



U . S . S E N A T E R E P U B L I C A N P O L I C Y C O M M I T T E E

September 30, 2009

Do Time Extension Instead of a Bad Treaty

START Follow-on Dos & Don'ts

Executive Summary

- The Strategic Arms Reduction Treaty (START), which provides limits on U.S. and Russian strategic nuclear warheads and delivery systems, and a complex regime to verify compliance with those limits, is set to expire on December 5, 2009. President Obama and Russian President Medvedev have proposed a legally binding agreement to replace it, which President Obama said will be done this year.
- The Constitution requires the Senate give its advice and consent to treaties. The Senate will have to give its consent to this START follow-on agreement, which should capture the following six principles:
 1. If the treaty requires reductions in the U.S. nuclear arsenal, the President should explain what beneficial geopolitical developments compel such cuts.
 2. A thorough nuclear posture review should recommend numerical limitations.
 3. Military needs must drive those numerical limitations, not vice versa.
 4. The treaty should deal with Russian tactical (nonstrategic) nuclear weapons.
 5. The treaty should not limit extraneous and unrelated U.S. defense programs, such as missile defense or prompt global strike capability.
 6. A comprehensive nuclear modernization plan should accompany the treaty.
- The United States should not pay for what is free. Russia's nuclear numbers will decline dramatically in the coming years with or without an arms control treaty. The United States should not make important concessions in return for something that will happen in any event.
 - Russia needs this agreement far more than the U.S. does. It is desperately trying to lock the U.S. into lower nuclear levels, not the other way around.
- If the Administration can complete an agreement consistent with these principles and submit it with sufficient time for the Senate to complete a thorough review by the time START expires, then it is more likely to gain the two-thirds majority necessary for Senate consent.
- On the other hand, if these goals cannot be met by the end of this year, or in order to alleviate any timeline pressure there may be to negotiate a treaty not meeting these goals, the Senate should consent to a straightforward extension of START to remain in force while the parties continue to negotiate a replacement.

Introduction

The Strategic Arms Reduction Treaty (START), which provides limits on U.S. and Russian strategic nuclear warheads and delivery systems, and a complex regime to verify compliance with those limits, is set to expire on December 5 of this year. At the conclusion of a summit meeting in Moscow in early July, Russian President Medvedev and President Obama issued a Joint Understanding proposing a “legally binding agreement to replace the current START Treaty.” At the joint press conference that followed, President Obama promised that “this legally binding treaty will be completed this year.”

START provides that the parties may extend the treaty for a five-year period. But if any changes were to be made, or if the treaty were to be extended for a different period of time, then the new agreement would require the consent of the Senate. The Senate’s solemn constitutional duty to provide its advice and consent on treaties is heightened on issues directly addressing such core national security matters.

This paper outlines what a START replacement treaty more likely to gain the two-thirds majority necessary for Senate consent would look like. Most importantly, for the Senate to approve a treaty requiring significant reductions in the U.S. arsenal, the President must articulate what beneficial geopolitical developments have recently taken place that compel such cuts. Moreover, any proposed cuts must be consistent with military needs, rather than forcing the military to work with politically proposed cuts. Furthermore, any agreement must not limit extraneous and unrelated U.S. defense programs, such as missile defense or prompt global strike capability. Finally, the President must submit a comprehensive plan to modernize the U.S. nuclear weapons complex, which is a prerequisite to any reductions.

If these goals cannot be met by the end of this year, or in order to alleviate any timeline pressure there may be to negotiate a treaty not meeting these goals, the Senate should consent to a straightforward extension of START to remain in force for some duration other than five years while the parties continue to negotiate a replacement agreement.

START Background and Nuclear Weapons Overview

Strategic Arms Reduction Treaty (START)

In his commencement address at Eureka College in Illinois on May 9, 1982, President Reagan made reference to the Strategic Arms Reduction Talks.¹ Nine years and 700 pages later,² the United States and Soviet Union signed the Strategic Arms Reduction Treaty on July 31, 1991. Almost 430 days after that, after thorough and exhaustive review, the United States Senate voted to ratify the treaty on October 1, 1992.³ The treaty entered into force on December 4,

¹ Ronald Reagan, Address of the President at the Commencement Exercises at Eureka College, May 9, 1982.

² Donald H. Rumsfeld, Testimony of the Secretary of Defense before the Senate Armed Services Committee hearing on Ratification of the Moscow Treaty, July 25, 2002.

³ Roll Call Vote No. 253, 102nd Cong., 2nd Sess., Oct. 1, 1992.

1994, and by its terms it is to expire 15 years later, which is December 5, 2009.⁴ The United States and Russia are currently negotiating what is being called a START follow-on agreement.

As its central purpose, START limits the parties' strategic (long-range) nuclear-capable delivery systems to 1,600 launch vehicles and the nuclear warheads those systems deliver to 6,000. The treaty has a complex set of accounting rules "attributing" a certain number of warheads to certain delivery vehicles of intercontinental ballistic missiles (ICBM), submarine-launched ballistic missiles (SLBM), and heavy bombers. It then provides a complex verification and monitoring regime involving, among other things, data exchanges and short-notice on-site inspections. The treaty has other associated limits on nuclear forces, such as restraints on the locations and movements of delivery vehicles carrying nuclear warheads and notifications prior to movements.

Strategic Offensive Reductions Treaty (SORT)/Moscow Treaty

Upon entering office, the Administration of President George W. Bush completed a Nuclear Posture Review to evaluate the U.S. nuclear arsenal, and the President decided that the United States would reduce its strategic nuclear forces to between 1,700 and 2,200 operationally deployed nuclear warheads.⁵ At a summit meeting in November 2001, President Bush informed Russian President Vladimir Putin that the United States would unilaterally execute these cuts and essentially invited Russia to do the same.⁶ President Putin soon made a similar commitment.

The Strategic Offensive Reductions Treaty (SORT, or Moscow Treaty) is basically a codification of these agreements and actions that would have taken place irrespective of the existence of the treaty. As Secretary of Defense Donald Rumsfeld explained, "we would have made these cuts regardless of what Russia did with its arsenal."⁷ The Moscow Treaty is three pages long and came to pass after six months of negotiation. It was signed on May 24, 2002, the Senate unanimously ratified it on March 6, 2003,⁸ and it entered into force on June 1, 2003.

SORT does not do much, by its terms, beyond codifying warhead limitation numbers, as it does not limit delivery vehicles and does not provide an associated monitoring or verification regime. Article I of the treaty provides that each party shall determine for itself the composition and structure of its nuclear forces, subject to the warhead limitation numbers. The treaty does not define "strategic nuclear warheads" or even mention "operationally deployed" warheads, nor does it have complex counting rules tabulating whether the parties are complying with the 1,700-2,200 warhead range. As the Congressional Research Service (CRS) explains, the treaty "does not indicate whether the parties will count only those warheads that are 'operationally deployed,' all warheads that would count under the START accounting rules, or some other quantity. . . . As a result, the United States and Russia each use their own definition when counting strategic nuclear warheads, and neither uses the START counting rules."⁹

⁴ Strategic Arms Reduction Treaty, art. 17.

⁵ *Strategic Arms Control After START*, CRS Rpt. R40084, pp. 9-10.

⁶ *Id.* at p. 10.

⁷ Rumsfeld Testimony, *supra* note 2.

⁸ Roll Call Vote No. 43, 108th Cong., 1st Sess., March 6, 2003.

⁹ CRS Rpt. R40084 at p. 10.

START vs. SORT

The differences in accounting rules between the treaties produce striking differences in the number of warheads that count under each treaty. Under START, according to the January 2009 exchange of data, the United States declared that it had 5,576 warheads attributable to the START accounting rules.¹⁰ Russia declared it had 3,909 warheads under START accounting rules.¹¹ By contrast, in May 2008, the United States declared that it had 2,871 operationally deployed strategic warheads that would count against the Moscow Treaty.¹² By the end of 2008, the United States reduced its forces below the upper SORT limit of 2,200 warheads.¹³ Russia does not make such a declaration under SORT, but the Bulletin of the Atomic Scientists estimated at the beginning of this year that Russia had 2,790 operationally deployed strategic nuclear warheads.¹⁴ As CRS concluded, “it is clear that under START definitions, the United States would have to count hundreds of warheads that it excludes from the Moscow Treaty total because it does not consider them to be operationally deployed.”¹⁵

This contrast is also evident for delivery vehicles counting under START rules and the actual operational nuclear-capable delivery vehicle force. (Again, SORT does not address delivery vehicles). Under the most recent START declaration, the United States declared 1,198 delivery vehicles (Russia declared 814).¹⁶ The actual U.S. force is approximately 900:

- 450 ICBMs,
- 336 SLBMs (14 Trident submarines carrying 24 Trident II (D-5) missiles each, although two of these subs are likely unavailable at any one time due to being in overhaul), and
- 114 long-range bombers (20 B-2 bombers and 94 B-52 bombers, although the B-52 fleet is likely to fall to 56 aircraft in the coming years).¹⁷

Russia’s delivery vehicle capability is in serious decline, and is estimated to fall below 500 in the next five to ten years.¹⁸ In terms of operationally deployed warheads and operational delivery vehicles, both the United States and Russia are far below the START limitations.

¹⁰ State Department Fact Sheet on START Aggregate Numbers of Strategic Offensive Arms as of January 1, 2009, available at <http://www.state.gov/documents/organization/121251.pdf>.

¹¹ Id.

¹² CRS Rpt. R40084 at p. 10.

¹³ *Final Report of the Congressional Commission on the Strategic Posture of the United States*, p. 5 (2009) [hereinafter Strategic Posture Commission].

¹⁴ Bulletin of the Atomic Scientists, *Nuclear Notebook: Russian Nuclear Forces*, 2009 (May/June 2009), available at <http://thebulletin.metapress.com/content/h304370f70137734/fulltext.pdf>.

¹⁵ CRS Rpt. R40084 at p. 26.

¹⁶ State Department Fact Sheet on START Aggregate Numbers, *supra* note 10.

¹⁷ Departments of Defense and Energy, National Security and Nuclear Weapons in the 21st Century (Joint White Paper), p. 16; *U.S. Strategic Nuclear Forces: Background, Developments, and Issues*, CRS Rpt. RL33640 (Summary).

¹⁸ CRS Rpt. R40084 at p. 18.

START follow-on Treaty Joint Understanding

At the conclusion of a summit meeting in Moscow in early July, Russian President Medvedev and President Obama issued a Joint Understanding proposing new reductions to the countries' nuclear forces. The most tangible element of their commitment was to a "legally binding agreement to replace the current START Treaty" limiting the range of strategic delivery vehicles to 500-1,100 and the range of "their associated warheads" to 1,500-1,675.¹⁹

The United States still requires a credible and reliable nuclear deterrent.

The congressionally created bipartisan, independent Strategic Posture Commission²⁰ recently submitted its report—unanimous on all points but one (the Comprehensive Test Ban Treaty section)—finding that "the principal function of nuclear weapons has not changed in decades: deterrence."²¹ It then found it imperative that the United States "continue to ensure that its deterrent is strong and effective, including its extended deterrent for allies."²² To provide effective deterrence, the threat to use nuclear weapons must be seen as credible, meaning, in part, the weapons "must be operationally effective for the intended military purpose."²³ More simply, that they will work when called upon to do so. Given the current security environment, the Strategic Posture Commission concluded that "the United States will need to sustain a deterrent for the indefinite future,"²⁴ and providing assurance to U.S. allies through extended deterrence "remains a top U.S. priority."²⁵

The Departments of Defense and Energy have jointly explained that nuclear weapons also assure allies that "U.S. security commitments remain valid" and that the United States is capable of responding to "plausible scenarios of concern."²⁶ Additionally, U.S. nuclear weapons dissuade potential peer competitors from military competition with the United States and from trying to acquire a nuclear capability comparable to the United States.²⁷

In summary, President Obama must ensure that any U.S. nuclear force posture resulting from a START follow-on agreement reliably, credibly, and effectively assures allies, dissuades competitors, and deters adversaries. As the President himself said this past April in Prague, "As

¹⁹ Joint Understanding of U.S. President Barack Obama and Russian President Dmitry Medvedev concerning a START follow-on Treaty, July 6, 2009, available at http://www.whitehouse.gov/the_press_office/The-Joint-Understanding-for-The-Start-Follow-On-Treaty/.

²⁰ FY08 National Defense Authorization Act § 1062, Pub. L. No. 110-181, 122 Stat. 3, 319 (Jan. 28, 2008) (creating the Congressional Commission on the Strategic Posture of the United States, directing it to conduct a review of the U.S. strategic posture, including a detailed review of nuclear weapons policy, strategy, and force structure; and to make recommendations as appropriate).

²¹ Strategic Posture Commission at p. 20.

²² *Id.* at p. 15. Extended deterrence can be defined as a threat to retaliate against an adversary on behalf of a third-party state.

²³ *Id.* at p. 39.

²⁴ *Id.* at p. 13.

²⁵ *Id.* at p. 20.

²⁶ DOD/DOE Joint White Paper at p. 11.

²⁷ *Id.* at 12.

long as these weapons exist, the United States will maintain a safe, secure and effective arsenal to deter any adversary, and guarantee that defense to our allies.”²⁸

DO Explain Why Further Nuclear Reductions Are Necessary

If a START follow-on treaty is completed prior to START’s expiration, it will be submitted to the Senate without final analysis by the Nuclear Posture Review (NPR), which is to complete its work in December of this year. In the absence of an NPR, the Administration must submit detailed supporting analysis on why any reductions beyond the SORT warhead numbers are beneficial at this time. This would need to take into account whether Russian behavior warrants such reductions, and the lack of empirical evidence that U.S. nuclear behavior has any effect on the nuclear weapons programs of Iran and North Korea.

START Joint Understanding:2010 NPR::Cart:Horse

The decision to set the U.S. nuclear posture between 1,700 and 2,200 nuclear warheads was arrived at through an assiduous nuclear posture review in 2001.²⁹ The current NPR Terms of Reference provide that its analysis “will provide a basis for the negotiation of a follow-on agreement to the Strategic Arms Reduction Treaty.”³⁰ This does not seem to be the case, however, as President Obama has already proposed new reductions to the country’s nuclear force. This proposed further constraint on and reconstitution of the U.S. nuclear posture was done without the benefit of the final NPR report.

Keith Payne, former Deputy Assistant Secretary of Defense for Forces Policy, outlined in congressional testimony something rather intuitive. “Identifying specific arms control ceilings for agreement prior to [the NPR’s] conclusions would be putting the cart before the horse.”³¹ The NPR promised that its work would inform the negotiations of any START follow-on agreement; it should actually be allowed to do that.

To be fair, however, it has been claimed that the NPR process has been front-loaded to support the START follow-on negotiations. Most notably, in testimony to the Senate Armed Services Committee, Marine General James Cartwright, Vice Chairman of the Joint Chiefs of Staff, said: “We prioritized in the Nuclear Posture Review . . . the activities and the analysis that would be necessary to support the timelines associated with the START negotiations or the follow-on START negotiations. . . . I’m very comfortable that we prioritized that analysis at the front end in order to support these negotiations.”³² This would mean that this complex analysis

²⁸ Barack Obama, Remarks of the President in Hradcany Square, Prague, Czech Republic, April 5, 2009.

²⁹ DOD/DOE Joint White Paper at pp. 14-15 (noting that it was the “NPR’s decision to reduce the strategic nuclear force posture to between 1,700 and 2,200 ODSNW [operationally deployed strategic nuclear warheads]”).

³⁰ Nuclear Posture Review Terms of Reference, available at <http://www.defenselink.mil/news/d20090602NPR.pdf>.

³¹ Keith B. Payne, Testimony before the House Committee on Foreign Affairs hearing regarding The July Summit and Beyond: Prospects for U.S.-Russia Nuclear Arms Reductions, June 24, 2009.

³² Marine Gen. James Cartwright, testimony of the Vice Chairman of the Joint Chiefs of Staff to the Senate Armed Services Committee hearing on his re-nomination to that position, July 9, 2009.

was completed by the NPR team (the terms of reference of which were released on June 2, 2009) in time for the completion of the Joint Understanding issued on July 6, 2009.

Have Russia's actions warranted further reductions?

The Strategic Posture Commission found that “the sizing of U.S. forces remains overwhelmingly driven by Russia.”³³ This is more for the benefit of our allies, given our extended deterrence commitments, as “some of our allies see Russia as a potential threat.”³⁴ President Clinton provided that U.S. nuclear forces would also serve as a “hedge” against adverse political developments,³⁵ which today could include the “continued uncertainty about the future of Russia’s political relationship with the West.”³⁶

The SORT numbers of 1,700 to 2,220 warheads were conceived at a time when the United States was contemplating a radical restructuring of its relationship with Russia. As Secretary Gates explained in a white paper issued by the Departments of Defense and Energy in September 2008: “Achieving a more cooperative, less confrontational U.S.-Russian relationship was key to adjusting the size of the U.S. nuclear force.”³⁷ It is not obvious that Russia’s actions have really earned further nuclear reductions beyond the SORT numbers, at a time when Russia continues to support Iran’s nuclear program at Bushehr, “has used nuclear threats to attempt to coerce some of its neighbors,”³⁸ and is only one year removed from invading its Georgian neighbor.

U.S. nuclear numbers have zero effect on North Korea and Iran’s nuclear programs.

In an interview around the time of the Moscow Summit, President Obama explained his rationale for why a START follow-on agreement encompassing further nuclear cuts is needed, stating, “It’s naïve for us to think . . . that we can grow our nuclear stockpiles . . . [and that] we’re going to be able to pressure countries like Iran and North Korea not to pursue nuclear weapons themselves.”³⁹ Setting aside the fact that the United States has not been growing its nuclear stockpile for quite some time now, it is naïve to think that the composition of the U.S. nuclear arsenal has any bearing whatsoever on the nuclear weapons programs of North Korea or Iran. All empirical evidence is to the contrary.

The number of U.S. warheads under START accounting rules in 1997 was 7,957, falling to 5,966 in 2006 and 5,576 at the beginning of this year. During the late 1980s and early 1990s, North Korea was making initial strides in its nuclear program, operating the 5MW reactor at Yongbyon and testing the reprocessing plant. This was the same time period the United States and the Soviet Union were signing, ratifying, and implementing the INF Treaty directed at eliminating an entire class of nuclear weapons. It seems as if Iranian and North Korean

³³ Strategic Posture Commission at p. 24.

³⁴ Id.

³⁵ DOD/DOE Joint White Paper at p. 11.

³⁶ Strategic Posture Commission at p. 11.

³⁷ DOD/DOE Joint White Paper at p. 15.

³⁸ Strategic Posture Commission at p. 12.

³⁹ “Obama’s Youth Shaped His Nuclear-Free Vision,” *New York Times*, July 5, 2009.

proliferation decisions are wholly removed from U.S. nuclear stockpile decisions, given their growing nuclear ambitions at a time of U.S. nuclear reductions.

This may be why the “[Strategic Posture] Commission does not believe that unilateral nuclear reductions by the United States would have any positive impact on countries like North Korea and Iran.”⁴⁰ In explaining why a START follow-on agreement encompassing further nuclear cuts is needed, the President should avoid asserting that the composition of the U.S. nuclear arsenal has any bearing on the ability to halt the nuclear weapons programs of North Korea or Iran.

DO Have Numbers Based on Strategy/DON’T Make Strategy Based on Numbers

In noting that a START follow-on treaty is currently scheduled to be completed before the NPR final report, Dr. Payne further observed, “Our military leaders frequently note that arms control numbers should not drive strategy requirements; rather strategy requirements should drive the numbers.”⁴¹ The numbers agreed to in any START follow-on treaty must be consistent with U.S. national security, in that the resultant U.S. force of warheads and delivery vehicles must still be able to reliably, credibly, and effectively assure allies, dissuade competitors, and deter adversaries.

START follow-on numbers must meet U.S. national security needs.

The number of nuclear warheads and delivery vehicles necessary for U.S. national security is generally arrived at after complex multi-variable analysis. Eleven months ago, the joint Department of Defense/Department of Energy white paper explained how 1,700 to 2,200 nuclear warheads and a future delivery vehicle composition of 450 ICBMs, 14 nuclear ballistic missile submarines (with 24 missile tubes each), and 76 heavy bombers was “judged to be sufficient to meet the requirements of assuring allies and dissuading potential competitors.”⁴²

If a START follow-on agreement requires cuts in the posture of warhead numbers and delivery vehicles deemed necessary just 11 months ago, the President must certify that those cuts are consistent with military needs and political commitments of extended deterrence, as well as explain the beneficial developments in the geopolitical environment allowing for such cuts. For example, if the United States is considered to be around the upper SORT limit of 2,200 warheads, reducing U.S. nuclear warheads to 1,500 warheads would be a 33 percent reduction. Even more dramatic would be a reduction in delivery vehicles to as low as 500. Extended deterrence is an important factor in the calculus of the nuclear force. As the Strategic Posture Commission explained, “the requirement to extend assurance and deterrence [credibly and effectively] to others may well impose on the United States an obligation to retain numbers and types of nuclear weapons [and capabilities] that it might not otherwise deem essential to its own defense.”⁴³

⁴⁰ Strategic Posture Commission at p. 66.

⁴¹ Payne Testimony, supra note 31.

⁴² DOD/DOE Joint White Paper at pp. 12, 15.

⁴³ Strategic Posture Commission at pp. 13, 21.

Triad: If it ain't broke, don't fix it.

The Strategic Posture Commission praised each leg of the triad (land, sea, and air-based delivery vehicles of ICBMs, SLBMs, and the bomber force) as having its own individual value. Moreover, the triad as a whole at the current numbers provides flexibility, redundancy, and survivability. The Commission evaluated arguments in favor of a dyad (eliminating one, unspecified, leg of the triad), but recommended the retention of the triad.⁴⁴ Although the triad may be able to sustain certain cuts in warhead and delivery vehicle numbers, at some point it becomes imperiled, which should only be done, if at all, after the most assiduous analysis accompanying something like a Nuclear Posture Review.

START follow-on numbers should not be so low as to invite peer competition.

A critical purpose of a properly composed nuclear arsenal is to dissuade potential peer competitors from military competition with the United States and efforts to acquire a nuclear capability comparable to the United States. In the joint white paper, Secretary Gates found that maintaining 1,700 to 2,200 operationally deployed strategic nuclear warheads provides “a sufficient capability such that the costs of a direct nuclear competition with the United States would be very high,” as well as “substantial warning and response time should any potential near-peer competitor aggressively seek to achieve nuclear parity with, or superiority over, the United States.”⁴⁵ To this end, the Strategic Posture Commission recommended that “the United States should so compose its nuclear force as to discourage Russia and China from trying to compete with the United States for some new advantage in the nuclear realm.”⁴⁶ The President would have to explain how cuts beyond these levels do not invite others to match U.S. numbers.

DON'T Include Unrelated Items Like Missile Defense or Global Strike

This should be simple enough, as it was the Administration's position on the matter heading into the Moscow Summit. For example, in a press briefing just prior to the summit, Michael McFaul, special assistant to the President and National Security Council senior director for Russian and Eurasian affairs, said, “we're not going to reassure or give or trade anything with the Russians regarding . . . missile defense.”⁴⁷ It also reflects the position of the Administration as given by the State Department spokesman on June 22 of this year, that in the START follow-on negotiations with Russia, “the issues of missile defense and strategic offensive reductions should be dealt with independently. These are two different issues.”⁴⁸

It is the Russian position, however, to connect extraneous, unrelated topics to nuclear reductions in the START follow-on agreement. For example, Russian President Dmitry

⁴⁴ Id. at p. 25.

⁴⁵ DOD/DOE Joint White Paper at p. 12.

⁴⁶ Strategic Posture Commission at p. 21.

⁴⁷ Michael McFaul et al, Press Briefing on the President's Visit to Russia, Italy, and Africa, July 1, 2009, available at http://www.whitehouse.gov/the_press_office/Press-Briefing-on-the-Presidents-upcoming-trip-to-Russia-Italy-and-Africa/.

⁴⁸ Ian Kelly, Statement of the State Department Spokesman at the Daily Press Briefing, June 22, 2009, available at <http://www.state.gov/r/pa/prs/dpb/2009/125229.htm>.

Medvedev said on April 20: “Another aspect of security is the relationship between offensive and defensive weapons. . . . I will not hide Russia’s position which has been stated repeatedly: we are very concerned about the prospect of the unilateral deployment of antimissile systems, which damages the current system of checks and balances in this field and very much complicates the prospects for nuclear disarmament.”⁴⁹

It seems, unfortunately, that the Russian position has prevailed, as President Obama capitulated to the Russian view in the Joint Understanding, providing that the “legally binding agreement to replace the current START Treaty” should have provisions on “the interrelationship of strategic offensive and strategic defensive arms,” and “the impact of intercontinental ballistic missiles and submarine-launched ballistic missiles in a non-nuclear configuration on strategic stability.”⁵⁰ Russia is likely to use this language in an attempt to have the START follow-on agreement limit U.S. missile defense systems and U.S. development of a prompt global strike capability. Former Secretaries of Defense Harold Brown and James Schlesinger described this global strike capability in 2006 as “a missile strike option we need.”⁵¹

It is especially disheartening that President Obama appears to have unilaterally conceded an aspect of this point to the Russians in his recent decision to restructure the missile defense architecture in Europe. Although the decision to abrogate agreements with the Czech Republic and Poland to place a radar system and interceptors in those countries is not expressly tied to the negotiation of a START successor agreement, certain audiences think otherwise. After the decision was announced, media commentators drew a direct correlation between the missile defense decision and START negotiations, finding that the president’s decision is expected to produce “smoother talks” over the agreement.⁵² This is not surprising, as Russia has been adamant that halting this initiative is a priority and tied directly to the success of the agreement. To be fair, Secretary Gates stated that “Russia’s attitude and possible reaction played no part in my recommendation to the president on this issue.”⁵³

Any START follow-on agreement submitted for consent to the Senate should capture the original Administration position. This is already the stated position of the Senate, as at the end of July the Senate accepted by unanimous consent an amendment expressing the sense of the Senate urging the President “to maintain the stated position of the United States that the follow-on treaty to the START Treaty not include any limitations on the ballistic missile defense systems, space capabilities, or advanced conventional weapons systems of the United States.”⁵⁴

⁴⁹ Dmitry Medvedev, Speech of the President of Russia at Helsinki University, Apr. 20, 2009, available at http://www.kremlin.ru/eng/speeches/2009/04/20/1919_type82912type82914type84779_215323.shtml.

⁵⁰ START follow-on Treaty Joint Understanding, supra note 19.

⁵¹ Harold Brown and James Schlesinger, “A Missile Strike Option We Need,” *Washington Post*, May 22, 2006. The development of a prompt global strike capability would provide the President a conventional capability/option to interdict fleeting targets around the globe in a very timely manner. Proposals generally involve converting platforms that today are configured to deliver only nuclear weapons to be able to deliver conventional, kinetic warheads.

⁵² Mary Beth Sheridan and Philip P. Pan, “Obama Missile Decision May Smooth U.S.-Russia Arms Talks,” *Washington Post*, Sept. 21, 2009.

⁵³ Robert M. Gates, “A Better Missile Defense for a Safer Europe,” *New York Times*, Sept. 19, 2009.

⁵⁴ S. Amdt. 1807 to S. Amdt. 1760 to S. 1390, FY10 Defense Authorization Bill, 155 Cong. Rec. S8002-03 (July 23, 2009).

Don't pay for what's free.

Over the next decade, in the absence of any arms control treaty or agreement, “the number of delivery vehicles in Russia’s nuclear arsenal will continue to decline sharply,” perhaps to fewer than 500 delivery vehicles.⁵⁵ This is because “Russian strategic systems have not been designed for long service lives,” and Russia is unable to replace aging delivery systems at the pace at which they are retired.⁵⁶ There is certainly no reason for the United States to pay for something that is going to happen with or without an arms control treaty. In this respect, there is no reason for the United States to sacrifice U.S. nuclear force structure, or other unrelated national defense matters, such as missile defense or prompt global strike, “as a price to be paid for an agreement that requires nothing of the Russians beyond discarding the aged systems they plan to eliminate in any event.”⁵⁷

DO Address Russian Tactical (Nonstrategic) Nuclear Weapons

The Strategic Posture Commission counseled that “the United States should seek substantial reductions in the large force of Russian NSNF [nonstrategic nuclear forces].”⁵⁸ Secretary of Defense William Perry, Strategic Posture Commission Chairman, found that “[START] follow-on treaties entailing deeper reductions would require finding a way of dealing with very difficult problems, to include ‘tactical’ nuclear forces.”⁵⁹

There is a significant asymmetry between the U.S. and Russian tactical nuclear arsenals.

CRS estimates that “the United States has maintained approximately 1,100 nonstrategic nuclear weapons in its active stockpile,” with a fair amount of these held in storage areas in the United States.⁶⁰ As for Russia, CRS outlined that “analysts have estimated that Russia may still have between 2,000 and 8,000 warheads for nonstrategic nuclear weapons, with the lower number reflecting the number of deployed weapons and the higher number including those weapons that remain in central storage.”⁶¹ In summary, Tom D’Agostino, head of the National Nuclear Security Administration, compared the number of tactical nuclear weapons between the United States and Russia, stating, “the actual numbers are classified, but I will say there’s a ten to one ratio, roughly, give or take. You know, it’s a big difference between the two.”⁶²

⁵⁵ CRS Rpt. R40084 at pp. 15, 18.

⁵⁶ Payne Testimony, *supra* note 31.

⁵⁷ *Id.*

⁵⁸ Strategic Posture Commission at p. 68. There is no universally accepted definition of a tactical or nonstrategic nuclear weapon. It can be defined by reference to various criteria, such as range, yield, or other capability; but in its most basic terms it is generally intended for battlefield or other limited uses. It can also be conveniently defined for the purposes of this paper by exclusion, as generally any ICBM, SLBM, and heavy bomber not captured by START. Nonstrategic Nuclear Weapons, CRS Rpt. RL 32572, p. 6.

⁵⁹ Strategic Posture Commission at p. xii (Chairman’s Preface).

⁶⁰ CRS Rpt. RL 32572 at p. 12.

⁶¹ *Id.* at p. 17.

⁶² Tom D’Agostino, Statement of the Administrator of the National Nuclear Security Administration at a hearing of the Senate Armed Services Committee Subcommittee on Strategic Forces, June 3, 2009 (responding to the question of Senator Sessions about “how many tactical nuclear weapons the Russians have and how many we have”).

*The Strategic Posture Commission found that addressing this asymmetry is “urgent.”*⁶³

U.S. allies are rightfully concerned about this imbalance, as Russia “stores thousands of these weapons in apparent support of possible military operations west of the Urals.”⁶⁴ Evolving Russian military doctrine places greater reliance on nuclear weapons, including war-fighting roles for its tactical arsenal.⁶⁵ The extended deterrence commitments the United States has made to its allies, and the fact that “the current imbalance is stark and worrisome to some U.S. allies in Central Europe,” means that the United States must take steps to address that worry.⁶⁶

The asymmetry should be addressed in the context of the START follow-on agreement.

Dealing with the enormous asymmetry in tactical nuclear weapons must be done in concert with strategic reductions in any START follow-on treaty for three reasons. First, it is vital to the security of the United States and its allies because of the “evidently rising value in Russian military doctrine and national security strategy” of tactical nuclear weapons.⁶⁷ Second, the Strategic Posture Commission found that “there is a clear allied concern about this development,” which will only be exacerbated, and thus allies less assured, if strategic nuclear weapons are reduced without addressing the imbalance in tactical nuclear weapons.⁶⁸ Third, if the United States codifies reductions in strategic nuclear weapons without addressing tactical nuclear weapons, it is unclear what leverage remains to negotiate a reduction in Russian tactical nuclear weapons.

DO Nuclear Modernization with Any Agreement Requiring Reductions

Reductions in the nuclear arsenal can only be made if there is great confidence that those weapons remaining actually work, which is a prerequisite for credible deterrence. The United States currently maintains confidence in its nuclear weapons “primarily through the Stockpile Stewardship Program and Life Extension Program.”⁶⁹ Extending the life of current nuclear weapons in this manner cannot be done forever.⁷⁰ In fact, the directors of the nation’s nuclear weapons laboratories, who are responsible for certifying annually that the nuclear weapons stockpile is safe, secure, and reliable, have already begun to express concern about “the ability to ensure confidence in the reliability of the legacy stockpile over the long term, without nuclear

⁶³ Strategic Posture Commission at p. 67.

⁶⁴ Id. at p. 21.

⁶⁵ CRS Rpt. RL 32572 at pp. 14-16; Payne Testimony, supra note 31.

⁶⁶ Strategic Posture Commission at p. 21.

⁶⁷ Id. at p. 25.

⁶⁸ Id. at pp. 21, 25, and 67 (“If and as reductions continue in the number of operationally deployed strategic nuclear weapons, this imbalance will become more apparent and allies less assured.”).

⁶⁹ Id. at p. 14.

⁷⁰ Id. at p. 40 (noting that the ability to extend the life of the current weapons arsenal “indefinitely” through the Stockpile Stewardship Program (SSP) and Life Extension Program (LEP) “is limited”).

testing.”⁷¹ It is difficult to overstate the dire condition of the U.S. nuclear weapons complex: its physical infrastructure is crumbling and its intellectual edifice is aging.⁷²

Nuclear modernization is a prerequisite for nuclear reductions with confidence.

Part of the reason the United States maintains the nuclear weapons numbers that it does is the worry about a family-wide failure in a certain weapon. As General Kevin Chilton, Commander of U.S. Strategic Command, has said, in the case of such a failure “you better have enough of something else to put in its place if you want to maintain your deployed status.”⁷³ (It is also the reason the United States maintains two warhead types for each major delivery system.)⁷⁴ This is only compounded by the fact that the United States does not have a nuclear warhead production capability. The United States needs to maintain a certain number of nuclear warheads because it cannot currently manufacture a replacement if that is ever required.

A modernization program would address concerns about the current (aging) stockpile, and greater confidence in the reliability of a modernized stockpile would allow, in turn, for nuclear reductions. For this reason, the United States should be careful about considering further reductions to its nuclear force without an attending modernization program. As Secretary Gates lamented in a speech to the Carnegie Endowment at the end of last year, “[c]urrently, the United States is the only declared nuclear power that is neither modernizing its nuclear arsenal nor has the capability to produce a new nuclear warhead.”⁷⁵

Nuclear modernization is inextricably linked to nuclear reductions that do not make the United States less secure. In his Carnegie speech, Secretary Gates said, “To be blunt, there is absolutely no way we can maintain a credible deterrent and reduce the number of weapons in our stockpile without either resorting to testing our stockpile *or pursuing a modernization program.*”⁷⁶ In July, Thomas D’Agostino, head of the National Nuclear Security Administration, similarly tied together the need to undertake nuclear modernization in concert with nuclear reductions, stating “as our stockpile gets smaller, it becomes increasingly important that remaining forces are safe, secure and effective.”⁷⁷ Secretary Gates linked the issues once again in September of this year, stating that modernizing the U.S. nuclear capability is an “enabler of

⁷¹ DOD/DOE Joint White Paper at p. 17; Strategic Posture Commission at p. 41 (“[L]aboratory directors have testified that uncertainties are increasing.”).

⁷² Strategic Posture Commission at pp. 50, 51 (finding that certain facilities of the nuclear weapons complex are “genuinely decrepit,” and the complex’s “intellectual infrastructure” “is in serious trouble”); Robert Gates, Speech of the Secretary of Defense to the Carnegie Endowment for International Peace on Nuclear Weapons and Deterrence in the 21st Century, Oct. 28, 2008, available at http://carnegieendowment.org/files/1028_transcrip_gates_checked.pdf (“No one has designed a new nuclear weapon in the United States since the 1980s, and no one has built a new one since the early 1990s.”).

⁷³ Gen. Kevin P. Chilton, Statement of the Commander of U.S. Strategic Command at the Los Alamos National Laboratory Conference on Strategic Weapons in the 21st Century, Jan. 31, 2008, available at <http://www.stratcom.mil/speeches/9/>.

⁷⁴ Strategic Posture Commission at p. 39.

⁷⁵ Robert Gates Carnegie speech, *supra* note 72.

⁷⁶ *Id.* (emphasis added).

⁷⁷ Thomas D’Agostino, Prepared Remarks of the Administrator of the National Nuclear Security Administration to the U.S. Strategic Command Symposium on Strategic Deterrence, July 29, 2009, available at <http://nnsa.energy.gov/news/2466.htm>.

arms control and our ability to reduce the size of our nuclear stockpile. When we have more confidence in the long-term viability of our weapons systems, then our ability to reduce the number of weapons we must keep in the stockpile is enhanced.”⁷⁸

It would be imprudent for the Senate to act on a START follow-on agreement requiring further reductions in the U.S. nuclear stockpile until the Senate acts on a contemporaneously submitted comprehensive nuclear modernization plan. This is the position of the Chairmen and Ranking Members of the Senate Armed Services Committee and Senate Foreign Relations Committee, as well as the co-chairs of the Senate National Security Working Group. On July 23, 2009, Senators Levin, McCain, Kerry, Lugar, Byrd, and Kyl sent a letter to the President saying, “when the START treaty is submitted, you should also submit a plan, including a funding estimate for FY11 (and out years across the next decade), . . . to modernize the nuclear weapons complex.”

At a minimum, as the letter referenced and as the Strategic Posture Commission recommended, modernization would include improvements to the physical elements of the nuclear weapons complex. This involves the warheads and delivery vehicles themselves, as well as facility infrastructure. Modernization would also require maintenance of the intellectual capacity and capabilities underlying this complex, namely the designer and technical workforce.⁷⁹

DO Seek a Time Extension Rather Than Negotiate a Bad Treaty

This would seem obvious, but in a rush to complete a treaty by the end of the year, the Administration may agree to a bad deal with the Russians rather than walk away. At the joint press conference after the Moscow Summit, President Obama promised that “this legally binding treaty will be completed this year.”⁸⁰ While it may be politically difficult for the Administration to walk away from this promise, the President should only follow through on this promise if:

1. He is able to explain what beneficial geopolitical developments have recently taken place that compel further reductions in the U.S. nuclear arsenal;
2. A thorough nuclear posture review recommends numerical limitations;
3. Military needs drive those numerical limitations, not vice versa;
4. The agreement deals with Russian tactical nuclear weapons;
5. It does not limit extraneous and unrelated U.S. defense programs, such as missile defense or prompt global strike; and
6. The agreement is attended by a comprehensive nuclear modernization plan.

⁷⁸ Robert Gates, Remarks of the Secretary of Defense at the Air Force Association’s Annual Conference, Sept. 16, 2009, available at <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=4478>.

⁷⁹ Strategic Posture Commission at Chps. 5 and 6 (finding that “[t]he production complex requires significant modernization and refurbishment,” and “strongly recommend[ing] that significant steps should be taken to remedy” the concern that “the intellectual infrastructure” of the nuclear weapons complex “is in serious trouble—perhaps more so than the physical complex itself”).

⁸⁰ Barack Obama, Statement of the President at a Joint Press Conference with Russian President Medvedev, July 6, 2009, available at http://www.whitehouse.gov/the_press_office/Press-Conference-by-President-Obama-and-President-Medvedev-of-Russia/.

If the Administration can complete an agreement consistent with these six principles and submit it with sufficient time for the Senate to complete a thorough review by the time START expires on December 5, then it would be more likely to gain the two-thirds majority necessary for Senate consent. Otherwise, the parties should either extend the treaty for five years as provided for, or amend the treaty to remain in force for a different period of time, to which the Senate should consent, while the parties continue to negotiate a new agreement. President Obama may wish to consider requesting a one-year extension now to alleviate any time pressures on the negotiation process. An extension may be difficult, as CRS assesses that “[n]either the United States nor Russia believes the two parties should extend the START Treaty in its current form.”⁸¹ Extension is clearly preferable, however, to rushing a new agreement that is not consistent with the principles articulated above, which the Senate should then reject, thereby leaving START and its attending regimes and protocols expired and without replacement. *Institutional prerogatives counsel for a time extension over a replacement treaty.*

A treaty of this magnitude, covering the most critical elements of U.S. national security, requires the most thorough and thoughtful deliberation and attention of the Senate. By way of reference, almost 430 days passed from the time the United States signed START (July 31, 1991) and the U.S. Senate provided its consent to the Treaty (October 1, 1992). SORT was signed on May 24, 2002 and ratified in the Senate more than nine months later on March 6, 2003. The Senate’s consideration of the INF Treaty could be considered swift by comparison, and the five months that passed between signature and Senate ratification is still more than the time remaining until START expires. All of these timelines started at the signing of the treaty, something that has not happened yet with the START follow-on agreement. It would seem that the President asks too much of the Senate to consent to a treaty of this magnitude on such a compressed timetable.

*Russia needs this agreement FAR more than the United States does.*⁸²

The dominating U.S. interest in this transaction seems to be the extension of the START verification regime in some modified form. If the verification regime is extended, both Russia and the United States benefit similarly; whereas if it lapses, there is probably equal detriment.

On the other hand, Russia’s primary interest seems to be in bringing U.S. nuclear numbers—namely the delivery vehicles—down via a replacement treaty. Russian nuclear numbers will decline dramatically for the foreseeable future with or without any arms control treaty, and Russia’s interest seems to be in reducing the U.S. numbers in kind.

In this respect, if the United States and Russia complete an agreement codifying lower nuclear numbers, then the parties benefit similarly in that they will both reduce their stockpiles to some agreed-upon numbers. If an agreement is not complete, however, the effect is dramatically dissimilar, as Russian nuclear delivery vehicles will decline considerably regardless, and the United States can choose to maintain its arsenal at elevated levels if it wishes.

⁸¹ CRS Rpt. R40084 at p. 14.

⁸² “In Search of Détente, Once Again,” *The Economist* p. 21, 23, July 4, 2009 (“Russia needs a new treaty more than America.”).

This pattern demonstrates something that hopefully the U.S. negotiators are aware of and acting in accordance with, which is that it is Russia that is desperately trying to lock the United States into lower nuclear levels in some sort of follow-on agreement, and not the other way around. Unfortunately, the Joint Understanding issued in July seems to codify just the opposite urgency, as its language accommodates another of Russia's articulated interests: constraining unrelated U.S. defense capabilities while maintaining an extraordinary dominance in tactical nuclear weapons. The Joint Understanding is silent on the issue of tactical nuclear weapons, while providing specific language Russia has signaled in the past is directed at U.S. missile defense and advanced conventional weapons programs. Given the circumstances, the United States should not feel rushed to complete an agreement to replace START, when extending it is an available option. The United States especially should not accommodate a Russian position that may be affirmatively harmful to U.S. national security.

Conclusion

This paper has outlined what a START replacement treaty more likely to gain the two-thirds majority necessary for Senate consent would look like. It is not about stopping a treaty providing for further nuclear reductions; rather, it is about proceeding responsibly on an issue of national security. Any treaty on this point will require the most serious and sustained consideration of the Senate. A treaty meeting the goals articulated in this paper is more likely to gain the two-thirds majority necessary for Senate consent.