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DIGEST OF THE RUSSIAN JOURNAL
YADERNY KONTROL
(NUCLEAR CONTROL)

International Security. Nonproliferation. Arms Control.

N 7

Spring 1998

Published three times a year since 1996

Contains selected analytical articles from *Yaderny Kontrol*, a journal published in Russian six times a year

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Subscriptions worldwide (Russian and English editions): please, send requests to fax +7+095-234-9558 or e-mail: subscription@pircenter.org. Checks or wire transfers. Express mail delivery.

Circulation:

Russian journal: 2,000 copies

English Digest: 800 copies

Signed for printing

on April 9, 1998

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- The editors wish to express special thanks to the Center for Nonproliferation Studies at the Monterey Institute of International Studies for making this publication possible through its support of the PIR - Center for Policy Studies in Russia

Publisher: PIR - Center for Policy Studies in Russia

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Hot Topic**LESSONS
OF "THE GYROSCOPE DEAL"**

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[This article was originally published in Russian in *Yaderny Kontrol*, No.2, March-April, 1998]

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 Abridged version

The PIR - Center for Policy Studies in Russia was the first, and is still the only Russian non-governmental organization to begin studying the gyroscope scandal, involving gyroscopes which were illegally exported from Russia to Iraq. In September 1997 we issued a respective report followed by a number of articles on the subject¹, we received responses from a broad array of sources, including the representatives of Russian governmental authorities, experts on missile technology, Western journalists, and the employees of the UN Special Commission on Iraq (UNSCOM). In the initial report and the subsequent follow-ups we drew conclusions about the imperfection of Russian export controls over missile components as well as the imperfections of the Russian Criminal Code which prevented punishment of those guilty of smuggling. However, we repeatedly emphasized that our investigation turned up more questions than answers, with the primary question shifting from the undoubtedly interesting aspect where from and where to, to the question why. In other words, question *qui prodest?* - who profits? - stayed open.

We endeavored to complete the investigation we had begun. It required additional interviews (which we succeeded in obtaining, on the condition that we maintain the anonymity of the sources), an independent expert review of the material received earlier, and also additional information from official sources or private experts as well as foreign journalists, in particular, from the USA and Jordan; and a considerable amount of information was supplied

from the Iraqi and Palestinian circles. Like all the other sources, these have been thoroughly and, where possible, cross-checked multiple times.

Though we had collected the materials referred to below as early as January, at that time we refrained from their disclosure: while the Iraqi crisis was in full swing (which was the case in January-February) the risk of a biased interpretation and use of the data for an investigation, similar to our own, was too great.

Today, when the crisis around Iraq has subsided (probably, temporarily), we are ready to suggest our version of the reasons and details of the story started in 1994 and resulted in the export of eight hundred ten-missile gyroscopes from Russia.

The Story

On December 9, 1995, a group of scuba divers hired by the UNSCOM surfaced six missile instruments from the bottom of the river Tigris, near Baghdad: L24-560-4 two-stage gyro units, serial numbers A17373 and Z17530; L20-17G integrating gyros, serial numbers E17248 and T17215; an LVR-014 air pressure regulator, decimal number LD2.573.014, and a micromotor, serial number A093.

Immediately after the finding of the gyroscopes the Russia's Ambassador to the United States Yuli Vorontsov declared that they were not of the Russian origin, regardless of the revealing numbers. At first, it was assumed that the gyroscopes had been stolen from the manufacturer in Ukraine.

In early February 1996 the Chairman of the UNSCOM, Rolf Ekeus, came to Moscow for negotiations with the Ministry of Foreign Affairs. In the course of almost four-hour of talks in the Russian Ministry of Foreign Affairs he swamped the experts with questions, showing knowledge of a large amount of information on the issue. The Russian diplomats were not prepared for this meeting. After the meeting their statements became more cautious - they were already not denying the Russian origin of the Iraqi gyroscopes, however they insisted that governmental authorities had nothing to do with the deal.

On April 9, 1996, on the basis of the materials supplied by the Department for Counterintelligence Support of the Strategic Facilities of the Federal Security Service (FSB) of Russia, the Investigation Department of the FSB of the Russian Federation opened criminal case on the charge of the illegal export of the equipment applicable in the construction of missile delivery systems for weapons of mass destruction, i.e. regarding evidence of the type of crime covered by the Criminal Code of the Russian Federation, Part 2, Article 78-1.

The Goods

The gyroscope is a measuring instrument, a quickly rotating rotor widely used in ground and space technology. A gyroscope retains a constant position relative to the stars, and is used for steering moving objects, by providing fixed points in several directions for the construction of onboard coordinates. The constant axis of rotation of a gyroscope serves as a reference for the missile position in three-dimensional space. The divergence between the constant axis of the gyroscope, fixed against coordinates, and rotational axis of the missile should correspond to the programmed value. If deviations occur, this signals the necessity for flight correction. Every type of missile has its own program depending on the flight range and missile characteristics in longitudinal and lateral axis and rotation. If a correction has to be made in the three axis independent of each other it will disrupt the missile's functioning and take a lot of time. Besides, a missile has its own oscillation frequency depending, in particular, on the flight altitude, and generating a resonance with the gyroscope oscillations. In addition, gyroscopes for short and large range missiles have design differences - the former are autonomous, the latter are integrated into a gyroplatform.

It is well known that those non-member-states of the Missile Technology Control Regime (MTCR) who are striving to possess advanced nuclear potential, as a rule, face serious (and often insurmountable) difficulties in the creation of indigenous missile guidance systems². The creation of gyroscopes through a national effort in such countries, particularly Iraq and Iran, does not

seem feasible today, while in most other parameters they may advance in missile building with little or no external assistance.

The Buyer

Viam Garbie. A subject of the Hashimite Kingdom of Jordan, but ethnically a Palestinian. He was born 1963 in Lebanon, which he left with his parents for Qatar where he grew up. From Qatar he went to the United States, where he studied at the University of Chicago. He maintained a close relations with General Union of Palestinian Students and was an active member. He worked in collaboration with the Democratic Youth Organization, the League for Support of Palestine, and other student, youth, and public organizations registered and formally working in the USA.

Garbie took an active part in the events during *intifada*. He participated in the demonstrations, manifestations and other public actions "directed at the attraction of attention of the American public to the problem of the Palestinian people". However, in connection with my activities in this field he had no problems in terms of a breach of the law, and he had no criminal charges. Though he knew that his name was mentioned in the so-called *black list*. Many of his friends had to face similar problems both in the USA and Canada. In the USA Garbie opened his own business, trading in second-hand computers. Then he left for Canada. He spent more than ten living in North America.

Garbie decided to leave the USA since he received an opportunity to get a job as well as becoming a permanent residence. Considering that the Jordanian authorities denied him the extension of his passport at the time, he was afraid that the American authorities could make use of this condition against him or he would have problems because he had not made timely arrangements for his passport, and it would thus turn out that he was breaking the Immigration Law. However, he learnt that in Canada they had more favorable conditions for naturalization of the people of his status (*Palestinians without passports*) as well as for getting a suitable job. Besides, he believed that in Canada he would face a different

political situation, more favorable compared with that pursued within the US borders. He did not have a valid passport to extend it.

In Canada, Garbie lived in Toronto and Montreal. He rented an apartment himself or shared it with a friend. Later, he could not remember the addresses of the companies with whom he cooperated. In Canada Garbie was associated primarily with Arabs who had received Canadian citizenship, and later he could not exactly recall their names or occupations.

The Seller

The Research and Testing Institute of Chemical and Building Machines (NIIKhSM). Situated in Serghyev Posad, the Moscow Region. From 1990 to 1995, in compliance with the START-1 Treaty, more than 100 submarine launched 3M-40 intercontinental ballistic missiles³ were disposed of here.

The disposal of missiles is the responsibility of the company which designed them. The same company issues the documentation describing the purpose and method for their disposal. The principal task here is cost effectiveness, i.e. the possibility of reasonable reuse after the disposal (for instance, missiles are cut into blocks and the metal is recycled). A secondary task is declassification (i.e. pieces sent to the dumping site should not contain classified components). Theoretically, SLBM disposal should be the responsibility of the Makeyev GRTs Design Bureau (the Myass Machine Building Design Bureau, in the Chelyabinsk Region). However, they actually only take responsibility for the general coordination of the work and use a large number of subcontractors, which are responsible for specific aspects, such as engines, steering systems, etc. In particular, the steering systems are the domain of the Sverdlovsk Design Bureau, and this bureau, also, uses subcontractors for power supplies, gyroscopes, etc. This branching is infinite, and it is unknown who determines the limit of declassification.

Usually there are no problems in the process of transportation of SLBM from the Ministry of Defense location to a disposal site. And in this case the SLBM, from which the warhead

was removed, came to dismantling and disposal to Serghyev Posad under strong security and marked "classified". The direct dismantling of the missiles was also conducted in a guarded and secret location. After the missile dismantling (crushing or cutting) *the scrap* (including intact instrument parts, with gyroscopes among them) is delivered to the storage facility (copper separately, tin separately, gyroscopes separately, etc.)⁴.

The Sanctions

According to UN Security Council Resolution No.687 of April 1991, suppliers of goods related to military technologies and dual-use goods to Iraq must receive special permission. It is prohibited to supply missiles with a range above 150 km and related equipment to Iraq. The first unmodified SCUD missiles (SS-1 SCUD-B) supplied by the USSR to Iraq, had a 300 km range (there are a few modified SCUDs with a range varying from 320 to 550 km). The modified missiles manufactured by Iraq are: *Al Hussein* (600 km), *Al Hajarakh* (750 km) and *Al Abbas* (900 km). Iraq also possesses *Tammuz* missiles with a range of up to 2000 km, and *Al Abid* missiles, with a range of up to 2500 km⁵.

Russia joined in the sanctions against Iraq. However, the detailed documents on the subject were not passed in Russia for six and a half years. On November 7, 1997 Prime Minister Victor Chernomyrdin signed the legal *provisions* which determined the method for controlling the export from the Russian Federation to Iraq of dual-use goods and technologies and other means originating in the Russian Federation or released in free circulation within the territory of the Russian Federation, including the List of Dual-Use Goods and Technologies and Other Means whose export to Iraq, in compliance with the UN Security Council Resolution, is controlled and subject to approval, or banned⁶.

The Buyer

After more than ten years in North America Garbie returned to the Middle East, and specifically Jordan. However, he faced serious passport problems in the Amman's *Al-Malica*

Alya international airport. The old Jordanian passport used for travelling around the world had expired. On arrival to Amman Garbie was detained and the expired passport seized from him. Garbie had to stay in the transit passenger room about six days before he received, due to the mediation of, as he would call him later, *an intimate friend*, the permission to enter Jordan, with his passport returned.

Upon arrival to Jordan, Garbie stayed in the Amman International Hotel. Then, for a while he stayed with his relatives. Later, when his relatives bought their own apartment for the family, he settled with them at Umm Uweina, on the corner of the Mecca Street and Medina Street, near a small Chinese restaurant.

After the seizure of Kuwait in 1990 Garbie suddenly found himself in the occupied territory. Here he continued his computer business, removing computers from the plundered Kuwait offices, including the Ministry of the Interior. According to some sources, he discovered confidential and classified information in some of the Ministry computers, which he profited from by selling it to Iraq. After this, the Iraqi special services established direct, friendly contact with Garbie. He also met Camil Hussein, the Minister of Industry, Trade and Oil of Iraq, and most important, Saddam Hussein's son-in-law.

It was from him that Garbie received his first really serious order.

The Seller

Garbie first came to Russia in December 1993, also on *computer* business. He began with *small things*, buying electronic components at markets and selling them to Iraq via Jordan. He found his way around, and as early as 1994 he established important relations with a number of Moscow businesses, including some in the military industrial complex.

Thus, in early 1994, Garbie contacted the managers of NIIKhSM, including Deputy Director of Economic Affairs V., Chief Accountant S., First Deputy Director L., and Deputy Director of General Affairs O.⁷ Soon

they began detailed negotiations on selling him various kind of equipment, including that from disposed of missiles.

By July 1995 they came to a final agreement with Garbie on selling him a large amount of non-liquid equipment as well as gyroscope instruments from the command modules of decommissioned 3M-40 ballistic missiles. V. and S. were directly involved in the execution of the deal with Garbie (including the execution of the contract, financial and other documents, and shipping the equipment).

Simultaneously, a obscure company, the closed joint-stock company *SPM-Systema* emerged in Serghyev Posad. We can now only guess who was behind the creation of this company, however it was all done neatly: the closed joint-stock company was registered by a front, though with the use of forged documents and seal. The trail of *SPM-Systema* owners faded, though the contract which was soon signed - the only one for the company - lifted the shroud surrounding the mystery.

The Gyroscope Samples

Garbie requested samples of the gyroscopes, and received approximately ten. Together with these samples he quietly went to Jordan in June 1995 (Russian customs officers would hardly have reason to search a modest consignment of *electrical equipment* without *being prompted*, or additional occupational training), and then to Iraq. He showed the samples to Camil. And then strange things began to happen.

According to one of the versions, Camil reprimanded Garbie for lack of wit: the gyroscopes offered by the Russians were much more advanced than those Iraq was looking for. Camil was interested in the gyroscopes for short range missiles, for SCUDs. The use of the gyroscopes for longer range missiles required a gyroplatform (housing three gyroscopes in three directions), additional documentation, and service support. Finally, long rang missiles themselves would also be necessary. According to another version Camil appreciated the efforts of the Palestinian in

Russia more than favorably, and gave him a free hand to implement the whole deal. That would certainly imply its generous financing.

In any case, upon Garbie's return to Moscow lines of credit had been opened in the Moscow commercial bank *Yapy Toko Bank*, to be distributed to NIIKhSM, for US\$100,000 and \$20,000.

It was these *samples* that were quite accidentally recovered from the turbid Tigris by the UN Special Commission six months later. By that time Camil Hussein was already far away from Baghdad: Saddam's son-in-law had dissented and told his new (or perhaps not so new) patrons many curious things about the life of the Baghdad court, including, probably, the *gyroscope story*.

Incongruity

Why did Iraq need the gyroscopes which were clearly inapplicable for any practical purpose due to the absence of the appropriate missiles and no feasible way to create them in the near future?

The Deal

In August 1995 V. and S. signed an agreement, on behalf of NIIKhSM, with their closed joint-stock company *SPM-Systema* "to conduct experimental work", under which a large number of various instruments were delivered, including those from the command modules of the disposed 3M-40 ballistic missiles: L24-560-4 two-stage gyro units and L20-17G integrating gyros, which are listed in the "list of equipment, materials and technologies, used for creation of missile weapons, the export of which are controlled and licensed", as approved by the Executive Order No. 193-rp of the President of the Russian Federation, dated April 25, 1995.

A total of eight hundred gyroscopes were sold to the Iraqis, not including the first ten.

The Deputy Director and the Chief Accountant were actually quite familiar with the Russian export control legislation. They preferred not to break laws. Because under those laws there is nothing *criminal* in selling gyroscopes by a Russian institute to a

company which is also Russian. How *SPM-Systema* would sell the gyroscopes to a foreign company, should it be Jordanian or any other, was a different question. But that did not confuse the investigators from the *Defense Ministry*, either.

What confused them was the money issue. First, the amount of the contract. One hundred twenty thousand was next to nothing for the goods offered, considering their size, actual world prices, and strategic importance. However, an amount with a larger number of trailing zeros could attract the attention of the customs authorities or the Federal Security Service. The second confusing, and more important, point was the conditions, established by Garbie, on the line of credit at the *Yapy Toko Bank*. Their fulfillment was clearly too difficult. We can say, jumping ahead, that neither NIIKhSM, nor *SPM-Systema* ever received the money for the goods. Not a cent.

Customs

In the assessment of the risk of breaking the export controls laws of Russia, one of the greatest risks is pinned to the possibility of carrying goods without license, or specifying false data. Customs officers themselves admit that even in case of radioactive materials their capabilities to identify and stop the transfer of contraband materials are extremely limited⁸. As for stopping non-nuclear strategic contraband, in particular, missile equipment, no governmental resolution would enable customs officers to reveal and prevent such illegal exports. There certainly is no prompting from special services or, even more reliable, competing companies⁹.

In this connection, the actions of V., S. and Garbie stir a special interest, because they still preferred to play it safe. In addition to the *Qatar-Canadian* Palestinian, *Muscovite* Nigerians also came onto the scene.

When the equipment purchased by Garbie in NIIKhSM in August 1995 was carried from Serghyev Posad to Moscow in two lots, the execution of the customs formalities for the consignment was taken by a representative of the Russian-Nigerian closed joint stock

company *Nison Investment Plc* Gerald Iwusezi, to whom Garbie described the consignment to be exported as *television (electronic) equipment* or as *precision supersensitive instruments*.

As Garbie later stated in Amman: "No organization or person asked me to rename the goods, as I adhered to the conventional classification, namely, the term *micromotor*, i.e. a precision supersensitive motor. This is a general classification for electric instruments. All instruments of this kind has its own number stamped on it; they have no signs except the numbers. This name is used in documents, however, the term *gyroscope* implies a whole group of instruments, that is why it would be illogical to apply a single term to them.

"The execution of the shipping documents in the framework of the deal signed was charged to a Russian company owned by Nigerians. That company was occasionally involved in the organization of shipping goods. We informed the company about having a lot of precision equipment, with the basis being electric motors. We needed an experienced specialist in goods export from Russia since we did not have such experience. We needed a lawyer or accountant with necessary experience and authority to [prepare the required documents]. One of the company office workers assumed this responsibility. The control was exercised by the company providing the loading of the consignment. Throughout all the necessary steps there was neither renaming of the goods nor change of its classification fixed in respective documents. The man [in charge] did all those things personally. Before the loading he came to the airport to be sure of the correctness of the execution of the consignment, its compliance with the specified name, classification and numbers specified. All of that data was contained in the shipping documents. All of this was done to pass the customs examination. ... In this way we carried the last lot of equipment from Russia in a few steps.]

"[The problems] were connected primarily with the financial aspects concerning prices

and customs taxes, and did not cover technical classification. Though we used the term *highly sensitive equipment* to describe those components there could be no problem here since we also formally imported precision equipment, in the framework of the same consignment, having received it from the same source. As for the use of the term *gyroscopes* or *accelerometers*, there is no such classification in the customs catalogue. Besides, nobody would deny that they are based on precision motors".

Indeed, there can hardly be any claims against the Russian-Nigerian company. They only assisted in the execution of the documents. However, Garbie was well aware what was in the load he was carrying and why the neutral word *micromotor* should be used in the documents. He really feared a charge of breaking export controls laws, that is why he tried to demonstrate in every way that his contraband is not so dangerous: "[The deal] does not run counter to either the laws of the exporter country or those of the importer country. Such a deal could be compared, for instance, with a purchase of electronic equipment with a purpose to use the internal parts containing gold"

Garbie insisted in talking with his Jordanian lawyers, that he did not simply know that export of gyroscopes from Russia is criminal under the law effective in this country. According to my information, he said to one of his lawyers, export of such gyroscopes has not been banned. They were not in the international classification list of gyroscopes prohibited for sale - that was my impression when I received them and opened a line of credit for that purpose. The group of such high-sensitivity electronic instruments could better be refereed to as potentiometers, tachometers, etc. Besides, these are multipurpose instruments; they may be used in various systems, for instance, to be installed at civil aircraft, drilling equipment, etc. Those instruments were designed only for the determination of deviation and acceleration. In many Western states, and not Western states only, trading in these instruments is allowed [This is true but only within those states, while their export is controlled according to MTCR - Ed].

Specialized newspapers and journals publish articles describing similar technical arrangements. The deal was legitimate. Otherwise, with the existing prohibition on the sale of these instruments the deal could not have been formally executed, however, all the documents were generated and signed by the selling party, not to mention the formal nature of the contacts. I did not distort the classification characteristics of the instruments, Garbie believed, for I brought them to the territory of Jordan on the basis of a formal document with the respective reference number. In the Moscow Sheremetyevo Airport those samples passed through the necessary examination without any problem. Besides, Garbie continued, we had not made any modifications in the rates or name of the goods to hide contraband. We knew that in case of any problems in the Moscow Airport we had an opportunity to invite a representative of the selling party to confirm the legitimacy of the deal regarding the sale of those instruments, specifying the payment account with the authorized bank. The goods were sent to my address and my name. I did not try to avoid the customs examination or mislead the customs officers.

When we attempted to receive the technology and ready components from the gyroscope manufacturers, Garbie explained to his lawyers, the selling party in compliance with the formal documents offered us separate components, technologies and materials not covered by the agreement on prohibition to transfer technologies related to some specific pieces of missile equipment. In case of gyroscopes and accelerometers, one has to be extremely accurate in their classification. We did not go beyond this classification in receiving the instruments from the missile equipment dismantling plant. One knows that the agreement covers only production process transfer, but it does not include ready manufactured pieces. We know that India imported manufactured instruments in the framework of its projects for development of missile technologies, however, it was denied the transfer of the production process going beyond the framework of the agreement. It is a fact that we have not imported the whole guidance and steering system - the

gyroplatform. We imported separate parts of that system: some electronic instruments which, when desired, could be separately obtained both from Western and Eastern sources at well-known prices and in the framework of the same classification to which we adhered importing the instruments, with their subsequent installation, after certain improvements and revamping, in a system where they could be used, for instance, at *ground-to-ground* missiles or *ground-to-air* missiles, or other similar systems.

In the same way one could buy a missile airframe or other missile part, and use individual components as metal scrap, with the electric and electronic systems retrieved to be used separately, explained Garbie. We gave opportunity of solving all the questions concerning the purchase, transportation, handling and delivery of the goods to the persons interested in the deal. As we knew, it was not an attempt to smuggle the instruments not included in classification lists of electric or other equipment. We had an opportunity to obtain a whole guidance system [Editor's emphasis], however, we did not do it so as not to breach the law regarding all items of the system as a whole. We could have used various forms of pressure to conclude such a deal in this or that way, however, we left the opportunity to resolve the issue to the persons interested in the deal, who assured us that they acted within the framework of the international agreements and Russian laws.

We did not quote the above ample reasoning to assure the reader of Garbie's naiveté. It is obvious that he had prepared such an excuse in advance and it is intended for the people who have little knowledge of the constraints in the framework of MTCR. It seemed noteworthy to us that the same reasoning is also used, almost verbatim, by some domestic potential sellers who would like to put the Russian military industrial complex on a commercial track.

However, the Palestinian had one more *stand-by explanation*, and it was this explanation that could really confuse the investigation.

Scrap

Nevertheless, Garbie did not resort to it. Only once, in Amman, did he let out that he carried to Iraq the instruments designated as *scrap*. Our interlocutors in Moscow spoke about it much more frequently and persistently. Really, the gyroscopes were dismantled from the SLBM without any further intentions for their sale; it was expected that they would stay in storage until *final* and *irreversible* disposal. Several domestic specialists in missile technology and guidance systems tried to persuade us, concertedly, that most gyroscopes dismantled from missiles undergo rough mechanical manipulation (for instance, using hammer to separate pieces) and, hence, they cannot in any way be used for military purpose because they would not provide the necessary guidance accuracy. At the same time, according to these specialists, the dismantled gyroscopes may be of interest both in terms of exercise and experiments, and in terms of studying the design. Though, on the other hand, it is clear that a few hundreds of instruments are obviously too numerous for the purpose.

The instruments found in Iraq in November 1996 were made available for expertise in Russia by the UNSCOM, and their technical review was prescribed and fulfilled. The expert opinion was that those instruments had been manufactured in the Russian Federation and were the components of a command instrument of a ballistic missile steering system; at that time the instruments were inoperative and could not be used for the designed purpose; the reason of the impossibility to use them for the design purpose was their nonprofessional dismantling from missiles not pursuing the purpose to retain operability of the instruments, and two of the instruments had been damaged by water.

So, two instruments, before they got to the Tigris, had been operable and could be used for their designed purpose. That was one third of the instruments which underwent review by experts. If this proportion is extended to all the gyroscopes purchased by Garbie, it would turn out that two hundred

seventy items might have been used by Iraq for their originally intended purpose.

However, Garbie did not seem to know completely why he was carrying the gyroscopes to Baghdad. As he said to one of his Jordanian friends, "according to the purchase conditions for the gyroscopes, we could use either separate items of their structure (to be precise, high sensitivity electric motors or precision internal systems) or the whole system."

Incongruity

What was it that Garbie carried to Iraq: broken instruments unfit for any missiles? Then why was it necessary to receive the order from Camil himself? Why was it necessary to request hundreds of thousands of dollars to pay for the deal? Was it just to bring from Serghyev Posad to Baghdad the scrap only good for studying its chips? Would not it have been simpler to be confined with the previously delivered, and, as it is becoming clear, not quite unfit *samples*? Or was it a concrete military order for the implementation of specific purposes?

The Destiny of the Gyroscopes

The gyroscopes successfully passed through the freight customs of the Sheremetyevo airport and were delivered to Jordan by *Royal Jordanian Airlines*. In Amman, the goods were examined at customs through a few steps upon arrival and at their dispatch from Al-Malike Alya airport to the customs warehouse where they were to stay till shipment to Baghdad, while Garbie was executing the permission to trans-ship the consignment to the end-user in Baghdad.

But there turned out to be no consignee. Camil had disappeared from Baghdad. The money promised for the deal had disappeared with him. As Garbie found out, nobody else expected him and his goods in Baghdad. Soon it became clear that Camil had *sold out* his father-in-law and, probably, he had long been working for the Americans.

Garbie was anxious to go to Baghdad, even without the gyroscopes. He had problems with a financial matter as he had no free money because Camil Hussein's had

disappeared. He was trying to solve his problems in a few ways: either selling the electronic equipment, electric motors and instruments, or returning them, or making arrangements with the Iraqi Government. Simultaneously he began devising other options, so as not to sustain a complete loss. He did not rule out that he might supply the gyroscopes or their components to Egypt or Algeria.

But on Garbie's way from Amman to Baghdad, which is within an easy distance, he was suddenly confronted by the Jordanian special services - probably, those whom he previously numbered among his *intimate friends*. Again they used the best pretext - the expired passport of the Palestinian, and agreed to extend it once more (and let Garbie go to Baghdad) provided that he agrees to tell them about his political activities in the USA and he suggested that they return his passport in exchange for agreeing to leave Jordan, promising not to return to that country. Garbie had to accept such an outcome as he needed to return to Iraq -- on urgent business.

Instead of receiving the money Garbie was arrested in December 1995 by the law enforcement agencies of Iraq "on suspicion of involvement in the illegal supply of missile components to Iraq". At the same time, the majority of the missile and other equipment exported by Garbie from Russia was detained by the law enforcement agencies of the Kingdom of Jordan.

Incongruity

While the Russian customs officers easily let Garbie pass with his freight, their Jordanian counterparts appeared to be capable of revealing the actual content of the consignment. They could hardly be as knowledgeable in missile technology details (unless they were graduates of the Bauman Technical University in Moscow). Maybe somebody *suggested* the true details to them?

Perhaps the Jordanian partners he had both in Amman and Moscow? At least Garbie, himself was sure it was not them.

Iraqis? Most unlikely, taking into account the difficult relations between the Baghdad and Amman (although this cannot be completely ruled out).

Camil Hussein?

The outcome

On January 5, 1997, in connection with the entry into force of the Criminal Code of the Russian Federation on January 1, 1997, and amendment of the language of Art.78-1 of the Criminal Code of the RSFSR, the case against the NIIKhSM was requalified to Art. 189 of the Criminal Code of the Russian Federation, the disposition of which does not provide for criminal liability for illegal export of equipment used in creation of delivery vehicles of weapons of mass destruction. Criminal case has been closed. The only charges that could be presented against S., V. and other employees of the institute would be setting up a front company with the purpose to... Well, the purpose is not important any more because no investigator would undertake to prove their connection with *SPM-Systema*.

Viam Garbie is in Iraq with his case under investigation. The criminal prosecution against him was undertaken according to Article 159 of The Law on Criminal Offense of the Republic of Iraq, "work for an enemy foreign state". One can easily guess that the state in question is by no means Jordan.

The gyroscopes and other equipment seized at the Amman customs warehouse have been expropriated by the Hashimite Kingdom of Jordan.

Qui prodest?

The criminal case has been closed. However, it would be premature to file the gyroscope story away in the archives. It still contains too many lacunas and too much incongruity.

The principal question pending: what was the need for Iraq to undertake that potentially expensive, cumbersome operation pregnant with scandals undesirable to Baghdad?

Tim McCarthy, a senior researcher for the Center for Nonproliferation Studies of the Monterey Institute of International Studies believes that Iraq was interested exactly in advanced perfect missile systems as vehicles for their WMD, and if one develops a project to create a long range missiles capable of hitting London, Washington or New York, one cannot do it without a guidance system¹⁰. According to the former head of the UNSCOM Rolf Ekeus, Sweden, it was planned to use the Russian gyroscopes "for methodology and training purposes", i.e. to see, upon dismantling, how to arrange a long range missile gyroscope, and possibly use them for further indigenous development, with indigenous missile construction specialists available in Iraq¹¹. This version does not run counter to the assertions of the Russian specialists that the gyroscopes arrived in Iraq and then in Jordan in "a badly damaged condition" and "could not be used for combat purpose".

The Iraqis themselves acknowledge that they would not refuse to buy short range missile (up to 150 km) gyroscopes, which Iraq is allowed to do, but a 150 km missile gyroscope can hardly be distinguished from a gyroscope for a 151 km missiles which are already banned, asserts a member of the UN Special Commission and comes to the conclusion: "Iraq strives to receive steering systems for independent manufacture of long range missiles". Thus, in 1995 Iraq declared that even before the Gulf War they had been developing the engine for a new generation missile with a range exceeding 3 000 km. Iraq, as it is frequently mentioned in mass media, even after the Gulf War, continued the work on the transformation of the Soviet *ground-to-air* SA-2 missile into a middle range *ground-to-ground* missile capable of being a biological weapons delivery vehicle; the UN inspections crew found computer software used to simulate missile launching and calculate the trajectories of their flight¹².

Many things could be explained by the customer, Camil Hussein... But he was killed after he returned to Iraq. That was his father-in-law's order. Could *the key* to the answering the numerous remaining questions lie here? When did he begin supplying information to

Americans? Had he been their man in Baghdad for a long time?

Imagine, that Russian diplomats learned about *the gyroscope story* from Western counterparts and had to find excuses, though not publicly, but at negotiating table¹³. The material evidence, saved from the Tigris with the accuracy of fine needle work, was on display, including the serial numbers. The breach of the Russian obligations on the sanctions was also evident. The tide in mass media was rising. Russia's statements of loyalty to its international obligations in adherence to the sanctions against Iraq was compromised. At that moment, any attempt by Moscow to pursue its own course in relation to Iraq, different from the American approach, could be interpreted as a desire to sell Russian military equipment to Iraq. Not to mention the opportunity to declare that the contraband came from a state-owned enterprise (and NIIKhSM certainly is one) as export authorized by the Russian Government¹⁴. In a war of *compromising materials* the winner is generally the one who is the first to table his *compromising materials* and thus is the one to launch the offensive. Those who look for excuses stir little trust. Especially if their excuses are so clumsy and delayed as was the case with the Russian diplomats concerning the gyroscopes. One may not rule out that if the position of Moscow in relation to the Iraq settlement was even farther from the American position than it actually was in 1996 and the first half of 1997, the *gyroscope card* could have been played for full impact. This is, certainly, only one of the possible versions.

Crime without punishment

However, regardless of our answer to the question: who profits? - it is still a fact that the Russian judicial and legal system is incapable of adding at least some element of *vitality* in the sections of the Criminal Code covering breaches of export control legislation¹⁵. While such states as Germany and the USA demonstrate a most serious attitude towards the breaches of national legislation and international obligations by the illegal export of goods and technologies included in the *control lists*, Russia appears to

consider any criminal prosecution here unnecessary.

We can only guess how it happened that Criminal Case fell to pieces and never came to court here, in Russia. We may assume that in the power structures and law enforcement agencies there are many people acutely suffering from the conniving of those who have created serious blows to the national interests and prestige of the state.

Upon reading the Resolution of the Government No.57 *On the Improvement of Controls over Export of Dual-Use Goods and Services Related to Weapons of Mass Destruction and Missile Delivery Vehicles Thereof*, many federal officials were seriously concerned about whether their agencies were prepared to meet the stringent requirements of the document. However, many people away from Moscow, at manufacturing plants only smiled ironically, not believing in the seriousness of the intentions of the government which is capable of writing formidable resolutions but incapable of bringing even an obvious case of missile contraband to court.

Is there a lacuna in the Criminal Code where WMD delivery systems have been *forgotten*? Possibly so. However, did any of the present law-makers do anything to demand that the legislator fill in these lacunas? Was that *forgetfulness* unintentional? Probably so. Though this absence of attention betrays how poorly the government thinks its constraints on strategic export *will work*; one can even notice a poorly hidden trace of pity for the managers of the collapsing enterprises of the *defense industry* who try, in circumvention of the law, to feed themselves and maybe the enterprise, too... their thoughts are far from criminal prosecution.

Is it really necessary to wait for a nuclear warhead to be carried through customs.

Appendix

Preventing proliferation: the criminal liability for the offenses (review of the Russian Criminal Code)

To secure the traffic of radioactive materials in the framework of the *International Convention on Physical Protection of Nuclear Materials* which entered into force on February 1988, the following articles were added in 1988 to the Criminal Code of the RSFSR (UK RSFSR), Chapter X "Offenses against public safety, public order and public health": Article 223-2: The illegal acquisition, storage, use, transfer or destruction of radioactive materials; Article 223-3: Theft of radioactive materials; Article 223-4: Threat of theft of radioactive materials or their use; Article 223-5: The breach of rules for the storage, use, accounting, transportation of radioactive materials and other rules for handling thereof.

In the new Criminal Code, which entered into force on January 1, 1997, the legislator deleted Arts. 223-4, 223-5, retaining Arts. 223-2, 223-3, which are similar in disposition.

Article 220. The illegal handling of radioactive materials

In the new code the liability for the illegal handling of radioactive materials is covered by Art.220, Criminal Code of the RF (UK RF)¹⁶. Part 1 defines illegal handling: acquisition, storage, use, transfer or destruction, for those found responsible it provides for probation for a term up to two years, arrest for a term up to 4 months, or imprisonment for a term up to two years. Part 2 of the article provides for liability for the same acts under aggravating circumstances resulting in an inadvertent death of a person or other grave consequences, to be punished by probation for a term up to five years or imprisonment for a term up to ten years. The notion "other grave consequences" contained in Art.220 leaves room for evaluation, and will certainly complicate the formation of investigative and judicial practice. Special rules for handling radioactive materials are contained in the Federal Laws of the RF "On the Use of Atomic Energy", "On the Safety of the

Population from Radiation", and other departmental regulatory acts.

Article 221. Theft or extortion of radioactive materials

Art. 221 of the new UK RF provides for liability for theft or extortion of radioactive materials. The previously effective (and similar in disposition) Art. 223(3) of the UK RSFSR did not contain qualifying criteria and consisted of one part providing for liability only for theft of radioactive materials¹⁷. In the new Criminal Code the legislator did not only change the disposition of Art. 223(3) but also expanded the qualifying criteria for this *corpus delicti* which is reflected in Parts 2 and 3 of UK RF. These include, in Part 2, the commission of an act: by a group of persons on prior conspiracy; on multiple counts; by a person using his office; with use of violence not dangerous for human life or health, or threat to use such violence. And in Part 3, if they are committed by: an organized group; with use of violence dangerous for human life or health, or threat to use such violence; by a person with two or more previous convictions for theft or extortion. However, compared with the previously effective article, the punishment was increased only in Part 3 in its lower limits from five to ten years imprisonment with or without the seizure of the property thereof.

Article 225. Misconduct in office in regards to the security of arms, ammunition, explosive substances and explosive devices
An important chapter in the new Criminal Code of the RF in the field of non-proliferation is Art.225, "Misconduct in Office in Regards to the Security of Arms, Ammunition, Explosive Substances and Explosive Devices", Part 2 of which provides for the liability for misconduct in office regarding the security of nuclear, chemical, biological or other types of weapons of mass destruction or materials or equipment which can be used for creation of weapons of mass destruction, provided that it entailed grave consequences or created a threat of an occurrence thereof. The punishment for the above offense provides for a term of three to seven years with deprivation of the right to take certain offices or be engaged in certain activities for a term up to three years¹⁸. The

subject of the above offense is either an official or any other person who is charged with the duty of securing the above types of arms.

In the meaning and direction of the disposition of Art.225 note the following: these acts are connected with criminal conduct of officials, who are deemed as persons either performing functions of a representative of authorities, permanently, temporarily or as a special authority, or performing executive or administration functions in state bodies, bodies of local government, state or municipal offices as well as Armed Forces of the RF, other troops or military units.

Article 226. Theft or extortion of arms, ammunition, explosive substances and explosive devices

Chapter 24 "Offenses against public safety" of UK RF Sec. IX was complemented by Art.226 "Theft or extortion of arms, ammunition, explosive substances and explosive devices", Part 2 of which also constitutes a new criminal legal norm: the theft or extortion of nuclear, chemical, biological or other types of weapons of mass destruction as well as materials or equipment which can be used in creation of weapons of mass destruction, and provides for the imprisonment for a term of five to ten years of those found guilty of its violation.

The qualifying criteria for the above offense in relation to Arts. 1 and 2 of this article and its committal: by a group of persons on prior conspiracy; on multiple counts; by a person using his office; with use of violence not dangerous for human life or health, or threat to use such violence. In relation to Arts. 1, 2 and 3 of this article, if they were committed:
a. by an organized group; with use of violence dangerous for human life or health, or threat to use such violence; by a person with two or more previous convictions for theft or extortion. The sanctions of these articles are severe enough to ensure adequate state enforcement against the persons who have committed such offense.

Article 189. Illegal export of technologies, scientific technological information and

services used in the creation of weapons of mass destruction, arms and military equipment

The creation of the system of export controls in Russia began in 1992. A number of legislative acts were passed to prevent uncontrolled exports in this field.

In 1993 the UK RSFSR was complemented by Article 78(1), Illegal export of goods, scientific technological information and services used in creation of arms, and military equipment, weapons of mass destruction.

Analyzing the issue of criminal legal liability (of the new Criminal Code) for the offenses in conducting foreign economic activities and assurance of the fulfillment of international obligations for nonproliferation of weapons of mass destruction, it should be noted that the application of a number of norms is complicated because of absence of their interpretation. Some articles contain drawbacks, we believe, originally made by the authors and not eliminated by the legislator.

Thus, for instance, the multiplicity of regulatory acts to turn to for qualification of offense in this field impedes the use of these norms of the Criminal Code¹⁹. Quite a vivid example is Art.189 of the Criminal Code, "Illegal export of scientific technological information and services used in creation of weapons of mass destruction, arms and military equipment", where criminal liability is found in the case of the illegal character of such export, i.e. when it is carried out in breach of legislatively established prohibition and in circumvention of the *special export controls*. This article was added in the UK RSFSR in 1993. As we see it, the practical application of the notion "circumvention of the special export controls", which first appeared in 1995 in the federal law "On state regulation of foreign economic activities", is quite complicated. The same law determines that export controls are a combination of measures for implementation by the federal executive bodies on the procedure, established by the above Federal Law, other federal laws and other legal acts of the Russian Federation, of exportation outside

the Russian Federation of arms and military equipment as well as particular types of raw materials, materials, equipment, technologies and scientific technological information which can be used in the creation of arms and military equipment, to prevent exportation of weapons of mass destruction and other very dangerous types of arms and their delivery vehicles as well as measures for revealing, prevention and suppression of the breaches of this procedure. Art.16 of the same law determines that the nomenclature of export controllable arms, military equipment, particular types of raw materials, materials, equipment, technologies and scientific technological information and services which can be used in creation of weapons of mass destruction, missile delivery vehicles thereof and other most dangerous types of arms, is to be determined by the lists established by Decrees of the President of the RF on submission of the Government of the RF for the establishment of the lists of goods subject to export controls, to enter into force not earlier than three months after their promulgation. This appears difficult in application for criminal legal norms.

Article 189 of the UK RF consists of one part and does not contain qualifying criteria. It is only those subjects who in virtue of the effective law are entitled to such export, that face the circumstances described in the disposition of the above criminal legal norm. For this reason, as we see it, the lack of a disciplined approach to legislation addressing this problem, i.e. the increase in criminal liability along with other measures of an economic preventive nature, may result not in increase but rather decrease in this type of offense. The punishment provided by Art.189 of the UK RF varies in the range from fine to seven years of imprisonment. Application of this norm is complicated by the effective legislation for the export control system which is based primarily on the regulatory acts determining the procedure of such export which are constantly amended and complemented.

Article 188. Contraband

In 1993 the entry into force of the new Customs Code of the RF did not only bring a

new definition of contraband but also included items not previously covered by the notion of contraband (nuclear, chemical, biological or other types of weapons of mass destruction, materials and equipment which can be obviously used for their creation; strategically important raw material goods)²⁰. This gave rise to a legal collision since Art.78 of the effective UK RSFSR provided a different definition of contraband. The newly passed Customs Code went beyond its competence by assigning new criminal legal criteria to contraband. Only on July 1, 1994, Art. 78 of the UK RF was given new language providing for liability for contraband of goods which constitute an increased danger (objects of a destructive system), or constitute a special importance (strategic raw materials).

The *corpus delictum* connected with the breach of customs rules includes contraband. In the new Criminal Code the legislator expanded the disposition of Art. 188 providing for liability for this type of offense. Compared with the previously effective Art. 78 of the UK RSFSR, criminal liability under the new code is only applicable in cases of the commission of such gross act. However, for the transfer of materials and equipment listed in Art 188, Part 2 of the UK RF a gross act is not required. Such materials and equipment also include those covered by the special export controls: strategically imported materials, nuclear, chemical, biological and other types of weapons of mass destruction, materials and equipment which can be used in creation of weapons of mass destruction. Compared with the previously effective Arts. 78 and 188 it is evident that the liability for this type of offense has been mitigated.

The qualifying criteria for items considered to be contraband are described in Art. 188, Parts 3 and 4 of the UK RF. The legislator added a new criterion in Part 3 - use of violence against a person exercising customs examination, to replace the previous one - overt transfer (breaking through a customs border), providing for 5 to 10 years of imprisonment, with property seizure thereof. Part 4 of the article provides for a qualifying criterion - commission of the transfer of

contraband materials by an organized group, with the punishment of 7 to 12 years of imprisonment and an additional compulsory punishment of property seizure.

Article 335. Production and proliferation of weapons of mass destruction

This article is included in Section XII, Chapter 34, *Crimes Against the Peace and Security of Mankind*. In fulfillment of the international obligations of the RF on the nonproliferation of weapons of mass destruction, the complete prohibition and nonproliferation of biological weapons, the legislator added Article 335 in the new Criminal Code of the Russian Federation²¹: Compared to Art. 67-1 of the UK RF providing liability for the use of biological weapons, and Art. 67-2 for development, production, acquisition, storage, sale, transportation of biological weapons, Art. 335 of the UK RF contains amendments. Note that liability results from the production, acquisition, or sale not only of biological but also chemical and other types of weapons of mass destruction. The term of punishment in the previously effective Art. 67-1 provided for 10 to 15 years of imprisonment.

Art. 67-2, Part 1 provided for punishment as up to 5 years of imprisonment. Under Part 2, the same acts entailing the death of a person, damage to his health or other grave consequences, or those committed by a group of people on prior conspiracy, or by a person who was in charge of biological agents or toxins through his office or who had access to them in connection with the work he was doing is to be punished by imprisonment for a term of 3 to 10 years.

Art. 67-2, Part 2 has special qualifying criterion: rendering assistance to a foreign state or foreign organization in development, production, acquisition, storage, sale, transportation of biological weapons is to be punished by imprisonment for a term of 5 to 8 years.

Such qualifying criteria are absent from the new Criminal Code of the RF.

Art. 355 of the UK RF does not contain qualifying criteria and consists of one part.

The liability for this act provides for 5 to 10 years of imprisonment.

In the UN documents, weapons of mass destruction (extermination) include those which "act by way of explosion or through radioactive materials, lethal chemical or bacteriological weapons or any other weapons to be developed in the future, possessing the properties of the atomic bomb or other above mentioned weapons" (Resolutions and Decisions of the UN General Assembly passed at session XXII, New York, 1968 p.47). Today, weapons of mass destruction, in compliance with the international legal instruments, include chemical, biological (the production of which is absolutely forbidden) and nuclear weapons (the use of which is also forbidden and production is limited).

Though criminal liability for this type of offense under Art. 20, Part 1 of the UK RF includes the provision that at the age of 16 individuals will held criminally responsible for such acts. In practice, calling for criminal liability at this age is extremely rare.

The sanctions for the criminal legal norms being analyzed are alternative, i.e. they enable the court to choose from several types of punishment. The new Criminal Code for the first time consolidated the provision that a more severe punishment out of those provided for the commission of the offense being ruled on shall be prescribed only if a less severe punishment cannot assure the purpose of the punishment.

Among the requirements constituting the fundamentals of punishment prescription, Art. 60, Part 3 of the UK RF obliges the court to take into account, in the prescription of punishment, not only the type and degree of danger of the offense but also the character of the guilty person, including the circumstances mitigating and aggravating the punishment as well as the effect of the punishment prescribed on the correction of the convicted person and conditions of the life of his family.

Advantages and possible disadvantages of the new Criminal Code can be objectively manifested in the process of practical

application of criminal legal norms. However, the analysis of the *corpus delicti* of interest to us, like in judicial practice on this category of cases is difficult because the evidence (in most cases) contains information which constitutes a state secret, and in compliance with the criminal procedural legislation the bodies of the Federal Security Service are charged with their investigation.

¹ See: Maria Katsva, "Russian Missile Equipment Was Sold to Iraq as Scrap. *Export Obychnyh Vooruzhenii*, PIR Center. No. 8-9 (August-September, 1997): p. 35-37; "Gyroscopes Found in Iraq - Basic Components of the Missile Onboard Steering System - Came There from Russia, From a Closed Military Institute in Sergyev Posad, *Voprosy Bezopasnosti*, PIR Center, No.13 (September 1997): p.3-7; Maria Katsva, "Loopholes in Arms Exports". *Nezavisimoye Voyennoye Obozreniye*, October 23, 1997: p.6; David Hoffman, "Russian Missile Gyroscopes Were Sold to Iraq," *Washington Post*, September 12, 1997: A01 (in some references to the PIR Center report); *The Proliferation Primer. A Majority Report of the Subcommittee on International Security, Proliferation, and Federal Services*. Committee on Governmental Affairs, U.S. Senate, January 1998: p.22-23; Anna, Otkina, Ivan Safranchuk, "Role of Russia in the Settlement of the Situation around Iraq and Ways to Control Russian Critical Exports to Iraq," *Yaderny Kontrol*, No.1, January February 1998, pp.11-12

² Hoffman, "Russian Missile Gyroscopes Were Sold to Iraq", p.A01

³ The Russian CC-H-18 Stingray missile (in Russian classification RSM-50) has a range of 8.000 km and 3 to 7 MIRVs.

⁴ Katsva, "Russian Missile Equipment was Sold to Iraq as Scrap," p.37

⁵ "The Gyroscopes Found in Iraq - Basic Components of the Missile Onboard Steering System - Came There from Russia, From a Closed Military Institute in Sergyev Posad," p.7. See details in: *The Nonproliferation Primer*, p.59-60

⁶ For a detailed analysis of this document see: "The Role of Russia in the Settlement of the Situation around Iraq and Ways to Control Russian critical Exports to Iraq," *Yaderny Kontrol*, No.1 (January-February 1998) p.8-11

⁷ *Yaderny Kontrol* Editors are informed about real names of all individuals involved in the deal

⁸ See: Nikolai Kravchenko, "Only 25 Percent of the Border Points are Equipped with Special Instruments to Stop Contraband" *Yaderny Kontrol*, No.20-21 (August-September 1996), p. 8-10; Nikolai Cherepanov, "At Customs There Is

No Real Control of Radioactive Materials," *Yaderny Kontrol*, No.32-33, (August-September 1997): p. 29-30

⁹ Interview with an official of the State Customs Committee of the RF given to the author (name withheld at his request), February 1998

¹⁰ Hoffman, "Russian Missile Gyroscopes Were Sold to Iraq," A01

¹¹ See: Katsva, Russian Missile Equipment Was Sold to Iraq as Scrap, p.36.

¹² Ibid. Also see: *The Nonproliferation Primer*, p.59-60

¹³ This is what they had been doing until September 1997, when during the visit of the head of the Special Commission, Richard Butler, both parties agreed to deem the subject closed.

¹⁴ Jeffrey Smith, "Document Indicates Russian-Iraq Deal". *Washington Post*, February 12, 1998: A01

¹⁵ See details in the appendix to this article.

¹⁶ *Criminal Code of the Russian Federation*, (Moscow: Yurist Publishers, 1996). p. 523

¹⁷ Ibid, p.535

¹⁸ Ibid, p.534

¹⁹ Ibid, p.468

²⁰ Ibid, p.466

²¹ Ibid, p.798

Interview

VICTOR KOLTUNOV: "ADDITIONAL LIMITATIONS ON THEATER MISSILE DEFENSE SYSTEMS WILL BE CONSIDERED AS NEW SYSTEMS TECHNOLOGIES ARE DEVELOPED"

[This interview was originally published in *Russian in Yaderny Kontrol*, No.36, December 1997]

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An exclusive interview of Victor Koltunov, head of the Russian Delegation to the SCC (ABM Treaty), to Yaderny Kontrol clarifies issues of the implementation of the documents on the ABM Treaty signed in September 1997 in New York and expresses Russia's official position on the future of the ABM Treaty as well as on the TMD issues. It should be taken into account, however, that the Russian Parliament has not yet ratified the agreements. Moreover, the President's Office has not yet prepared documents necessary for their ratification, and the ratification proposal has not yet been submitted by the President to the State Duma (as of April 7, 1998).

It is likely that the President's Office will suggest that the Duma should ratify the START-2 and all September 1997 New York agreements including ones of the ABM Treaty "in package" by late June, 1998. At the same time, the Duma communist-and-nationalist majority which is generally positive about the ABM part of the agreements has not yet taken final decision on whether to support ratification on the non-START part of the future "package" or to block the whole "package".

YADERNY KONTROL: How long did it take to prepare the documents which have were signed in September 1997 in New York by the U.S. and Russian heads of foreign offices? It is known that the SCC's efforts to coordinate positions on high-velocity AMD systems had been stalled