR may be preparing an ABM defense of its national territory.

Advanced Technologies for Defense Against Ballistic Missiles

In the late 1960s, in line with its long-standing emphasis on strategic defense, the Soviet Union initiated a substantial research program into advanced technologies for defense against ballistic missiles. That program covers many of the same technologies involved in the U.S. Strategic Defense Initiative, but represents a far greater investment of plant space, capital, and manpower.

Laser Weapons

The USSR's laser program is much larger than U.S. efforts and involves over 10,000 scientists and engineers and more than a half dozen major research and development facilities and test ranges. Much of this research takes place at the Sary Shagan Missile Test Center where the Soviets also conduct traditional ABM research. Facilities there are estimated to include several air defense lasers, a laser that



The directed-energy R&D site at Sary Shagan proving ground includes ground-based lasers that could be used in an antisatellite role today and possibly a ballistic missile defense role in the future.

may be capable of damaging some components of satellites in orbit, and a laser that could be used in feasibility testing for ballistic missile defense applications. A laser weapon program of the magnitude of the Soviet effort would cost roughly $1 billion per year in the U.S.

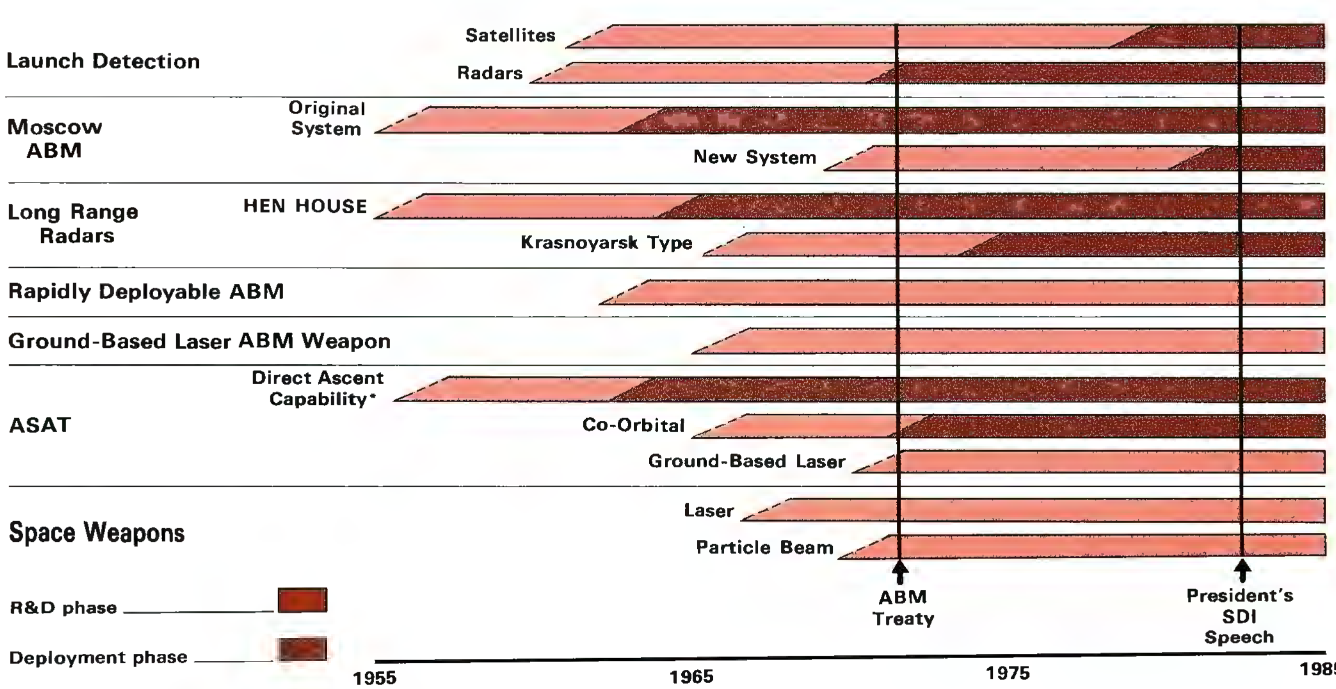
The Soviets are conducting research in three types of gas lasers considered promising for weapons applications: the gas-dynamic laser; the electric discharge laser; and the chemical laser. Soviet achievements in this area, in terms of output power, have been impressive. The Soviets are also aware of the military potential of visible and very short wave-length lasers. They are investigating excimer, free-electron, and x-ray lasers, and have been developing argon-ion lasers for over a decade.

The Soviets appear generally capable of supplying the prime power, energy storage, and auxiliary components needed for most laser and other directed-energy weapons. They have developed a rocket-driven magnetohydrodynamic generator which produces over 15 megawatts of electrical power — a device that has no counterpart in the West. The Soviets may also have the capability to develop the optical systems necessary for laser weapons to track and attack their targets. Thus, they produced a 1.2-meter segmented mirror for an astrophysical telescope in 1978 and claimed that this was a prototype for a 25-meter mirror that would be constructed in the future. A large mirror is considered necessary for a space-based laser weapon.

Unlike the U.S., the USSR has now progressed in some cases beyond technology research. It already has ground-based lasers that could be used to interfere with U.S. satellites, and could have prototype space-based antisatellite laser weapons by the end of the decade. The Soviets could have prototypes for ground-based lasers for defense against ballistic missiles by the late 1980s, and could begin testing components for a large-scale deployment system in the early 1990s.

The remaining difficulties in fielding an oper-

Soviet ABM/Space Defense Programs



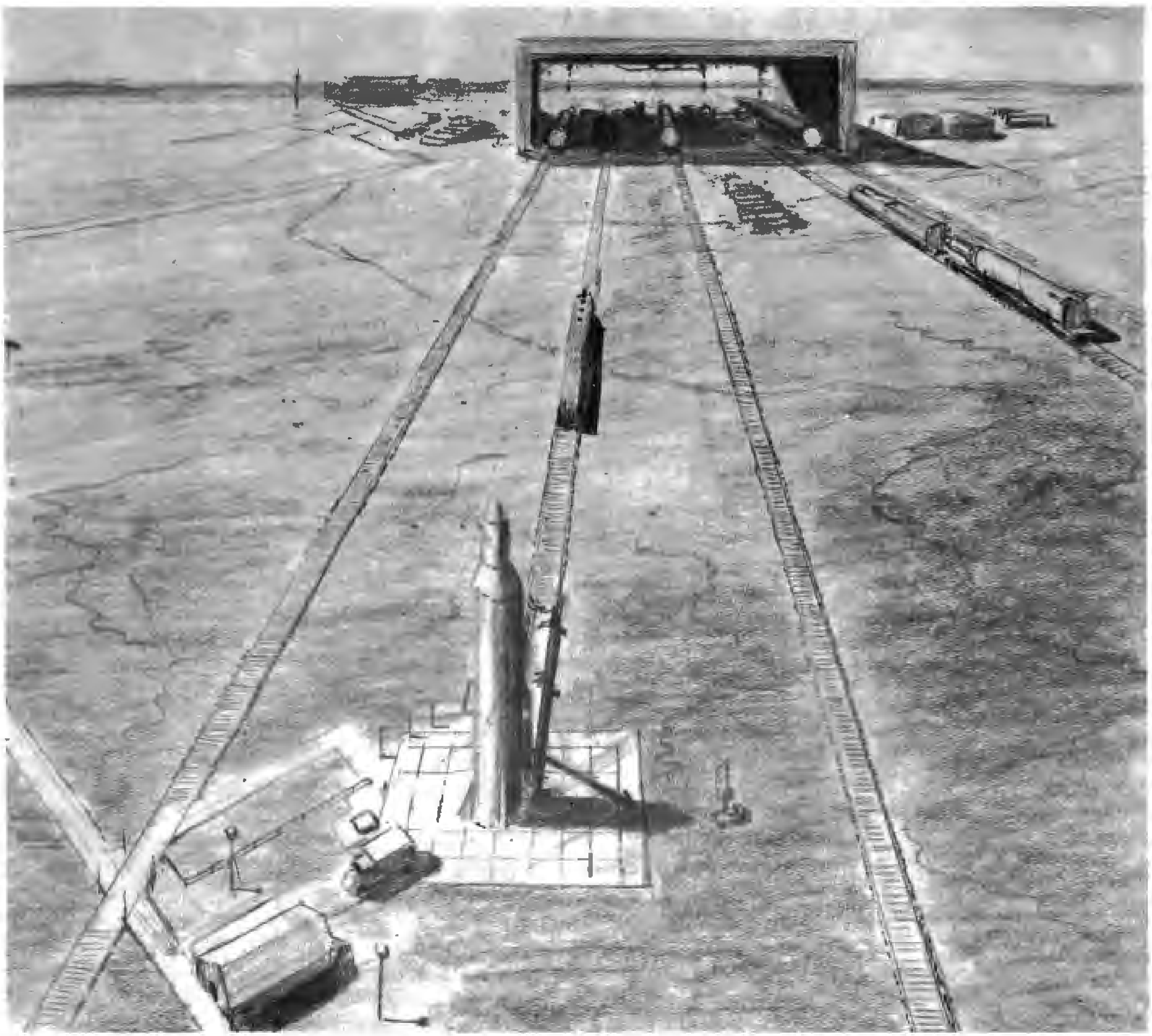
Soviet programs for ABM and Space Defense, which include advanced technologies and space based weapons, were in place prior to the 1972 ABM Treaty and have continued to expand in scope and size. During the same time period, U.S. ABM/Space Defense research has been limited in scope as well as the level of effort in terms of resources invested.

*Potential capability of the Moscow ABM system.

ational system will require still more development time. An operational ground-based laser for defense against ballistic missiles probably could not be deployed until the late 1990s, or after the year 2000. If technology developments prove successful, the Soviets may deploy operational space-based antisatellite lasers in the 1990s, and might be able to deploy space-based laser systems for defense against ballistic missiles after the year 2000.

Particle Beam Weapons

Since the late 1960s, the Soviets have been involved in research to explore the feasibility of space-based weapons that would use particle beams. We estimate that they may be able to test a prototype particle beam weapon intended to disrupt the electronics of satellites in the 1990s. A weapon designed to destroy satellites could follow later. A weapon capable of physically destroying missile boosters or



The USSR's operational antisatellite interceptor is launched from the Tyuratam Space Complex, where two launch pads and storage for additional interceptors and launch vehicles are available.

The Soviet orbital antisatellite (ASAT) weapon is operational and designed to destroy space targets with a multi-pellet blast.

warheads probably would require several additional years of research and development.

It is still uncertain whether ground-based charged particle-beam weapons are feasible — that is, whether the beam will propagate in the atmosphere. A space-based neutral particle beam weapon, however, would not be affected by the atmosphere or by the earth's magnetic field.

Soviet efforts in particle beams, and particularly on ion sources and radio frequency quadrupole accelerators for particle beams, are very impressive. In fact, much of the U.S. understanding as to how particle beams could be made into practical defensive weapons is based on Soviet work conducted in the late 1960s and early 1970s.

Radio Frequency Weapons

The USSR has conducted research in the use of strong radio frequency signals that have the potential to interfere with or destroy critical electronic components of ballistic missile warheads. The Soviets could test a ground-based radio frequency weapon capable of damaging satellites in the 1990s.

Kinetic Energy Weapons

The Soviets also have a variety of research programs underway in the area of kinetic energy weapons, using the high-speed collision of a small mass with the target as the kill mechanism. In the 1960s, the USSR developed an experimental "gun" that could shoot streams of particles of a heavy metal such as tungsten or molybdenum at speeds of nearly 25 kilometers per second in air and over 60 kilometers per second in a vacuum.

Long-range, space-based kinetic-energy systems for defense against ballistic missiles probably could not be developed until the mid-1990s or even later. The USSR could, however, deploy in the near-term a short-range, space-based system useful for satellite or space station defense or for close-in attack by a maneuvering satellite. Soviet capabilities in guidance and control systems probably are adequate for effective kinetic energy weapons for use against some objects in space.

Computer and Sensor Technology

Advanced weapons programs — including potential advanced defenses against ballistic missiles — are also dependent on remote sensor and computer technologies which are currently more highly developed in the West than in the Soviet Union. The Soviets are therefore devoting considerable resources to improving their abilities and expertise in these technologies. An important part of that effort involves an increasing exploitation of open and clandestine access to Western technology. For example, the Soviets have long been engaged in a well-funded effort to purchase U.S. high-technology computers, test and calibration equipment, and sensors illegally through third parties.

Antisatellite Developments

The USSR has had for more than a dozen years the world's only operational antisatellite system, a co-orbital device which enters into the same orbit as its target satellite and, when it gets close enough, destroys the satellite by exploding a conventional warhead. In addition, the nuclear-armed GALOSH ABM interceptor deployed around Moscow may have ASAT capability, and Soviet ground-based lasers could possibly damage some sensors on some U.S. satellites.

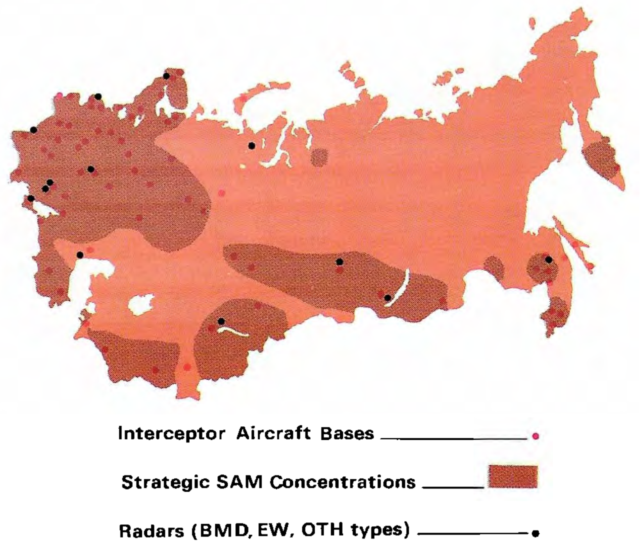
Furthermore, as noted earlier, the Soviets are engaged in research and, in some cases development, of weapons which ultimately may serve as ballistic missile defense systems, but probably will first provide antisatellite capabilities.

Air Defense

Although the United States began dismantling most of its defenses against Soviet bombers in the 1960s, the Soviet Union has continued to invest enormous resources in a wide array of strategic air defense weapon systems. Taken together, the Soviet strategic air defense network is a potent and increasingly capable force which would attempt to limit the retaliatory capability of our strategic bombers and cruise missiles.

The Soviets have deployed numerous strategic air defense systems with excellent capabilities against aircraft flying at medium and high altitudes. They are now in the midst of a major program to improve their capabilities against aircraft and cruise missiles that fly at low altitudes. That effort includes partial integration of strategic and tactical air defenses, the upgrading of early warning and surveillance capabilities, the deployment of more efficient data transmission systems, and the development and initial deployment of new aircraft, associated air-to-air missiles, surface-to-air missiles, and airborne warning and control system (AWACS) aircraft.

Soviet Territorial Air Defense

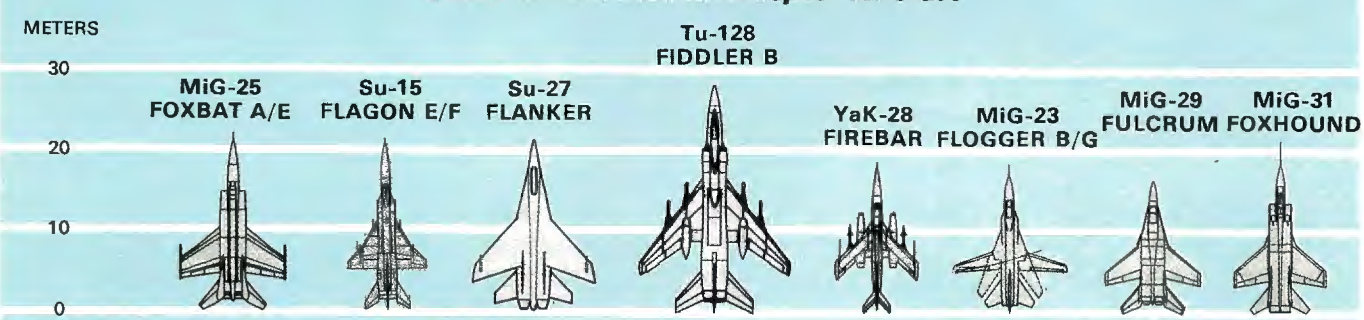


Currently, the Soviets have nearly 12,000 SAM launchers at over 1,200 sites, 10,000 air defense radars, and more than 1,200 interceptor aircraft dedicated to strategic defense. An additional 2,800 interceptors assigned to Soviet Air Forces (SAF) could also be employed in strategic defense missions. In contrast, the U.S. has approximately 300 interceptor aircraft based in the U.S. dedicated to strategic defense, 118 strategic air defense warning radars, and no operational strategic surface-to-air missile launchers. These figures do not include tactical air defenses deployed by NATO and the Warsaw Pact in Europe.

The new Il-76/MAINSTAY aircraft is illustrated as configured for its Airborne Warning and Control Systems mission.

The newest Soviet air defense interceptor aircraft, the MiG-31/FOXHOUND, has a look-down/shoot-down and multiple-target engagement capability. More than 85 FOXHOUNDS are now operationally deployed at several locations from the Arkhangelsk area in the northwestern USSR to the Far East Military District. Two new fighter interceptors, the Su-27/FLANKER and the MiG-29/FULCRUM, also have look-down/shoot-down capabilities and are designed to be highly maneuverable

USSR Air Defense Interceptor Aircraft



	MiG-25 FOXBAT A/E	Su-15 FLAGON E/F	Su-27 FLANKER	Tu-128 FIDDLER B	YaK-28 FIREBAR	MiG-23 FLOGGER B/G	MiG-29 FULCRUM	MiG-31 FOXHOUND
SPEED (KTS)	1,625	1,200	1,350	950	1,080	1,350	1,350	1,375
RADIUS (KM)	1,450	1,000	1,500	1,500	900	1,300	1,150	2,100
ARMAMENT	4 AAMs	2 AAMs	6 AAMs	4 AAMs	2 AAMs	6 AAMs	6 AAMs	8 AAMs
WINGSPAN (M)	14	9	14	18	12	8 (swept)	12	14

US Air Defense Interceptor Aircraft

	F-106A DELTA DART	F-4C/D PHANTOM II	F-15A EAGLE
SPEED (KTS)	1,150	1,200	1,450
RADIUS (KM)	925	825	1,000
ARMAMENT	5 AAMs	8 AAMs	8 AAMs
WINGSPAN (M)	12	12	13

The MiG-29/FULCRUM all-weather, air superiority fighter-interceptor reflects the USSR's continuing drive to produce new generations of tactical and strategic aircraft. The FULCRUM is fitted with AA-10 missiles and the USSR's most modern look-down/shoot-down radar.

in air-to-air combat. These three aircraft are equipped with two new air-to-air missiles — the long-range AA-9 (for the FOXHOUND) and the medium-range AA-10 (for the FULCRUM and FLANKER) — that can be used against low-flying targets.

The USSR is also deploying the MAINSTAY airborne warning and control system (AWACS) aircraft, which will improve substantially its capabilities for early warning and air combat command and control, especially against low-flying aircraft and cruise missiles.

The Soviets maintain the world's most extensive early warning system for air defense, composed of a widespread network of ground-based radars linked operationally with those of their Warsaw Pact allies. As previously noted, more than 10,000 air surveillance radars of various types provide virtually complete coverage at medium to high altitudes over the USSR, and in some areas well beyond the Soviet Union's borders. Three over-the-horizon radars for ballistic missile warning could provide additional warning of the approach of high-flying aircraft.

The USSR also has an active research and development program to improve its air surveillance network. In 1983, it began to deploy two new types of air surveillance radars which will enhance Soviet capabilities for air defense, electronic warfare and early warning of cruise missile and bomber attacks. The Soviets are also continuing to deploy improved air surveillance data systems that can rapidly pass data from outlying radars through the air surveillance network to ground-controlled intercept sites and SAM command posts.

Soviet strategic surface-to-air missiles provide low-to-high-altitude barrier, area, and terminal defenses under all weather conditions. Five systems are now operational: the SA-1, SA-2, and SA-3, and the more capable SA-5 and SA-10. The recent Soviet air defense reorganization permits efficient integration of strategic and tactical SAM systems. While most tactical SAMs have a shorter range than their strategic counterparts, many have better capabilities against targets flying at low altitude.

Over the years the Soviets have continued to deploy the long-range SA-5 and have repeatedly modified the system. Further deployment

The mobile version of the SA-10 SAM will soon be operational.

The surface-to-air missiles of the SA-X-12 air defense system are designed to counter high-performance aircraft, will also have a capability against tactical ballistic missiles, and may have a potential against some strategic ballistic missiles as well.

and upgrading of the SA-5 to enhance its capability to work in conjunction with low-altitude systems like the SA-10 are probable.

The SA-10 can defend against low-altitude targets with small radar cross-sections, like cruise missiles. The first SA-10 site was operational in 1980. Over 60 sites are now operational and work is progressing on at least another 30. More than half these sites are located near Moscow; this emphasis on Moscow and the patterns noted for the other SA-10 sites suggest a first priority on terminal defense of command and control, military, and key industrial complexes.

In keeping with their drive toward mobility as a means of weapons survival, the Soviets are developing a mobile version of the SA-10 which could become operational late this year. This mobile version could be used to support Soviet theater forces and to permit periodic changes in the location of SA-10 sites within the USSR so as to counter U.S. retaliatory forces more effectively.

The Soviets are also flight-testing another important mobile SAM system, the SA-X-12, which is able to intercept aircraft at all altitudes, cruise missiles, and short-range ballistic missiles. The SA-10 and SA-X-12 may have the potential to intercept some types of strategic ballistic missiles as well. This is a serious development because these systems are expected to be deployed widely throughout the Soviet Union in the 1980s. They could, if properly supported, add a significant point-target defense coverage to a nationwide Soviet ABM deployment.

Passive Defenses

Soviet military doctrine calls for passive defenses to act in conjunction with active forces to ensure the wartime survival and continuity of Soviet nuclear forces, leadership, military command and control units, war-related industrial production and services, the essential work force, and as much of the general population as possible. The U.S. passive defense effort is far smaller and more limited; it is no way comparable to the comprehensive Soviet program.

Physical hardening of military assets to make them more resistant to attack is an important passive defense technique. The USSR has hardened its ICBM silos, launch facilities, and key command and control centers to an unprecedented degree. Much of today's U.S. retaliatory force would be ineffective against those hardened targets. To maintain effective deterrence, the United States must be able credibly to threaten prompt retaliation against the full spectrum of Soviet targets, including those which have been greatly hardened.

Soviet leaders and managers at all levels of the government and Communist Party are provided hardened alternate command posts located well away from urban centers — in addition to many deep bunkers and blast shelters in Soviet cities. This comprehensive and redundant system, patterned after a similar system for the Soviet Armed Forces, provides hardened alternate facilities for more than 175,000 key party and government personnel throughout the USSR.

Elaborate plans have also been made for the full mobilization of the national economy in support of a war effort. Reserves of vital materials are maintained, many in hardened underground structures. Redundant industrial facilities are in active production. Industrial and other economic facilities have been equipped with blast shelters for the work force, and detailed procedures have been developed for the relocation of selected plants and equipment. By planning for the survival of the essential work force, the Soviets hope to reconstitute vital production programs using those industrial components that could be redirected or salvaged after an attack.

In addition, the USSR has greatly emphasized mobility as a means of enhancing the survivability of military assets. The SS-20 and SS-25, for example, are mobile. Rail-mobile deployment of the SS-X-24 is expected before the end of the decade. The Soviets are also developing an extensive network of mobile command, control, and communications facilities.

Soviet Statements on the U.S. Strategic Defense Initiative

These extensive Soviet activities in strategic defense, combined with the large Soviet buildup in offensive forces over the past two decades, have been eroding the retaliatory capabilities of U.S. strategic forces on which deterrence has long rested. If the USSR in the future were unilaterally to add an effective advanced defense against ballistic missiles to its offensive and other defensive forces, it would pose a very serious new threat to U.S. and allied security.

The U.S. Strategic Defense Initiative is designed to counter the trend in the Soviets' favor. It is thus not unexpected that Soviet reactions to the U.S. Strategic Defense Initiative have been strongly negative. Through an intensive, worldwide propaganda campaign, the USSR evidently hopes that it can dissuade the United States from pursuing this research program, thereby preserving the possibility of a Soviet monopoly in effective defenses against ballistic missiles — a monopoly that could give the USSR the uncontested damage-limiting first-strike capability that it has long sought.

Thus, Soviet statements on the SDI must be seen in light of the extensive, long-term growth in Soviet offensive and defensive forces and of their major research effort to develop advanced weapons for defense against ballistic missiles. They should also be viewed in light of comparable Soviet propaganda campaigns on other issues. The USSR engaged in a major propaganda effort in the late 1970s and early 1980s to preserve its monopoly in longer-range intermediate-range nuclear forces, and has adopted many of the same tactics to prevent the United States from acquiring an operational ASAT system to balance its own.

On April 22, 1983, a month after the President's announcement of the Strategic Defense Initiative, a published letter signed by more than 200 senior Soviet scientists denouncing the initiative appeared in the New York Times. It is interesting and instructive to note that a number of the signatories have been instrumental in the development of both traditional and advanced ballistic missile defensive systems: Petr D. Grushin, Vladimir S. Semenikhin, Fedor V. Bunkin, Yevgeniy P. Velikhov, Vsevolod S. Avduyevskiy, Aleksandr M. Prokhorov, and Nikolay G. Basov. Velikhov, for example, was for several years the director of the Institute of Atomic Energy laboratories at Troitsk,

Dr. Y.P. Velikhov has been a central figure in the development of the USSR's high energy laser weapons. As Chairman of the committee of Soviet Scientists in Defense of Peace and Against Nuclear War, Dr. Velikhov is also the leading Soviet scientific spokesman against the U.S. Strategic Defense Initiative.

where lasers for strategic and tactical applications are being developed. Avduyevskiy has long been involved with strategic weapons research and now has responsibility for a number of projects concerned with the military use of space, including a space-based laser weapon. Other signatories have spent their careers developing strategic offensive weapons and other military systems: Vladimir N. Chelomey, Valentin P. Glushko, Aleksandr D. Nadiradze, and Viktor P. Makeyev in ICBMs and SLBMs; Oleg K. Antonov and Aleksandr S. Yakovlev in military aircraft; Nikolay Isanin in nuclear submarines; Yuliy B. Khariton in the Soviet military nuclear energy program; and Martin I. Kabachnik in chemical warfare.

The U.S. Strategic Defense Initiative

The U.S. Strategic Defense Initiative offers the possibility of a better, more stable deterrence based increasingly on defenses that are survivable, militarily effective, and cost-effective relative to offensive forces. If our research shows that such defenses against ballistic missiles are feasible, they would allow us to move from deterrence based solely on the threat of nuclear retaliation, toward enhanced deterrence characterized by greater reliance on defensive capabilities that threaten no one. The Strategic Defense Initiative is also a prudent and necessary response to the very active Soviet efforts in offensive and defensive forces. It responds directly to the ongoing and extensive Soviet anti-ballistic missile effort, including the existing Soviet deployments permitted under the ABM Treaty. The SDI research program provides a necessary and powerful deterrent to any near-term Soviet decision to expand rapidly its ABM capability beyond that contemplated by the ABM Treaty. It also provides insurance against an eventual Soviet attempt to deploy an effective advanced system for defense against ballistic missiles unilaterally.

SDI research complements our efforts to achieve significant, equitable, and verifiable reductions in nuclear forces. In the near term, we are seeking reductions of strategic and intermediate-range nuclear forces, and discussing defensive and space arms, in the U.S.-Soviet negotiations which opened in Geneva in March 1985. The United States and the Soviet Union have agreed that there is a fundamental relationship between offensive and defensive systems and that neither can be considered in isolation.

In the longer term, if we were to deploy advanced defenses against ballistic missiles, such defenses could increase significantly the incentives for further negotiated deep reductions in offensive nuclear forces because they could reduce or eliminate the military utility of ballistic missiles. Such significant reductions would, in turn, serve to increase the effectiveness of defensive systems.

The SDI research program emphasizes advanced non-nuclear defensive technologies. It will provide to a future President and Congress, possibly in the early 1990s, the technical knowledge required for a decision on whether to develop and later deploy advanced defensive systems. Extensive discussions with our allies would take place prior to any future decision to move beyond research to development and deployment.

Any future deployment would also be a matter for discussion and negotiation as appropriate with the Soviet Union, as provided in the ABM Treaty. Even now we are seeking to engage the Soviets at Geneva in a discussion of the relationship of offensive and defensive forces and of a possible future transition to greater reliance on defensive systems.

While we could not allow a Soviet veto over a decision which would have such a major impact on U.S. and allied security, it is our intention and hope that — if new defensive technologies prove feasible — we and the Soviets would be able both to move to a more defense-reliant balance. What we envision is thus just the opposite of an arms race or a search for military superiority. We seek instead an approach that would serve the security interests of the United States, our allies, the Soviet Union, and the world as a whole.

Annex

Offensive Forces

Soviet military doctrine and strategy call for superior offensive forces capable of executing a successful first strike. The Soviet buildup in offensive forces over the last two decades has been designed to move in that direction.

Soviet strategic offensive forces introduced since 1971 include:

- four new types of intercontinental ballistic missiles (ICBMs) — the SS-17, 18, 19, and 25. In addition, the USSR probably has deployed the SS-16 in violation of the SALT II Treaty;
- five new types of ballistic missile-carrying submarines;
- four new types of submarine-launched ballistic missiles (SLBMs);
- five improved versions of existing SLBMs;
- long-range cruise missiles; and
- a new variant of the BEAR bomber carrying strategic air-launched cruise missiles.

That buildup is all the more striking when compared to the relative restraint exercised by the U.S. in its acquisition of nuclear weapons systems during the same period. The number of strategic and tactical nuclear warheads in the U.S. stockpile peaked in 1967. We had one-third more nuclear weapons then than we have now. Moreover, the total explosive power (measured in megatonnage) of our nuclear weapons was four times greater in 1960 than it is today.

Our latest B-52 bomber was built in 1962. Although we modernized the missiles our submarines carried with the POSEIDON C-3 in 1971 and TRIDENT I C-4 in 1979, we did not introduce a single new ballistic missile-carrying submarine from 1966 until 1981, when we began deploying the TRIDENT submarine at the rate of about one a year. In fact, our ballistic missile submarine force declined by one-fourth between 1966 and 1981, from 41 boats to 31. During the time we were decreasing the number of our SSBNs, the Soviet Union deployed 62 new ballistic missile-carrying submarines.

Similarly, the U.S. began deploying its newest ICBM, the MINUTEMAN III, fifteen years ago; today, we have fewer ICBMs than we did in 1967. By contrast, the Soviet Union has added about 800 ICBMs to its arsenal since that year. Of greatest concern for strategic stability has been the development and deployment of the SS-18 and SS-19 ICBMs. Since the late 1970s, the USSR has deployed more than 300 SS-18s, each twice as large as the U.S. PEACEKEEPER/MX and carrying ten warheads, and 360 SS-19s, each approximately the size of the PEACEKEEPER/MX and carrying six warheads. The Soviets already have enough hard-target-capable ICBM warheads today to attack all U.S. ICBM silos and launch control centers and will have a larger number of hard-target capable warheads in the future. (A weapon with hard-target capability has sufficient accuracy and yield to destroy targets that have been hardened to withstand the effects of a nuclear detonation.)

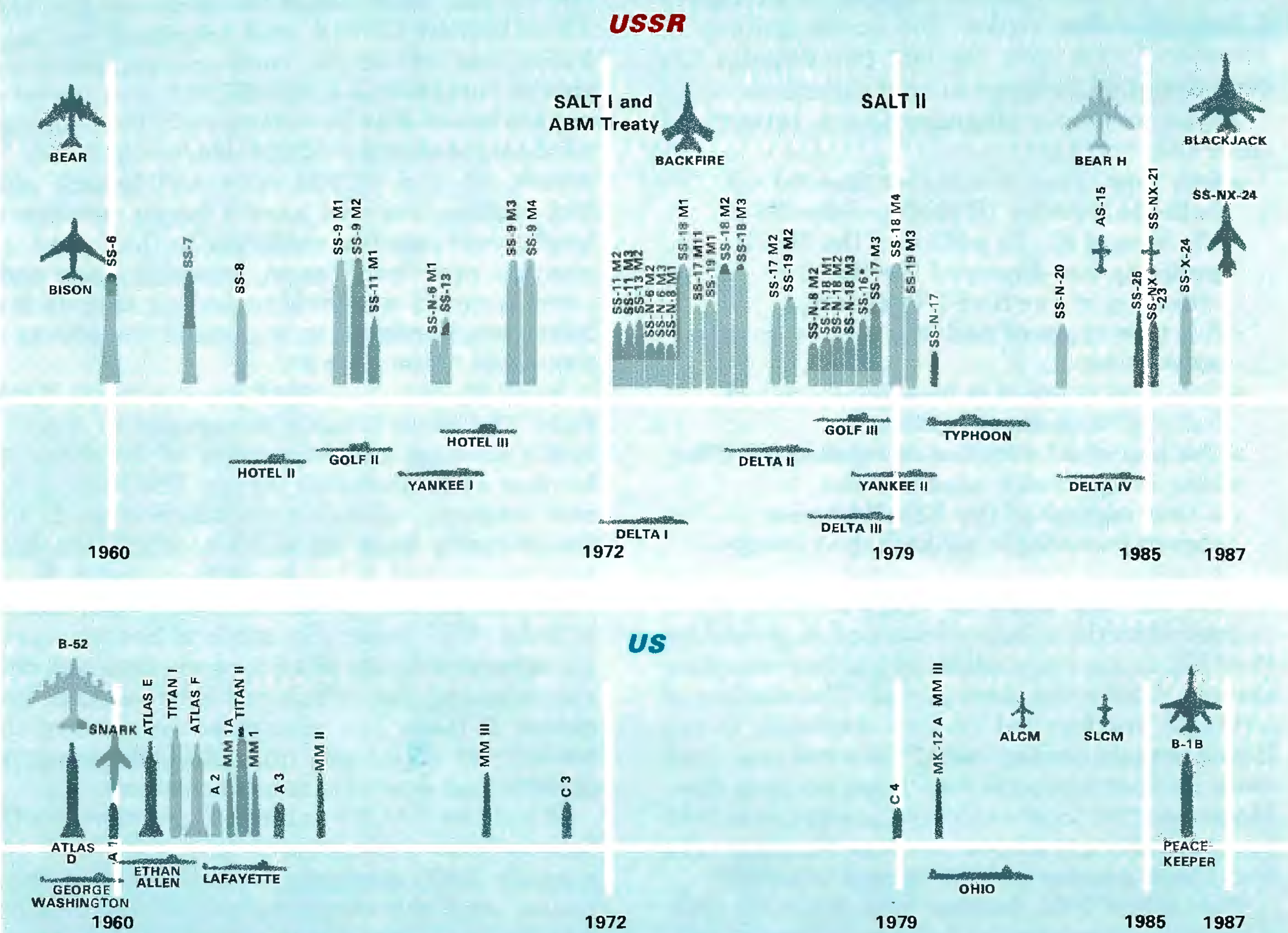
In addition to the rapid growth in its ICBM force, the Soviet Union is engaged in a major modernization and expansion of its strategic bomber and submarine forces. The bulk of Soviet strategic offensive nuclear warheads has traditionally been on ICBMs, while the U.S. has maintained a balanced force, with fewer than one-quarter of our strategic weapons on ICBMs. The growth in modern Soviet strategic offensive forces of all types is thus not only exacerbating the imbalance between U.S. and Soviet ICBMs, but also steadily eroding the traditional countervailing U.S. advantage in SLBMs and strategic bomber systems.

When the SALT I Interim Agreement on Offensive Arms was signed in 1972, the USSR had roughly 2,300 strategic ballistic missile warheads, and the throw-weight of its ballistic missile force was about 3 million kilograms. (Throw-weight is a basic measure of ballistic missile destructive capability and potential.) By the time the SALT II agreement was signed in 1979, the Soviet strategic arsenal had more than doubled to roughly 5,500 strategic ballistic missile warheads with a ballistic missile throw-weight of about 4 million kilograms. Today, the Soviet Union has over 8,000 strategic ballistic missile warheads and a ballistic missile throw-weight of about 12 million pounds.

Perhaps even more troubling is the fact that the USSR's offensive nuclear force buildup continues unabated, with a large number of new systems at or nearing deployment. For example, the Soviets are:

- continuing production of the BEAR H bombers which carry the AS-15 long-range

Introduction of Strategic Forces Systems by Year



*Available information on the SS-16 is inconclusive, but indicates probable deployment

air-launched cruise missile. They are also developing a new strategic bomber, the BLACKJACK, which, when deployed before the end of the decade, will be larger than either the U.S. B-1B or B-52;

- completing development of the SS-X-24 and have announced deployment of the SS-25 ICBM. The SS-25 violates the SALT II agreement, since it is a prohibited second new type of ICBM;
- deploying two new classes of nuclear-powered ballistic missile-carrying submarines (SSBNs), the DELTA IV and the TYPHOON, and associated SLBMs. They are also testing a new sea-launched cruise missile, the SS-NX-21.

The combination of U.S. restraint and Soviet expansion and modernization of its strategic offensive forces means that U.S. forces are becoming increasingly obsolete. We are therefore modernizing our strategic nuclear forces to ensure the balance necessary for continued deterrence. That program includes development of the PEACEKEEPER/MX ICBM, a smaller single-warhead ICBM (popularly known as MIDGETMAN), the B-1B bomber, an advanced technology bomber, and the TRIDENT II SLBM. We are also deploying long-range air- and sea-launched cruise missiles and TRIDENT SSBNs. Our strategic modernization program is essential not only for the military balance, but also to induce the Soviets to agree to negotiated offensive force reductions which would enable us to maintain the balance at far lower levels of armaments.

The Soviet Union has also greatly expanded its nuclear forces of less-than-intercontinental range, which primarily threaten our friends and allies. The USSR has developed an entirely new generation of nuclear short-range ballistic missiles. Of gravest concern has been the creation and subsequent rapid expansion of the SS-20 longer-range intermediate-range missile force, which threatens our friends and allies in Europe and Asia. NATO had no equivalent systems when the USSR began to field this modern, mobile, highly accurate, triple-warhead missile. As of September 1985, the Soviets had deployed 441 SS-20s, with over 1,200 warheads. Not only is the SS-20 force continuing to grow, but the Soviets are also testing a modified version of the SS-20 which is expected to be even more accurate. In contrast, NATO plans to deploy 572 single-warhead PERSHING II and ground-launched cruise missiles and stands ready to reduce or reverse those deployments if we can reach an equitable, verifiable arms reduction agreement with the USSR.

Special
Report
No. 129

The Strategic Defense Initiative

June 1985

United States Department of State
Bureau of Public Affairs
Washington, D.C.

In his speech of March 23, 1983, President Reagan presented his vision of a future in which nations could live secure in the knowledge that their national security did not rest upon the threat of nuclear retaliation but rather on the ability to defend against potential attacks. The Strategic Defense Initiative (SDI) research program is designed to determine whether and, if so, how advanced defensive technologies could contribute to the realization of this vision.

The Strategic Context

The U.S. SDI research program is wholly compatible with the Anti-Ballistic Missile (ABM) Treaty, is comparable to research permitted by the ABM Treaty which the Soviets have been conducting for many years, and is a prudent hedge against Soviet breakout from ABM Treaty limitations through the deployment of a territorial ballistic missile defense. These important facts deserve emphasis. However, the basic intent behind the Strategic Defense Initiative is best explained and understood in terms of the strategic environment we face for the balance of this century and into the next.

The Challenges We Face. Our nation and those nations allied with us face a number of challenges to our security. Each of these challenges imposes its own demands and presents its own opportunities. Preserving peace and freedom is, and always will be, our fundamental goal. The essential purpose of our military forces, and our nuclear forces in particular, is to deter aggression and coercion based upon the threat of military aggression. The deterrence provided by U.S. and allied military forces has permitted us to enjoy peace and freedom. However, the nature of the military threat has changed and will continue to change in very fundamental ways in the next decade. Unless we adapt our response, deterrence will become much less stable and our susceptibility to coercion will increase dramatically.

Our Assumptions About Deterrence. For the past 20 years, we have based our assumptions on how deterrence can best be assured on the basic idea that if each side were able to maintain the ability to threaten retaliation against any attack and thereby impose on an aggressor costs that were clearly out of balance with any potential gains, this would suffice to prevent conflict. Our idea of what our forces had to hold at risk to deter aggression has changed over time. Nevertheless, our basic reliance on nuclear retaliation provided by offensive nuclear forces, as the essential means of deterring aggression, has not changed over this period.

This basic idea—that if each side maintained roughly equal forces and equal capability to retaliate against attack, stability and deterrence would be maintained—also served as the foundation for the U.S. approach to the strategic arms limitation talks (SALT) process of the 1970s. At the time that process began, the United States concluded that deterrence based on the capability of offensive retaliatory forces was not only sensible but necessary, since we believed at the time that neither side could develop the technology for defensive systems which could effectively deter the other side.

Today, however, the situation is fundamentally different. Scientific developments and several emerging technologies now do offer the possibility of defenses that did not exist and could hardly have been conceived earlier. The state of the art of defense has now progressed to the point where it is reasonable to investigate whether new technologies can yield options, especially non-nuclear options, which could permit us to turn to defense not only to enhance deterrence but to allow us to move to a more secure and more stable long-term basis for deterrence.

Of equal importance, the Soviet Union has failed to show the type of restraint, in both strategic offensive and defensive forces, that was hoped for when the SALT process began. The trends in the development of Soviet strategic offensive and defensive forces, as well as the growing pattern of Soviet deception and of noncompliance with existing agreements, if permitted to continue unchecked over the long term, will undermine the essential military balance and the mutuality of vulnerability on which deterrence theory has rested.

Soviet Offensive Improvements. The Soviet Union remains the principal threat to our security and that of our allies. As a part of its wide-ranging effort further to increase its military capabilities, the Soviet Union's improvement of its ballistic missile force, providing increased prompt, hard-target kill capability, has increasingly threatened the survivability of forces we have deployed to deter aggression. It has posed an especially immediate challenge to our land-based retaliatory forces and to the leadership structure that commands them. It equally threatens many critical fixed installations in the United States and in allied nations that support the nuclear retaliatory and conventional forces which provide our collective ability to deter conflict and aggression.

Improvement of Soviet Active Defenses. At the same time, the Soviet Union has continued to pursue strategic advantage through the development and improvement of active defenses. These active defenses provide the Soviet Union a steadily increasing capability to counter U.S. retaliatory forces and those of our allies, especially if our forces were to be degraded by a Soviet first strike. Even today, Soviet active defenses are extensive. For example, the Soviet Union possesses the world's only currently deployed antiballistic missile system, deployed to protect Moscow. The Soviet Union is currently improving all elements of this system. It also has the world's only deployed antisatellite (ASAT) capability. It has an extensive air defense network, and it is aggressively improving the quality of its radars, interceptor aircraft, and surface-to-air missiles. It also has a very extensive network of ballistic missile early warning radars. All of these elements provide them an area of relative advantage in strategic defense today and, with logical evolutionary improvement, could provide the foundation of decisive advantage in the future.

Improvement in Soviet Passive Defenses. The Soviet Union is also spending significant resources on passive defensive measures aimed at improving the survivability of its own forces, military command structure, and national leadership. These efforts range from providing rail and road mobility for its latest generation of ICBMs [intercontinental ballistic missiles] to extensive hardening of various critical installations.

Soviet Research and Development on Advanced Defenses. For over two decades, the Soviet Union has pursued a wide range of strategic defensive efforts, integrating both active and passive elements. The resulting trends have shown steady improvement and expansion of Soviet defensive capability. Furthermore, current patterns of Soviet research and development, including a longstanding and intensive research program in many of the same basic technological areas which our SDI program will address, indicate that these trends will continue apace for the foreseeable future. If unanswered, continued Soviet defensive improvements will further erode the effectiveness of our own existing deterrent, based as it is now almost exclusively on the threat of nuclear retaliation by offensive forces. Therefore, this longstanding Soviet program of defensive improvements, in itself, poses a challenge to deterrence which we must address.

Soviet Noncompliance and Verification. Finally, the problem of Soviet noncompliance with arms control agreements in both the offensive and defensive areas, including the ABM Treaty, is a cause of very serious concern. Soviet activity in constructing either new phased-array radar near Krasnoyarsk, in central Siberia, has very immediate and ominous consequences. When operational, this radar, due to its location, will increase the Soviet Union's capability to deploy a territorial ballistic missile defense. Recognizing that such radars would make such a contribution, the ABM Treaty expressly banned the construction of such radars at such locations as one of the primary mechanisms for ensuring the effectiveness of the treaty. The Soviet Union's activity with respect to this radar is in direct violation of the ABM Treaty.

Against the backdrop of this Soviet pattern of noncompliance with existing arms control agreements, the Soviet Union is also taking other actions which affect our ability to verify Soviet compliance. Some Soviet actions, like their increased use of encryption during testing, are directly aimed at degrading our ability to monitor treaty compliance. Other Soviet actions, too, contribute to the problems we face in monitoring Soviet compliance. For example, Soviet increases in the number of their mobile ballistic missiles, especially those armed with multiple, independently-targetable reentry vehicles, and other mobile systems, will make verification less and less certain. If we fail to respond to these trends, we could reach a point in the foreseeable future where we would have little confidence in our assessment of the state of the military balance or imbalance, with all that implies for our ability to control escalation during crises.

Responding to the Challenge

In response to this long-term pattern of Soviet offensive and defensive improvements, the United States is compelled to take certain actions designed both to maintain security and stability in the near term and to ensure these conditions in the future. We must act in three main areas.

Retaliatory Force Modernization. First, we must modernize our offensive nuclear retaliatory forces. This is necessary to reestablish and maintain the offensive balance in the near term and to create the strategic conditions that will permit us to pursue complementary actions in the areas of arms reduction negotiations and defensive research. For our part, in 1981 we embarked on our strategic modernization program aimed at reversing a long period of decline. This modernization program was specifically designed to preserve stable deterrence and, at the same time, to provide the incentives necessary to cause the Soviet Union to join us in negotiating significant reductions in the nuclear arsenals of both sides.

In addition to the U.S. strategic modernization program, NATO is modernizing its longer range intermediate-range nuclear forces (LRINF). Our British and French allies also have underway important programs to improve their own national strategic nuclear retaliatory forces. The U.S. SDI research program does not negate the necessity of these U.S. and allied programs. Rather, the SDI research program depends upon our collective and national modernization efforts to maintain peace and freedom today as we explore options for future decision on how we might enhance security and stability over the longer term.

New Deterrent Options. However, over the long run, the trends set in motion by the pattern of Soviet activity, and the Soviets' persistence in that pattern of activity, suggest that continued long-term dependence on offensive forces may not provide a stable basis for deterrence. In fact, should these trends be permitted to continue and the Soviet investment in both offensive and defensive capability proceed unrestrained and unanswered, the resultant condition could destroy the theoretical and empirical foundation on which deterrence has rested for a generation.

Therefore, we must now also take steps to provide future options for ensuring deterrence and stability over the long term, and we must do so in a way that allows us both to negate the destabilizing growth of Soviet offensive forces and to channel longstanding Soviet propensities for defenses toward more stabilizing and mutually beneficial ends. The Strategic Defense Initiative is specifically aimed toward these goals. In the near term, the SDI program also responds directly to the ongoing and extensive Soviet antiballistic missile effort, including the existing Soviet deployments permitted under the ABM Treaty. The SDI research program provides a necessary and powerful deterrent to any near-term Soviet decision to expand rapidly its antiballistic missile capability beyond that contemplated by the ABM Treaty. This, in itself, is a critical task. However, the overriding, long-term importance of SDI is that it offers the possibility of reversing the dangerous military trends cited above by moving to a better, more stable basis for deterrence and by providing new and compelling incentives to the Soviet Union for seriously negotiating reductions in existing offensive nuclear arsenals.

The Soviet Union recognizes the potential of advanced defense concepts—especially those involving boost, postboost, and mid-course defenses—to change the strategic situation. In our investigation of the potential these systems offer, we do not seek superiority or to establish a unilateral advantage. However, if the promise of SDI technologies is proven, the destabilizing Soviet advantage can be redressed. And, in the process, deterrence will be strengthened significantly and placed on a foundation made more stable by reducing the role of ballistic missile weapons and by placing greater reliance on defenses which threaten no one.

Negotiation and Diplomacy. During the next 10 years, the U.S. objective is a radical reduction in the power of existing and planned offensive nuclear arms, as well as the stabilization of the relationship between nuclear offensive and defensive arms, whether on earth or in space. We are even now looking forward to a period of transition to a more stable world, with greatly reduced levels of nuclear arms and an enhanced ability to deter war based upon the increasing contribution of non-nuclear defenses against offensive nuclear arms. A world free of the threat of military aggression and free of nuclear arms is an ultimate objective to which we, the Soviet Union, and all other nations can agree.

To support these goals, we will continue to pursue vigorously the negotiation of equitable and verifiable agreements leading to significant reductions of existing nuclear arsenals. As we do so, we will continue to exercise flexibility concerning the mechanisms used to achieve reductions but will judge these mechanisms on their ability to enhance the security of the United States and our allies, to strengthen strategic stability, and to reduce the risk of war.

At the same time, the SDI research program is and will be conducted in full compliance with the ABM Treaty. If the research yields positive results, we will consult with our allies about the potential next steps. We would then consult and negotiate, as appropriate, with the Soviet Union, pursuant to the terms of the ABM Treaty, which provide for such consultations, on how deterrence might be strengthened through the phased introduction of defensive systems into the force structures of both sides. This commitment does not mean that we would give the Soviets a veto over the outcome anymore than the Soviets have a veto over our current strategic and intermediate-range programs. Our commitment in this regard reflects our recognition that, if our research yields appropriate results, we should seek to move forward in a stable way. We have already begun the process of bilateral discussion in Geneva needed to lay the foundation for the stable integration of advanced defenses into the forces of both sides at such time as the state of the art and other considerations may make it desirable to do so.

The Soviet Union's View of SDI

As noted above, the U.S.S.R. has long had a vigorous research, development, and deployment program in defensive systems of all kinds. In fact, over the last two decades the Soviet Union has invested as much overall in its strategic defenses as it has in its massive strategic offensive buildup. As a result, today it enjoys certain important advantages in the area of active and passive defenses. The Soviet Union will certainly attempt to protect this massive, long-term investment.

Allied Views Concerning SDI

Our allies understand the military context in which the Strategic Defense Initiative was established and support the SDI research program. Our common understanding was reflected in the statement issued following President Reagan's meeting with Prime Minister Thatcher in December, to the effect that:

First, the U.S. and Western aim was not to achieve superiority but to maintain the balance, taking account of Soviet developments;

Second, that SDI-related deployment would, in view of treaty obligations, have to be a matter for negotiations;

Third, the overall aim is to enhance, and not to undermine, deterrence; and,

Fourth, East-West negotiations should aim to achieve security with reduced levels of offensive systems on both sides.

This common understanding is also reflected in other statements since then—for example, the principles suggested recently by the Federal Republic of Germany that:

- The existing NATO strategy of flexible response must remain fully valid for the alliance as long as there is no more effective alternative for preventing war; and,
- The alliance's political and strategic unity must be safeguarded. There must be no zones of different degrees of security in the alliance, and Europe's security must not be decoupled from that of North America.

SDI Key Points

Following are a dozen key points that capture the direction and scope of the program:

1. The aim of SDI is not to seek superiority but to maintain the strategic balance and thereby assure stable deterrence.

A central theme in Soviet propaganda is the charge that SDI is designed to secure military superiority for the United States. Put in the proper context of the strategic challenge that we and our allies face, our true goals become obvious and clear. Superiority is certainly not our purpose. Nor is the SDI program offensive in nature. The SDI program is a research program aimed at seeking better ways to ensure U.S. and allied security, using the increased contribution of defenses—defenses that threaten no one.

2. Research will last for some years. We intend to adhere strictly to ABM Treaty limitations and will insist that the Soviets do so as well.

We are conducting a broad-based research program in full compliance with the ABM Treaty and with no decision made to proceed beyond research. The SDI research program is a complex one that must be carried out on a broad front of technologies. It is not a program where all resource considerations are secondary to a schedule. Instead, it is a responsible, organized research program that is aggressively seeking cost-effective approaches for defending the United States and our allies against the threat of nuclear-armed and conventionally armed ballistic missiles of all ranges. We expect that the research will proceed so that initial development decisions could be made in the early 1990s.

3. We do not have any preconceived notions about the defensive options the research may generate. We will not proceed to development and deployment unless the research indicates that defenses meet strict criteria.

The United States is pursuing the broadly based SDI research program in an objective manner. We have no preconceived notions about the outcome of the research program. We do not anticipate that we will be in a position to approach any decision to proceed with development or deployment based on the results of this research for a number of years.

We have identified key criteria that will be applied to the results of this research whenever they become available. Some options which could provide interim capabilities may be available earlier than others, and prudent planning demands that we maintain options against a range of contingencies. However, the primary thrust of the SDI research program is not to focus on generating options for the earliest development/deployment decision but options which best meet our identified criteria.

4. Within the SDI research program, we will judge defenses to be desirable only if they are survivable and cost effective at the margin.

Two areas of concern expressed about SDI are that deployment of defensive systems would harm crisis stability and that it would fuel a runaway proliferation of Soviet offensive arms. We have identified specific criteria to address these fears appropriately and directly.

Our survivability criterion responds to the first concern. If a defensive system were not adequately survivable, an adversary could very well have an incentive in a crisis to strike first at vulnerable elements of the defense. Application of this criterion will ensure that such a vulnerable system would not be deployed and, consequently, that the Soviets would have no incentive or prospect of overwhelming it.

Our cost-effectiveness criterion will ensure that any deployed defensive system would create a powerful incentive not to respond with additional offensive arms, since those arms would cost more than the additional defensive capability needed to defeat them. This is much more than an economic argument, although it is couched in economic terms. We intend to consider, in our evaluation of options generated by SDI research, the degree to which certain types of defensive systems, by their nature, encourage an adversary to try simply to overwhelm them with additional offensive capability while other systems can discourage such a counter effort. We seek defensive options which provide clear disincentives to attempts to counter them with additional offensive forces.

In addition, we are pressing to reduce offensive nuclear arms through the negotiation of equitable and verifiable agreements. This effort includes reductions in the number of warheads on ballistic missiles to equal levels significantly lower than exist today.

5. It is too early in our research program to speculate on the kinds of defensive systems—whether ground-based or space-based and with what capabilities—that might prove feasible and desirable to develop and deploy.

Discussion of the various technologies under study is certainly needed to give concreteness to the understanding of the research program. However, speculation about various types of defensive systems that might be deployed is inappropriate at this time. The SDI is a broad-based research program investigating many technologies. We currently see real merit in the potential of advanced technologies providing for a layered defense, with the possibility of negating a ballistic missile at various points after launch. We feel that the possibility of a layered defense both enhances confidence in the overall system and compounds the problem of a potential aggressor in trying to defeat such a defense. However, the paths to such a defense are numerous.

Along the same lines, some have asked about the role of nuclear-related research in the context of our ultimate goal of non-nuclear defenses. While our current research program certainly emphasizes non-nuclear technologies, we will continue to explore the promising concepts which use nuclear energy to power devices which could destroy ballistic missiles at great distances. Further, it is useful to study these concepts to determine the feasibility and effectiveness of similar defensive systems that an adversary may develop for use against future U.S. surveillance and defensive or offensive systems.

6. The purpose of the defensive options we seek is clear—to find a means to destroy attacking ballistic missiles before they can reach any of their potential targets.

We ultimately seek a future in which nations can live in peace and freedom, secure in the knowledge that their national security does not rest upon the threat of nuclear retaliation. Therefore, the SDI research program will place its emphasis on options which provide the basis for eliminating the general threat posed by ballistic missiles. Thus, the goal of our research is not, and cannot be, simply to protect our retaliatory forces from attack.

If a future president elects to move toward a general defense against ballistic missiles, the technological options that we explore will certainly also increase the survivability of our retaliatory forces. This will require a stable concept and process to manage the transition to the future we seek. The concept and process must be based upon a realistic treatment of not only U.S. but Soviet forces and out-year programs.

7. U.S. and allied security remains indivisible. The SDI program is designed to enhance allied security as well as U.S. security. We will continue to work closely with our allies to ensure that, as our research progresses, allied views are carefully considered.

This has been a fundamental part of U.S. policy since the inception of the Strategic Defense Initiative. We have made a serious commitment to consult, and such consultations will precede any steps taken relative to the SDI research program which may affect our allies.

8. If and when our research criteria are met, and following close consultation with our allies, we intend to consult and negotiate, as appropriate, with the Soviets pursuant to the terms of the ABM Treaty, which provide for such consultations, on how deterrence could be enhanced through a greater reliance by both sides on new defensive systems. This commitment should in no way be interpreted as according the Soviets a veto over possible future defensive deployments. And, in fact, we have already been trying to initiate a discussion of the offense-defense relationship and stability in the defense and space talks underway in Geneva to lay the foundation to support such future possible consultations.

If, at some future time, the United States, in close consultation with its allies, decides to proceed with deployment of defensive systems, we intend to utilize mechanisms for U.S.-Soviet consultations provided for in the ABM Treaty. Through such mechanisms, and taking full account of the Soviet Union's own expansive defensive system research program, we will seek to proceed in a stable fashion with the Soviet Union.

9. It is our intention and our hope that, if new defensive technologies prove feasible, we (in close and continuing consultation with our allies) and the Soviets will jointly manage a transition to a more defense-reliant balance.

Soviet propagandists have accused the United States of reneging on commitments to prevent an arms race in space. This is clearly not true. What we envision is not an arms race; rather, it is just the opposite—a jointly managed approach designed to maintain, at all times, control over the mix of offensive and defensive systems of both sides and thereby increase the confidence of all nations in the effectiveness and stability of the evolving strategic balance.

10. SDI represents no change in our commitment to deterring war and enhancing stability.

Successful SDI research and development of defense options would not lead to abandonment of deterrence but rather to an enhancement of deterrence and an evolution in the weapons of deterrence through the contribution of defensive systems that threaten no one. *We would deter a potential aggressor by making it clear that we could deny him the gains he might otherwise hope to achieve rather than merely threatening him with costs large enough to outweigh those gains.*

U.S. policy supports the basic principle that our existing method of deterrence and NATO's existing strategy of flexible response remain fully valid, and must be fully supported, as long as there is no more effective alternative for preventing war. It is in clear recognition of this obvious fact that the United States continues to pursue so vigorously its own strategic modernization program and so strongly supports the efforts of its allies to sustain their own commitments to maintain the forces, both nuclear and conventional, that provide today's deterrence.

11. For the foreseeable future, offensive nuclear forces and the prospect of nuclear retaliation will remain the key element of deterrence. Therefore, we must maintain modern, flexible, and credible strategic nuclear forces.

This point reflects the fact that we must simultaneously use a number of tools to achieve our goals today while looking for better ways to achieve our goals over the longer term. It expresses our basic rationale for sustaining the U.S. strategic modernization program and the rationale for the critically needed national modernization programs being conducted by the United Kingdom and France.

12. Our ultimate goal is to eliminate nuclear weapons entirely. By necessity, this is a very long-term goal, which requires, as we pursue our SDI research, equally energetic efforts to diminish the threat posed by conventional arms imbalances, both through conventional force improvements and the negotiation of arms reductions and confidence-building measures.

We fully recognize the contribution nuclear weapons make to deterring conventional aggression. We equally recognize the destructiveness of war by conventional and chemical means, and the need both to deter such conflict and to reduce the danger posed by the threat of aggression through such means. ■

Published by the United States Department of State • Bureau of Public Affairs
Office of Public Communication • Editorial Division • Washington, D.C. • June 1985
This material is in the public domain and may be reproduced without permission; citation of this source is appreciated.

Bureau of Public Affairs
United States Department of State
Washington, D.C. 20520

Official Business

If address is incorrect
please indicate change.
Do not cover or destroy
this address label. Mail
change of address to:
PA/OAP, Rm. 5815A

Postage and Fees Paid
Department of State
STA-501

U.S. MAIL

NATIONAL COMMISSION OFFICERS
National Chairman
BURTON S. LEVINSON
National Director
NATHAN PERLMUTTER
Chairman, National Executive Committee
RONALD B. SOBEL
Associate National Director
ABRAHAM H. FOXMAN
Honorary Chairmen
KENNETH J. BIALKIN
SEYMOUR GRAUBARD
MAXWELL E. GREENBERG
BURTON M. JOSEPH
Honorary Vice Chairmen
LEONARD L. ABESS
RUDY BOSCHWITZ
EDGAR M. BRONFMAN
MAXWELL DANE
LAWRENCE A. HARVEY
BRUCE I. HOCHMAN
GERI M. JOSEPH
MAX M. KAMPELMAN
PHILIP M. KLUTZNICK
CARL LEVIN
HOWARD M. METZENBAUM
SAMUEL H. MILLER
BERNARD D. MINTZ
MILTON MOLLEN
BERNARD NATH
ROBERT R. NATHAN
ABRAHAM A. RIBICOFF
WILLIAM SACHS
S.O. SHAPIRO
THEODORE H. SILBERT
SIDNEY R. YATES
Vice Chairmen
DOROTHY BINSTOCK
BEVERLY DAVIS
NAT KAMENY
SAM KANE
STEPHEN B. KAY
IRVING SHAPIRO
Vice Chairman, National Executive Committee
HOWARD P. BERKOWITZ
Honorary Chairman, National Executive Committee
DAVID A. ROSE
Honorary Treasurers
CHARLES GOLDRING
BENJAMIN GREENBERG
MOE KUDLER
Treasurer
ROBERT NAFTALY
Assistant Treasurer
PETER M. ALTER
Secretary
LARRY M. LAVINSKY
Assistant Secretary
MELVIN FRAIMAN

President, B'nai B'rith
GERALD KRAFT
Executive Vice President
DANIEL THURSZ
President, B'nai B'rith Women
IRMA GERTLER
Executive Director
ELAINE BINDER

DIVISION DIRECTORS
Administration
HAROLD ADLER
Civil Rights
JUSTIN J. FINGER
Communications
LYNNE IANNIELLO
Community Service
THOMAS NEUMANN
Development
SHELDON FLIEGELMAN
Intergroup Relations
THEODORE FREEDMAN
Leadership
Assistant to the National Director
MARVIN S. RAPPAPORT

General Counsel
ARNOLD FORSTER

ADL
Anti-Defamation League of B'nai B'rith

September 26, 1986

South Africa

Mr. Albert Chernin
Executive Vice President
NJCRAC
443 Park Avenue South
New York, NY 10016

Dear Al:

With reference to the intention of the NJCRAC to send a letter to Congress urging an override of President Reagan's proposed veto of sanctions legislation, ADL hereby exercises its veto power against the issuance of the letter and its public dissemination.

Numerous members of the South African Jewish community have been in touch with ADL. Uniformly, they have reminded us that South African Jews have been in the forefront of opposition to Apartheid. Moreover, voting analyses have revealed that the Jewish community has not been supportive of the National Party. Rather, it has been one of the most progressive-minded communities in South Africa.

Still, they have urged upon us that American Jews not take a front and center role in supporting the divestiture movement. It seems to us, given the sense of vulnerability that this suggests as well as the high profile activities in behalf of freedom of the Jewish community, that we ought show respect for the wishes of our South African brethren. Indeed, no less than Helen Suzman has eloquently opposed disinvestment. Surely, the Suzmans and the Alan Patons merit our consideration.

If the South African Jewish community had a less forthright position against Apartheid than it does, we could understand concern about their motivations. But they have in fact been quite vocal and visible on the issue. It's our view that as an American Jewish organization we ought not turn a deaf ear to our co-religionists.

This is not to in any way suggest that ADL is for or against an override of the President's proposed veto of sanctions legislation. We feel strongly, however, that the wishes of the South African Jewish community should be respected. Of course, individual Jewish organizations remain free to take whatever position they want on the issue.

Sincerely,

Burt

Burton S. Levinson
National Chairman

cc: Nathan Perlmutter

823 United Nations Plaza, New York, NY 10017 (212)490-2525/Cable: ANTIDEFAME/Telex: 649278

Human Rts

Soviet Union

David Smale is defense [illegible] allowed ABA [illegible] 647 5242 [illegible] position [illegible]

THE WHITE HOUSE

WASHINGTON

September 8, 1986

Dear Ms. Wampold,

The President has asked me to thank you for your letter regarding the cooperative agreement between the American Bar Association (ABA) and the Association of Soviet Lawyers (ASL) and to reply on his behalf. I apologize for the long delay in responding to your letter.

We are grateful that you took the time to share with us your concern about this matter. We are also sensitive to the possibility that cooperative activities with the ASL could give undeserved stature and recognition among legitimate professional legal organizations to this group sponsored by the Soviet government. We are well aware of Soviet efforts to use their "professional" organizations to manipulate exchange activities to their own ends.

We recognize the differences between the ABA and the ASL and have discussed with officers of the American Bar Association the need to be alert and to resist the manipulative efforts of the ASL. The cooperative activities of the ABA are of a purely private nature, neither funded nor supported by the U.S. government. The ABA is aware of the potential pitfalls of cooperative exchange activities with the ASL, but it is also convinced that such activities could serve a useful purpose

Though not a national bar association, the ASL does count among its members a select and potentially influential group of individuals with links to important decision-making levels in the Soviet hierarchy. Access to such individuals gives the ABA an opportunity to send strong messages of concern on human rights and other issues to the USSR.

As with other U.S.-Soviet exchanges--private and official--the ability to communicate American ideals and values to closed Soviet society can be a valuable opportunity. Last year President Reagan, in an effort to increase the Soviet peoples access to American ideas, concluded an agreement with Mr. Gorbachev to expand cooperative exchanges between our two countries. The resulting General Exchanges Agreement, among other activities, calls for "mutually acceptable exchanges, cooperation, and visits of ...specialists in various fields of law, including public law and government."

We hope the ABA's activities with the ASL will contribute to this objective, and will serve as a direct conduit for the views of concerned American lawyers and other citizens to Soviet citizens. It would be, in our view, completely appropriate for your

~~Soviet~~ ~~Eastern~~ Soviet Union (Structural Problems)

They're Minding the Arsenal

REAGAN AND GORBACHEV
By Michael Mandelbaum and Strobe Talbott.
190 pp. New York:
A Council on Foreign Relations Book.
Vintage Books. Paper, $5.95.

By Marshall I. Goldman

DESPITE their very different ages, styles, ideologies and work habits, Ronald Reagan and Mikhail Gorbachev share some remarkable similarities. Both were small-town boys who came to power when their countries were beset by troubles; each believed he had a solid mandate; and each "was devoted to the bedrock precepts of his political and economic system." Moreover, each had relatively little experience in foreign affairs, not to mention arms control.

Given their lack of experience, how have the somewhat similar but very different men handled the issue of arms control? This is the main focus of a short monograph by Michael Mandelbaum and Strobe Talbott entitled appropriately, "Reagan and Gorbachev." Mr. Mandelbaum, a senior fellow at the Council on Foreign Relations, and Mr. Talbott, the Washington bureau chief of Time magazine, have sought to improve our understanding of not only how the men interact, but of the very complex issues involved in arms negotiations. They have largely succeeded. Their book could be subtitled, "A Guide to Those Bewildered by Arms Control and the Strategic Defense Initiative."

The authors argue that, much to most everyone's surprise, by introducing the Strategic Defense Initiative, also known as Star Wars, President Reagan hit at the very source of what the Russians consider their main political and military gains in the post-World War II era. It matters not that Mr. Reagan may have had little understanding of what S.D.I. involves, nor that he may have been inspired by two old movie plots (which the authors present as a serious possibility). Nor does it seem to matter that many American scientists doubt that S.D.I., whatever it is, will work. What does matter is that Mr. Gorbachev and his advisers do worry that S.D.I. might be successful enough to put them at a military disadvantage (they have more confidence in our technology than we do).

There is good reason for the Russians to worry. Mr. Mandelbaum and Mr. Talbott argue that were it to succeed, S.D.I. would undercut the nuclear parity the Russians have worked so hard to achieve. If the United States can neutralize the Soviet advantage in land-based intercontinental missiles, this will jeopardize Soviet control over Eastern Europe as well as the inroads it has made in the third world. Without nuclear

Marshall I. Goldman is the author of the forthcoming "Gorbachev's Challenge: Economic Reform in the Age of High Technology."

SYGMA AT A\
President Reagan and Mikhail Gorbachev

parity, Eastern Europe and the third world, the Soviet Union will be revealed as nothing more than an empty economic entity. As the authors note, the Soviet Union is an anomaly; although it is a military colossus, it has a very weak underpinning. Despite former Foreign Minister and now President Andrei Gromyko's boast that "no question of any importance" can be decided "without the Soviet Union." Mr. Mandelbaum and Mr. Talbott observe that on purely economic issues, such as third world debt or world trade, the Soviet Union is an economic backwater of no consequence.

Recognizing this, Mr. Gorbachev has set an urgent goal to make the Soviet Union competitive in high technology. But this will take time and a radical restructur-

> *"The Soviet dispute with the United States involves no rival claims to territory."*

ing of the Soviet economic system. To gain time, Mr. Gorbachev has sought to do all he can to dissuade Mr. Reagan from proceeding with S.D.I. That explains why Mr. Gorbachev has been willing to consider sacrificing much in the way of the Soviet Union's land-based missile strength. To some in the United States, this is an attractive bargaining chip. As a result, Mr. Gorbachev's "grand compromise" has in turn set off a further round of debate between the Pentagon and the Department of State.

While the S.D.I. factor adds a new element to the relationship, the authors point to some intriguing parallels with the past. Although the Soviet Union today is firmly opposed to defense weaponry, in 1967 the then Prime Minister Aleksei Kosygin argued just the opposite. It was the American President, Lyndon Johnson, who tried to convince Kosygin that the world would be safer if the superpowers emphasized offensive rather than defensive weapons. Similarly, the struggle between the United States and the Soviet Union for power is reminiscent of an earlier rivalry between the United Kingdom and Germany at the turn of the century.

Regardless of how intractable the impasse between the United States and the Soviet Union may seem, the authors note that the issues that divide us may actually be less nettlesome than the conflict the Soviet Union has with Japan, West Germany and China. The Soviet dispute with the United States involves no rival claims to territory, as it does with the other countries. The authors also remind us that despite the sometimes heated nature of the United States-Soviet confrontation, the very threat of nuclear destruction actually seems to have prevented the two countries from going to war. Thus, "instead of using these weapons to fight, the two countries have used them to maneuver for political advantage." Clausewitz has been stood on his head so that "politics becomes the conduct of war by other means." We both seek to avoid war "while simultaneously conducting the political contest."

AS insightful as many of these observations are, other assertions, particularly several made in the opening pages of the book are questionable. For example, it is misleading to describe Mr. Gorbachev as "a latter-day Stalinist in his economics." He stresses discipline, but he also shows considerably more flexibility than Mr. Mandelbaum and Mr. Talbott give him credit for. In addition, they argue that at a time of "uncertainty and transition," such as Yuri Andropov's approaching death, the Soviet leadership tries to demonstrate its toughness, as when Andropov ordered Soviet arms negotiators home from Geneva in late 1983. What they neglected to mention was that a few months later, this time while awaiting Konstantin Chernenko's death, the Russians did just the opposite and sent Mr. Gromyko back to Geneva to meet Secretary of State George Shultz.

Such shortcomings, however, should not detract from the authors' insights into how S.D.I. has served to intensify the contest between the two countries and their leaders. The concluding chapter is an examination of the Reykjavik summit. Because "Irangate" has happened so recently, Mr. Mandelbaum and Mr. Talbott are not able to consider its effects on the prospects for arms control. It would be understandable, but unfortunate, if these new scandals preclude any further Reagan-Gorbachev meetings. It may well be that even without the scandals, the two would be unable to reach any agreement. Yet as ill-matched as these leaders may sometimes appear to be — because Mr. Gorbachev is so ambitious and imaginative and Mr. Reagan has such control over the right wing — it isn't likely that at any time soon we will have another pair of leaders better suited for reaching a meaningful arms control agreement.