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SALT II TREATY AMBIGUITIES: THE BACKFIRE BOMBER AND THE SS-20

INTRODUCTION

Of all the ambiguities present in the lengthy and complex SALT II agreements, probably the most important is the question of which weapons systems are considered to be strategic under the terms of SALT. Naturally enough, the negotiators at Geneva were forced to make a distinction between strategic nuclear weapons systems and theater or peripheral nuclear weapons systems by the necessity of arriving at a mutually acceptable negotiating framework. Nevertheless, it is now apparent that the distinction which they made was unnecessarily imprecise and ambiguous.

Theater nuclear weapons systems are systems designed for missions within a theater of operations and are defined as systems having a range of less than 3,000 miles. While they are greater in range and destructive power than tactical nuclear weapons systems (designed for use within the confines of a battlefield), they lack the range to hit targets at intercontinental distances. It would thus appear that distinctions made between theater and strategic nuclear weapons systems for the purposes of a strategic arms limitation treaty would be clear and precise - those capable of an intercontinental range would be included and those incapable of such range would be excluded. This did not prove to be the case in practice. Because of the very nature of the U.S.-Soviet negotiating process in SALT II, certain Soviet weapons systems with intercontinental capability escaped being labeled strategic. This paper discusses two of those systems.

DEFINING "STRATEGIC"

The definition of the term strategic has itself been an object of disagreement between the Soviet Union and the United States over the years. At the beginning of the SALT I talks, the

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Soviet Union insisted that strategic weapons systems were those systems which were capable of reaching the territory of the opposing power, no matter what their launch point was. Under such a definition, most of the United States theater nuclear systems designated to NATO would have come under the terms of SALT. These so-called forward-based systems consist of nuclear-capable carrier- and land-based fighter-bombers and the medium-range FB-111 bombers based in England. In contrast, none of the Soviet medium and intermediate range ballistic missiles targeted on the NATO countries in Western Europe would have been included.

The United States' definition of strategic, put forth in opposition to the unacceptable Soviet definition, was that strategic weapons were those weapons possessing an intercontinental range. This definition gained at least tacit acceptance by the end of the SALT I negotiations. The American definition of strategic (as it applied to ICBMs) was attached to the Interim Agreement as an Agreed Interpretation. This Interpretation stated: "The Parties understand that land-based ICBM launchers referred to in the Interim Agreement are understood to be launchers for strategic ballistic missiles capable of ranges in excess of the shortest distance between the northeastern border of the continental U.S. and the northwestern border of the continental USSR."¹

This Agreed Interpretation has been incorporated into the SALT II Treaty as Paragraph 1 of Article II, together with an elaboration that ICBM range capability refers to "a range in excess of 5,500 kilometers [3,418 miles]."² Ironically, the term strategic has yet to be defined adequately in SALT with regard to submarine-launched ballistic missiles and bombers. Although included under the terms of both the SALT I and SALT II agreements, SLBM launchers have not been categorized as strategic or non-strategic, but instead (in SALT II) as "modern" and (presumably) pre-modern. Accordingly, the SS-N-4 and SS-N-5 SLBM launchers carried in the twenty still-operational Golf-class Soviet ballistic missile submarines (some sixty launchers) are excluded from the strategic totals in SALT II because first, the Golf-class

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1. Agreed Interpretation H; "SALT: Agreed Interpretations and Unilateral Statements." Arms Control and Disarmament Agreements: Texts and History of Negotiations (Washington, D.C.: U.S. Arms Control and Disarmament Agency, June 1977), p. 142. This tacit acceptance did not mean that the Soviet Union had decided to entirely forget about pressing its case for linking American "forward-based systems" and SALT. (See, for example, the Soviet Unilateral Statement of May 17, 1972, in Ibid., pp. 146-147.) The Soviets raised the issue again during the preliminary negotiations on SALT II, but by the time of the Vladivostok meeting in November 1974 had "magnanimously" agreed to separate the discussion of FBS from SALT II.
 2. Selected Documents No. 12A - SALT II Agreement Vienna, June 18, 1979 (Washington, D.C.: Bureau of Public Affairs, United States Department of State, 1979), p. 27.

submarines are not nuclear powered and second, the SS-N-4s and SS-N-5s are not "modern" submarine-launched ballistic missiles (i.e., they were flight-tested before 1965).

On the other hand, bombers, which were left uncounted in the 1972 Interim Agreement, are categorized under the SALT II Treaty as "heavy bombers" (i.e., strategic) not in terms of ratios of range to weight of carried payload but in terms of designation based upon known configuration (B-52, B-1, TU-95, and Myasishchev M-4) or ability to carry long-range ACLMs (air-launched cruise missiles). Under this definition, medium bombers carrying long-range ALCMs suddenly become "heavy bombers" and cannibalized B-52 bombers, long since retired from active flying status and moth-balled in Arizona "bone yards," are required to be counted in SALT II totals.

With such obvious ambiguities, it is no wonder that a number of nuclear weapons systems fall into the category of "gray-area systems" - defined by Frank Hoerber as systems which "defy tactical/strategic distinction in black-and-white terms."³ Two of the primary systems that fall into SALT II's "gray area" are the Soviet BACKFIRE bomber and the Soviet SS-20 intermediate-range ballistic missile (IRBM). Both systems have capabilities which should have made them ready candidates for restriction under the terms of SALT II and yet both were left unconstrained by the new treaty.

THE BACKFIRE BOMBER⁴

When the Soviets first began deploying the BACKFIRE bomber in 1974, it came as something of a shock to a number of American strategic thinkers who had decided that the Soviet Union had no interest in decisively upgrading their manned bomber forces. One commentator echoed their sentiment: "Airplanes are simply no longer that significant an element of strategic arms limitation."⁵ The BACKFIRE was the first new Soviet bomber to be deployed in over fifteen years. Prior to its introduction, the Soviet long-range bomber fleet had been stable for some time, varying little from a level of approximately 150 aircraft.

During the SALT I negotiations, the United States had tentatively agreed that medium bombers would be excluded from the

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3. Francis P. Hoerber, "Strategic Forces," in Arms, Men, and Military Budgets: Issues for Fiscal Year 1979, by Francis P. Hoerber, David B. Kassing, and William Schneider, Jr. (New York: Crane, Russak & Co., 1978), p. 18.
 4. For an earlier Heritage study on the BACKFIRE, see John G. Behuncik, "The Soviet Backfire Bomber: Capabilities and SALT Complications," Background No. 57 (Washington, D.C.: The Heritage Foundation, April 4, 1978).
 5. Joseph Kruzal, "SALT II: The Search for a Follow-On Agreement," Orbis, Vol. 17 (Summer 1973), p. 348.

category of strategic weapons, even though they possessed some potential as intercontinental weapons. From the beginning of its deployment, the Soviet Union insisted that the new bomber was a medium bomber. And yet early estimates by Western intelligence sources indicated that BACKFIRE possessed intercontinental range. (For example, open sources in 1975 credited the bomber with a maximum range in the neighborhood of 7,000 statute miles.) Thus from the beginning, BACKFIRE posed a political problem for the Ford Administration.

When President Ford met with General Secretary Brezhnev at Vladivostok in November 1974 to agree on the general framework for SALT II, the new bomber was apparently not one of the strategic weapons discussed. As of late 1975, there was still disagreement within the Ford Administration as to whether BACKFIRE should be counted in strategic totals. In an interview on NBC's Meet The Press on November 17, President Ford commented: "The Backfire is a weapons system that has a potential, although there is a difference of opinion as to whether or not its primary mission is one of intercontinental bombing. It is a very difficult decision among several others. And I don't believe that with the importance of those negotiations that I should make a categorical statement on this program as to how we might handle the problem of the Backfire."

By 1976, intelligence estimates of the bomber's range had been revised downward. The Defense Department's range estimate - in excess of 5,000 nautical miles - still indicated intercontinental capability. The CIA's range estimate, however, was significantly lower (3,000 nautical miles). Interestingly, it was reported in September 1976 that Secretary of State Kissinger had ordered the CIA to reduce its estimate of the BACKFIRE's range to bring it into alignment with the American negotiating position that BACKFIRE was not a strategic bomber.¹⁰ Whatever the truth

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6. Richard Burt, "SALT II and Offensive Force Levels," Orbis, Vol. 18 (Summer 1974), pp. 467-468.
 7. For a discussion of this point, see James E. Dornan, Jr., "The Vladivostok Accord and the Future of Arms Control," R.U.S.I. and Brassey's Defence Yearbook 1975/76, edited by The Royal United Service Institute for Defence Studies (London: Brassey's Publishers, Ltd., 1975), footnote 23, p. 107.
 8. Quoted in Roger P. Labrie, SALT Hand Book: Key Documents and Issues 1972-1979 (Washington, D.C.: American Enterprise Institute, 1979), pp. 338-339.
 9. "Washington Roundup," Aviation Week & Space Technology, October 18, 1976, p. 15; John M. Collins, American and Soviet Military Trends Since the Cuban Missile Crisis (Washington, D.C.: The Center for Strategic and International Studies, Georgetown University, 1978), footnotes 6 and 7, p. 19.
 10. See the "Washington Roundup" columns in Aviation Week & Space Technology for September 13, 1976, September 20, 1976, October 11, 1976, and October 18, 1976.

of this report, it is now known that the CIA in 1976 had actively taken steps to downplay the range capability of BACKFIRE.¹¹

In his January 1976 talks with Brezhnev, Secretary of State Kissinger reportedly indicated to the Soviet leader that he and President Ford were ready to accept Soviet assurances on BACKFIRE's lack of intercontinental range.¹² And yet in public during 1976, Secretary Kissinger continued¹³ to deny that any tentative agreement on BACKFIRE had been reached.

The Carter Administration, in its initial SALT II negotiating, sought to balance the Soviet bomber with U.S. long-range ALCM-equipped, heavy bombers. In its May 1977 proposal, the Administration apparently called for an equal but separate limit on the number of BACKFIRE bombers and heavy bombers equipped with ALCM's.¹⁴ The Soviets, who had previously received tentative exemption of the bomber from the Ford Administration, resisted this negotiating point and continued to insist that BACKFIRE was a medium bomber. By July 1977, the American position had shifted in favor of the USSR - BACKFIRE would be considered nonstrategic if the Soviets would make formal assurances not to deploy it in a strategic mode and would limit its production during the three-year period of the protocol.¹⁵ The question of the formality of the required Soviet assurances was modified in 1978 and 1979, until now in the completed SALT II agreements the Soviet assurances consist only of an unsigned written statement and an accompanying oral confirmation.

The TU-22M BACKFIRE-B,¹⁶ the model of the bomber deployed with the Long-Range Aviation component of the Soviet Air Forces

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11. See Collins, American and Soviet Military Trends, footnotes 6 and 7, p. 19.
 12. John Osborne, "White House Watch: A Plus for Carter," The New Republic, February 19, 1977, p. 14. This was part of an apparent compromise position on both cruise missiles and BACKFIRE. See Roger P. Labrie, "The SALT II Negotiations," in his SALT Hand Book, p. 168.
 13. See his press conferences of January 14, January 23, and July 10, 1976, excerpted in Labrie, SALT Hand Book, pp. 354-361.
 14. See Zbigniew Brzezinski's press conference on April 1, 1977, reprinted in Ibid., p. 446; and Cyrus Vance's press conference of May 23, 1977, excerpted in Ibid., p. 460.
 15. House Armed Services Committee staff memorandum presented at the beginning of testimony from ACDA Director Paul Warnke during the Armed Services Committee's Hearings on H.R. 8390 and Review of the State of U.S. Strategic Forces, reprinted in Ibid., p. 482.
 16. TU-22M is the Soviet designation for the aircraft. The TU in the designation stands for Tupolev, the bureau that designed and built the bomber. The number 22 links the aircraft to the TU-22 BLINDER bomber, indicating that both planes share design similarities. The letter M refers to the aircraft's use in a maritime (anti-shipping) role. BACKFIRE is the unclassified NATO code name for the bomber. And the letter B indicates the second (redesigned) version of the aircraft.

and with the Naval Aviation branch of the Soviet Navy, is a variable-geometry ("swing-wing") bomber approximately two-thirds the size of the United States B-1 bomber cancelled by President Carter in 1977. It has a weapons-load capacity of some 20,000 pounds and a maximum range now estimated at between 5,500 and 6,200 statute miles - more than sufficient (on a one-way, high-altitude flight) to enable it to hit a high percentage of the military and civilian targets in the continental United States without refueling.¹⁷ For strategic missions it can be armed either with a variety of free-fall nuclear weapons or with two air-to-surface nuclear stand-off missiles such as the AS-4 or AS-6, with ranges (at low altitude) of 185 and 135 statute miles, respectively. In addition, BACKFIRE has recently been tested with long-range ALCM's.

Despite what some strategic thinkers would have argued only several years ago, there is a role for strategic bombers in nuclear war-fighting even in the era of the intercontinental ballistic missile. Alert bombers can be more survivable than fixed ICBMs. They can hit targets that have escaped destruction in the initial exchange of missiles. And properly augmented with tanker aircraft and/or surviving bases, they can ride out the early stages of a nuclear conflict to render strategic attacks long after most other forces have been expended or destroyed.

At present, the Soviet BACKFIRE force is 200 aircraft strong, with some 30 additional aircraft entering operational service each year. By the end of the SALT II treaty in December 1985, the Soviets are expected to have a BACKFIRE fleet of 380 to 400 bombers - none of which counts under the terms of SALT. A 400 aircraft BACKFIRE force could increase deliverable Soviet megatonnage by as much as 25 to 30 percent.¹⁸ Although apparently designed primarily for maritime and theater war-fighting roles, the BACKFIRE bomber, even in small numbers, poses a strategic threat to the United States because of the weaknesses of U.S. continental air defenses.

General George Brown explained the reasons for the inadequacy of American air defenses in testimony before the House Armed Services Committee in 1976. He noted: "You will recall the

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17. The Military Balance 1979-1980 (London: International Institute for Strategic Studies, 1979), p. 89; and Jane's All the World's Aircraft 1977-78 (New York: Franklin Watts, Inc., 1977), p. 463. For a general comparison of the BACKFIRE's characteristics with those of other Soviet and U.S. bombers, see Michael B. Donley, ed., The SALT Handbook (Washington, D.C.: The Heritage Foundation, 1979).
 18. SALT II An Interim Assessment, Report of the Panel on the Strategic Arms Limitation Talks and The Comprehensive Test Ban Treaty of the Intelligence and Military Application of Nuclear Energy Subcommittee of the Committee on Armed Services, House of Representatives, 95th Congress, 2nd Session, December 23, 1978, p. 11.

primary U.S. air defense mission has been adjusted to encompass only surveillance; peacetime control of U.S. airspace; and warning of a bomber, missile, or space attack. This decision was based on tight budget constraints and the belief that without effective ABM defenses, air defenses are of limited value against potential aggressors armed with strategic missiles."¹⁹ As a result of intentional budgetary decisions, United States continental air defenses consist only of some 321 interceptors - most of the F-106A type (a model dating from the 1950s) - of which only 70 to 75 percent are operational at any one time; some 45 continental radar sites (36 of which are scheduled to be run by the FAA under a Joint Surveillance System); several Airborne Warning and Control (AWACS) aircraft; and 12 surface-to-air missile batteries located in Florida.²⁰

These inadequate air defenses could be augmented in a crisis by an additional 160 fighter-interceptors (F-4s, F-15s and F-14s) but only if these aircraft were not otherwise committed. The present air defense picture represents an extremely worrisome situation for the military commander charged with continental air defense. The commander of NORAD (North American Air Defense Command) recently remarked: "It's a well-known fact that our radar systems and interceptor forces are old, being mid-fifties vintage, and our capabilities have diminished to the point. . . of peacetime air sovereignty with a limited ability to fight a war. We have several programs on the books to correct these deficiencies. However, at present they are not adequately funded."²¹

Over the course of the SALT II Treaty, even these limited air defense assets will probably decline (before eventually improving sometime in the late 1980s), as the inevitable delays develop in funding and producing newer aircraft to replace the obsolescent F-106A and F-101 interceptors.²² During this same

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19. "Statement of Gen. George S. Brown, USAF, Chairman, Joint Chiefs of Staff," Hearings on Military Posture and H.R. 11500 [H.R. 12438] Department of Defense Authorization for Appropriations for Fiscal Year 1977, Part I of 5 Parts: Military Posture and H.R. 11500, Committee on Armed Services, House of Representatives, 94th Congress, 2nd Session, January 27, 28, 29, February 2, 4, 6, 9, 10 and 11, 1976, p. 417.
 20. Report of Secretary of Defense Harold Brown to The Congress on The FY 1980 Budget, FY 1981 Authorization Request and FY 1980-1984 Defense Programs, January 25, 1979 (Washington, D.C.: U.S. Government Printing Office, 1979), pp. 127-128; Military Balance 1979-1980, pp. 5-6; and Thomas C. Reed, "The Soviet Backfire and SALT II: An Appraisal," International Security Review, Vol. 4 (Spring 1979), p. 64.
 21. General James E. Hill, quoted in "Neglect of Bomber, Missile Defense Hit," Aviation Week & Space Technology, August 20, 1979, p. 64.
 22. Lieutenant General Edward Rowny recently testified that the United States will have to spend some \$8 to \$10 billion between now and 1985 to improve its air defenses to cope with the threat posed by BACKFIRE. "Statement by Lt. Gen. E. Rowny (Ret.) before Committee," Committee on Foreign Relations, Senate, 96th Congress, 1st Session, September 11, 1979, p. 8. (Copy of a typescript document.)

period the Soviet's BACKFIRE bomber force, and hence its overall strategic bombing capacity, will be increasing steadily.

THE SS-20 IRBM

The Soviet Union first began deploying the SS-20 intermediate range ballistic missile (IRBM) in 1977 as an augmentation to and eventual replacement for its force of older SS-4 MRBMs (medium-range ballistic missiles) and SS-5 IRBMs targeted on Western Europe.²³ The new IRBM was essentially interchangeable with the SS-16 ICBM, which had an additional stage and different payload. The system's mobility, coupled with its interchangeability with the SS-16 made its deployment a matter of immediate importance for the United States. Accordingly, in one of his first press conferences, President Carter discussed the new missile:

The Soviets have a missile with limited range - it is not intercontinental in nature - called the SS-20. They have begun to install those missiles in mobile installations where they can move them in a concealed way from one part of an area to another. . . .

I would like to see the Soviets cease deployment of the mobile missile, even though it is not of intercontinental type. It is very difficult to distinguish²⁴ it from the intercontinental missile called the SS-16.

In the SALT I negotiations, the United States had pressed for a ban on mobile ICBMs but the Soviets had refused to go along. While the 1972 Interim Agreement did not ban mobile systems, American leaders made it clear that any attempt by the Soviet Union to deploy a mobile ICBM during the period of the Agreement would constitute a violation of the spirit of SALT I. In the SALT II negotiations, the United States sought to bar Soviet deployment of the SS-16 by again proposing a ban on mobile ICBMs. On April 1, 1977, Presidential National Security Adviser Zbigniew Brzezinski, in a briefing on the new Carter SALT II proposals, told reporters: "We would also expect the Soviets to abandon the development and deployment of the SS-16, which is their mobile ICBM, just as we would abandon the MX."²⁵

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23. A medium-range ballistic missile has a range of between 600 and 1,500 nautical miles. An intermediate-range ballistic missile has a range of from 1,500 to 3,000 nautical miles.
24. President Carter's press conference of February 8, 1977, excerpted in Labrie, SALT Hand Book, p. 421. The President's announcement of SS-20 deployment was premature. The Soviets actually did not begin deployment until some months later. See Aviation Week & Space Technology, August 15, 1977, p. 48.
25. Press conference of April 1, 1977, reprinted in Labrie, SALT Hand Book, p. 445.

Nevertheless, while negotiations were going forward, so too was the Soviet Union's ICBM deployment. Soviet testing of its mobile SS-16 ICBM was completed in 1975 (a test held in 1976 reportedly proved unsuccessful),²⁶ and limited deployment into fixed silos began in early 1978.

The SS-16 is a mobile, three-stage, solid-fueled ballistic missile some sixty-five feet in height. It is equipped with a postboost vehicle (PVB) - a cannister with thrusters to alter the ballistic flight path in order to sequentially disperse re-entry vehicles toward different targets - but unlike its SS-20 counterpart has only a single re-entry vehicle. The range of the SS-16 is more than 5,000 nautical miles. In all, approximately forty SS-16s have been emplaced in silos situated in previously-used ICBM fields in the Soviet Union.²⁷ In addition to these missiles, some sixty SS-16s are believed to be currently in storage.

The SS-20 IRBM is indistinguishable in most respects from the SS-16. It is a mobile, two-stage, solid-fueled ballistic missile some fifty feet in height. In place of the SS-16's single two megaton warhead, it has three submegaton (probably 150 kiloton) warheads. The SS-20's range is estimated to be about 3,000 statute miles - sufficient to target Alaska when deployed in the USSR's Kamchatka Peninsula. This range could be significantly upgraded either by substituting a light single-warhead payload for the present MIRVed payload or by adding the third stage designed for the SS-16 ICBM (a procedure which would take only a few hours). The SS-20 is mounted, together with its erector-launcher, on a mobile vehicle (see the picture on page 10), which enables the missile to be moved frequently to hinder NATO detection and targeting. Since the erector-launcher is compatible with the SS-16, the ICBM could be substituted for the IRBM at the appropriate time, virtually without detection until it was too late. More than 120 SS-20s are now deployed in the Soviet Union - the majority of them targeted on Western Europe. It is estimated that some 900 will be deployed by the Soviets during the period of the SALT II Treaty.

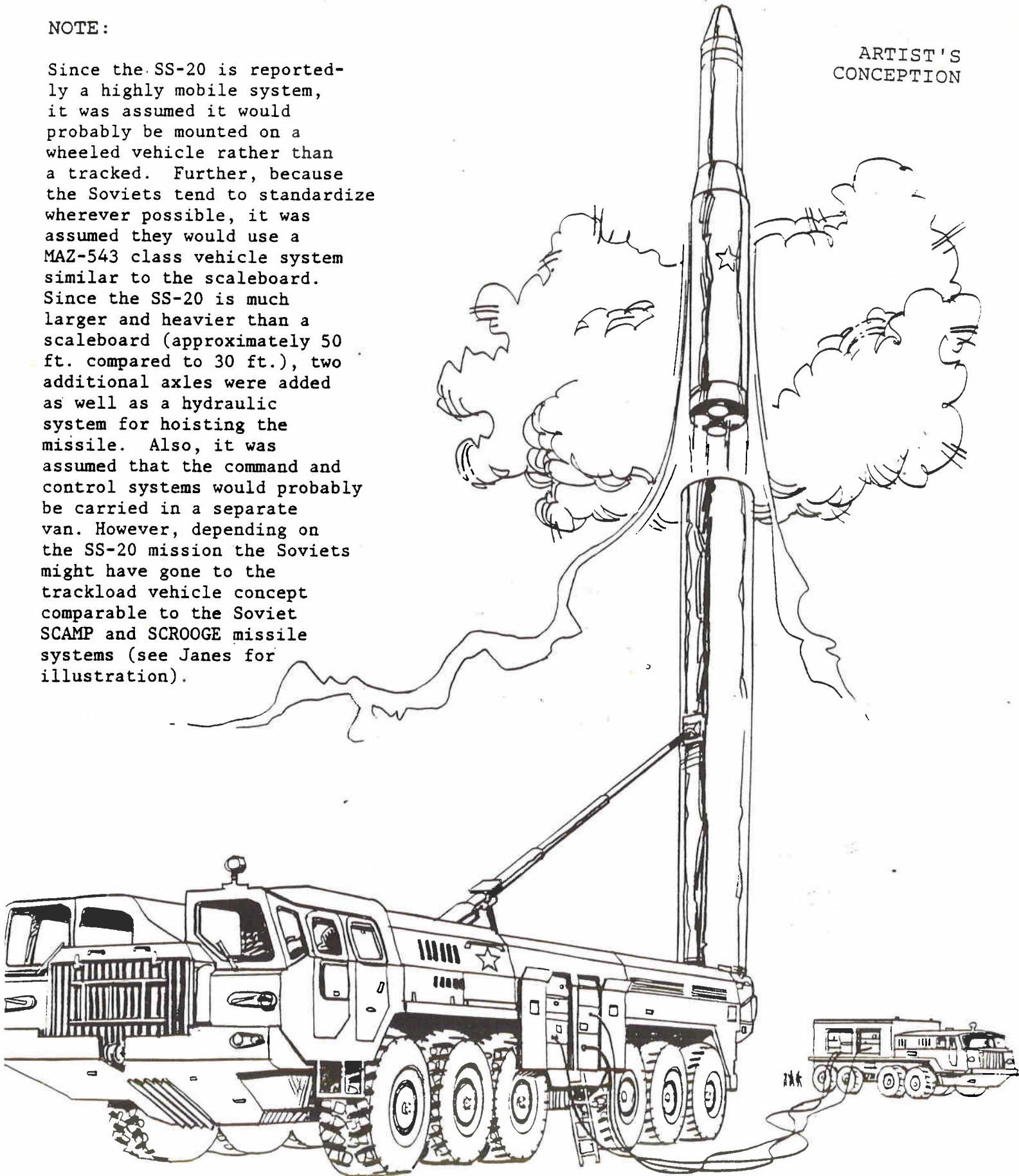
SALT II'S INADEQUATE "GRAY AREA" RESTRICTIONS

In the drafting of a strategic arms limitation treaty, there are certain things which can be done to effectively prohibit or restrict the introduction or maintenance of particular weapons systems in national inventories. First, within the text of the

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26. "Soviets Deploy SS-16 ICBM," Aviation Week & Space Technology, February 27, 1978, p. 15.
 27. "SS-16 Deployment Raises Senate Questions," Aviation Week & Space Technology, September 24, 1979, p. 24; and Jacquelyn K. Davis, Patrick J. Friel, and Robert L. Pfaltzgraff, Jr., SALT II and U.S.-Soviet Strategic Forces (Cambridge, Massachusetts: Institute for Foreign Policy Analysis, Inc., 1979), p. 46.

NOTE:

Since the SS-20 is reportedly a highly mobile system, it was assumed it would probably be mounted on a wheeled vehicle rather than a tracked. Further, because the Soviets tend to standardize wherever possible, it was assumed they would use a MAZ-543 class vehicle system similar to the scaleboard. Since the SS-20 is much larger and heavier than a scaleboard (approximately 50 ft. compared to 30 ft.), two additional axles were added as well as a hydraulic system for hoisting the missile. Also, it was assumed that the command and control systems would probably be carried in a separate van. However, depending on the SS-20 mission the Soviets might have gone to the trackload vehicle concept comparable to the Soviet SCAMP and SCROOGE missile systems (see Janes for illustration).

ARTIST'S
CONCEPTION

THE SS-20 MOBILE IRBM

treaty or in attached instruments, one can impose a ban on the weapons systems. However, to be effective, the language of provisions banning the systems must include not only a prohibition on the production and deployment of the systems during the term of the treaty but also a requirement that any components of the systems which were produced prior to the commencement of the treaty be destroyed within a fixed period following that commencement.

Second, within the text of the treaty or in attached instruments, restrictions can be applied to these weapons systems. Such restrictions can be numerical (for example, each Party may have only 820 MIRVed ICBMs), or qualitative (for example, each Party undertakes not to deploy cruise missiles with a range greater than 600 kilometers on sea- or land-based launchers). For qualitative restrictions to be legally enforceable, they must define exactly the aspect or aspects of the systems that are to be restricted. Moreover, if the weapons systems were in production prior to the beginning of the treaty period and therefore already possessed those qualitative aspects constrained by the treaty, then the sections of the treaty dealing with these systems must contain language which compels structural modification of these systems sufficient to eliminate the qualitative aspects in violation of the treaty and also language setting forth the means by which compliance with such structural modification can be ascertained.

In SALT II, the most effective way of handling the BACKFIRE and the SS-16/SS-20 problems would have been: first, to count BACKFIRE and the SS-20 dual-purpose launcher as strategic nuclear launch vehicles for purposes of the treaty (thus placing them under the 2400 maximum limit); and second, to ban the SS-16, while additionally compelling destruction of all missiles of that type and components which had been produced prior to the commencement of the treaty. This, however, was not done. Throughout the SALT II negotiations, the Soviets continued to deny the applicability of SALT to the question of its "gray area" systems.

However, aware of the probable criticism it would face by completely excluding the BACKFIRE and the SS-16/SS-20 from SALT II, the Carter Administration attempted to limit Soviet freedom of action with regard to these weapons systems by including provisions which at least partially addressed the strategic problems provided by both systems. Unfortunately, the provisions which the Administration managed to include in the SALT II package are not sufficient to accomplish this goal. Because the included provisions are ambiguous in meaning and lack comprehensiveness in application, it appears that the Soviet Union will be fully able to evade their intent.

With regard to the BACKFIRE question, a Soviet statement on BACKFIRE (outside the body of the Treaty text) is included in the package of agreements that was brought back from Vienna by President Carter. As printed in the State Department's official

text of the SALT II Agreement, the "Soviet Backfire Statement" consists of an unsigned, written statement and an oral confirmation of the BACKFIRE's production rate.

The written statement notes that the "Soviet 'TU-22M' airplane, called 'Backfire' in the USA, is a medium-range bomber, and that it [the Soviet Union] does not intend to give this airplane the capability of operating at intercontinental distances."²⁸ It further states: "In this connection, the Soviet side states that it will not increase the radius of action of this airplane in such a way as to enable it to strike targets on the territory of the USA. Nor does it intend to give it such a capability in any other manner, including by in-flight refueling."²⁹ The oral confirmation, given by General Secretary Brezhnev at Vienna, is that "the Soviet Backfire production rate would not exceed 30 per year."³⁰

The major problem with the "Soviet Backfire Statement" is that it refers to intentions that fly in the face of the material facts of the situation. The Soviet statement says that the USSR does not intend to give the BACKFIRE an intercontinental capability, but the aircraft already possesses such a capability. The statement further notes that the Soviet Union does not intend to give the BACKFIRE the capability of striking targets in the United States by increasing its radius of action (round-trip

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28. "Soviet Backfire Statement," Selected Documents No. 12A - SALT II Agreement, p. 50. There has been occasional discussion of whether a Soviet change of the BACKFIRE's official designation (from the TU-22M to the TU-30, for example), when coupled with minor structural modifications to the aircraft, would render its Backfire Statement contractually inoperable -- enabling the USSR to disregard its pledges on BACKFIRE's range, deployment and production rate. As currently understood in American treaty law, such a change would not render the Backfire Statement invalid for a number of reasons. Among these reasons are: 1) "Treaties should be so construed as to uphold the sanctity of public faith"; 2) "All parts of the treaty are to receive a reasonable construction with a view to giving a fair operation to the whole . . ." and "[t]he words used are to be given their natural and ordinary signification"; and 3) "Treaties are to be read in the light of the conditions and circumstances existing at the time they were entered into, with a view of effecting the object and purposes of the contracting states." American Jurisprudence, Volume 52 (San Francisco: Bancroft-Whitney Company, 1960), pp. 823 and 824. It is apparent that as long as the aircraft remained essentially the same as the bomber known to the United States as the BACKFIRE, the Soviet Backfire Statement would remain contractually valid.
29. Ibid. The Soviet interpretation is that unless a Soviet aircraft is capable of flying to the United States and back again without refueling, it can not be considered strategic. Interestingly enough, under such an interpretation, neither the U.S. B-52 nor the B-1 bomber would qualify as a strategic bomber.
30. Ibid.

flying range) through in-flight refueling, and yet the BACKFIRE-B aircraft from the beginning have been produced with fitted air refueling probes. They have had refueling capability all along. In a cosmetic maneuver, designed to garner support for pro-treaty forces in the United States, the Soviet Union in the last few months has removed the air refueling probes from many of its BACKFIRE bombers. It should be noted, however, that this action does not reduce the BACKFIRE's potential for mid-air refueling, since in all probability the probes were designed for easy removal and could be replaced in a matter of minutes by trained crewmen. It is likely that the probes can be stored aboard the aircraft for speedy conversion of the bomber to full air refueling status.

If one were looking at the BACKFIRE statement in terms of American contract law, he would note that its text contains a "mistake as to material fact." The material fact in the statement - the fact which "forms the very basis on the contract" - is the claim of BACKFIRE's present lack of intercontinental capability.³¹ And because this fact is inaccurate, the entire Soviet statement is fatally flawed. Accordingly, there is nothing in the "Soviet Backfire Statement" which acts to limit the aircraft's present strategic potential. The only thing that the statement obligates the Soviet Union to do is to avoid further upgrading of the aircraft's already adequate strategic range. The statement cannot be used by the United States to compel the USSR to decrease the BACKFIRE's present range capability.³² In this regard then, the statement is worthless as a means of denying the Soviet Union that proportion of its strategic power provided by its BACKFIRE bomber fleet.

With regard to the SS-16/SS-20 question, there were several Treaty provisions which the Carter Administration hoped would circumscribe Soviet freedom of action. For example, the Protocol to the SALT II Treaty expressly bans mobile ICBM launchers up through December 31, 1981.³³ Also, Paragraph 8 of Article IV of the SALT II Treaty states: "Each Party undertakes not to convert land-based launchers of ballistic missiles which are not ICBMs into launchers for launching ICBMs, and not to test them for this purpose."³⁴ Finally, the Common Understanding to Paragraph 8

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31. American Jurisprudence, Volume 12, pp. 618-619. For an elaboration of this concept as applied to international law, see "Section 3. The Validity and Effect of International Agreements: 2.b. Mistake, Fraud and Illegality," Cases and Materials on International Law by Wolfgang G. Friedmann, Oliver J. Lissitzyn and Richard Crawford Pugh (St. Paul, Minnesota: West Publishing Co., 1969), p. 336.
32. Under American treaty law "the presumption is against retrospective operation in the absence of a clear expression to that effect." American Jurisprudence, Volume 52, p. 827.
33. Selected Documents No. 12A - SALT II Agreement, p. 47.
34. Ibid., p. 34.

states that the USSR will not produce, test or deploy ICBMs of the SS-16 type and will not produce the third stage of the missile, the re-entry vehicle of the missile or the device for targeting the re-entry vehicle of the missile during the term of the Treaty.³⁵

At the time of the final treaty negotiating, the United States hoped that these provisions of the SALT II agreements would both ban the production and deployment of the SS-16 and prohibit the upgrading of the SS-20 to intercontinental range through use of the SS-16's third stage or payload. Yet here again, the attempt to limit Soviet initiative fails. The major flaw is that the provisions ignore an important pre-existing fact - the SS-16 ICBM has already been produced and deployed in some numbers. The Treaty language does not call for destruction of SS-16s already produced (since for purposes of the Treaty they do not exist), only for a ban on production, testing and deployment during the term of the Treaty. The language does not have a retroactive effect, and therefore the provisions can not be interpreted to include those SS-16s already produced and deployed.³⁶

Even the Protocol's prohibition on the deployment of mobile ICBM launchers has been inadequately framed. The key problem in this case is the SS-20 launcher's compatibility with the SS-16 ICBM. A number of sources insist that the launcher used for the SS-20 was actually designed for the SS-16. In its "Detailed Analysis of SALT II Provisions," the State Department argues that "dual-capable" launchers - those which can launch either IRBMs or ICBMs - are to be counted as ICBM launchers under the terms of the Treaty (because of counting rules).³⁷ If this assertion were true, the present SS-20 launchers would be specifically noted as counting under the aggregate strategic nuclear delivery vehicle totals (included in Paragraphs 1 and 2 of Article III of the Treaty). They are not. As the situation currently stands, the USSR continues to deploy "dual-capable" launchers for the SS-20 launchers that are capable of being used on very short notice to launch the already-stockpiled SS-16 ICBMs that have escaped SALT II's restrictions, thereby giving the Soviet Union a decided "breakout" potential.

35. Ibid.

36. See the note on "retrospective operation" contained in footnote 32, above. It is apparent that Treaty language does not specifically prohibit maintenance by the Soviet Union of SS-16 ICBMs produced and/or deployed in fixed-mode prior to the inception of the Treaty period. This would rule out the use of the language in Paragraphs 1 and 4 of Article XI of the Treaty to compel destruction of the 100-plus SS-16s already in the Soviet inventory. The State Department acknowledges this interpretation in the breach. See the pertinent portion of its "Detailed Analysis of SALT II Provisions," where it mentions only the fractional orbital bombardment missile as currently in the category of prohibited systems. Selected Documents No. 12A - SALT II Agreement, p. 21.

37. Selected Documents No. 12A - SALT II Agreement, p. 15.

CONCLUSION

It is an inescapable fact of treaty drafting that, in order to achieve success, parties to the agreement must express the clarity of their intentions and purposes through the precision of their language. If the language used is in any way unclear or ambiguous, it opens up such treaties to a relatively wide latitude of interpretation, a situation which most likely will benefit one party at the expense of the other. For under American treaty law: "Obscurities and uncertainties of obligatory clauses are to be interpreted in favor of the party who obligates himself, . . . and the obligation must be restricted to the sense which lessens the obligation; for he who obligates himself does it as little as he can, and if the other party is not satisfied, he should require a clearer and fuller explanation of the meaning of the clause."³⁸

The sad truth of this is nowhere more evident than in the case of the SALT II agreements' treatment of the BACKFIRE bomber and the SS-16/SS-20 missile questions. The ambiguities in connection with these weapons systems, which have been allowed to stand in the final draft of the SALT II agreements, have resulted in a situation where these potentially decisive strategic systems are allowed to exist almost unchecked. It is an inequality in the SALT II agreements of major proportions--an inequality that decidedly favors the Soviet Union. SALT II's handling of these two "gray area" systems is a matter so serious that it mocks the very term of arms limitation, under which the new SALT treaty is now heralded. And it is a matter which should be most carefully considered in the forthcoming Senate floor debate. The costs to the United States for allowing this situation to remain in its present state will rise to incalculable heights in the coming decade.

Jeffrey G. Barlow
Policy Analyst

38. American Jurisprudence, Volume 52, p. 826.