

# WebMemo



Published by The Heritage Foundation

No. 2725  
December 9, 2009

## Don't Circumvent the Senate's Important Role in Negotiating Strategic Arms Reduction Treaties

*Baker Spring*

The Obama Administration should have just let the 1991 Strategic Arms Reduction Treaty (START) expire on December 5, 2009.<sup>1</sup> Instead, the Administration unwisely undertook an overly ambitious plan to sign a new treaty to replace START before that deadline.

It proved too difficult, and now that the treaty has expired, the Administration is talking about adhering to the old treaty while they hammer out a new one. That is the wrong approach, principally because it holds the U.S. to the terms of a treaty that does not exist and while circumventing the Senate's important role of advice and consent in the process. It is also unnecessary because the U.S. and Russia are still partners to the Strategic Offensive Reductions Treaty (SORT) (also known as the Moscow Treaty) they signed in 2002.

A far better strategy would be to adopt a protocol to the SORT treaty to include the necessary verification and transparency measures being discussed for the follow-on START treaty.

**Where the Strategic Nuclear Arms Control Agenda Stands Now.** The Obama Administration's mishandling of strategic nuclear arms control discussions has created confusion about the current situation. The following are the essential facts:

*Fact #1: START has expired.* However, just before its expiration, the U.S. and Russian Presidents issued a joint, single-sentence statement:

Recognizing our mutual determination to support strategic stability between the United

States of America and the Russian Federation, we express our commitment, as a matter of principle, to continue to work together in the spirit of the START Treaty following its expiration, as well as our firm intention to ensure that a new treaty on strategic arms enter into force at the earliest possible date.<sup>2</sup>

The statement's pledge for the U.S. and Russia to "work together in the spirit of the START Treaty" has no legal standing. Parties to START, including the U.S. and Russia, no longer have a legal basis for honoring provisions of the treaty, either in whole or in part. This includes its verification and transparency measures.

An attempt by the Administration to honor provisions of the now-defunct START treaty on a selective basis is assuming treaty obligations where none exist. It also would circumvent the Senate in the treaty-making process.

*Fact #2: A START follow-on treaty has yet to be concluded.* Any follow-on treaty could not enter into force until months from now at the earliest, if at all.

As a result, there would be a considerable amount of time when certain provisions of START

This paper, in its entirety, can be found at:  
[www.heritage.org/Research/NationalSecurity/wm2725.cfm](http://www.heritage.org/Research/NationalSecurity/wm2725.cfm)

Produced by the Douglas and Sarah Allison  
Center for Foreign Policy Studies

Published by The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002-4999  
(202) 546-4400 • [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

are not in force—particularly verification and transparency measures.

The Administration might claim that because it plans to include those provisions in the follow-on treaty, the U.S. must honor and implement them before the follow-on treaty's entry into force. But that would be a blatant attempt to diminish the Senate's role in the making of treaties.

*Fact #3: The expiration of START does not mean that no treaty-based limits on U.S. and Russian strategic nuclear forces are in place.* The 2002 Strategic Offensive Reductions Treaty Remains in force.<sup>3</sup> While some Russians assert that SORT, or the Moscow Treaty, also ends with the expiration of START, in reality it remains in force until the end of 2012 unless either side elects to withdraw from it.<sup>4</sup>

Thus, even today, U.S. and Russian strategic nuclear forces are not permitted to return to Cold War levels. Additionally, the U.S. and Russia have time to conclude a new treaty for a further incremental reduction in strategic nuclear arms on both sides.

**What the Senate and the Obama Administration Should Do.** The best approach would be for the Administration to suspend the current START follow-on treaty negotiations in favor of a less ambitious and narrower set of negotiations to amend the Moscow Treaty to include verification and transparency measures. Such measures are needed to increase confidence on both sides that the numbers

of declared operationally deployed strategic nuclear warheads are accurate.

This narrower and straightforward negotiating agenda, which was recommended in a previous Heritage paper,<sup>5</sup> should permit a relatively quick agreement. As a protocol to the Moscow Treaty, the new agreement would be subject to Senate consent and provide the Senate the full measure of its proper role in the treaty-making process.

Short of serious concessions by the Administration during negotiations, this agreement would quite likely earn broad bipartisan support in the Senate. Following the entry into force of this Moscow Treaty protocol on verification and transparency, the U.S. and Russia could resume negotiations on a START follow-on treaty free from the pressures of unrealistic deadlines.

**Too Important to Mishandle.** Strategic nuclear arms control is too important a matter to be mishandled. Likewise, it is too important to be resolved through a process that circumvents or shortchanges the Senate's role in treaty-making. The Constitution established this role for the Senate precisely to encourage high standards in the drafting of treaties and to ensure that U.S. interests are protected.

—Baker Spring is F. M. Kirby Research Fellow in National Security Policy in the Douglas and Sarah Allison Center for Foreign Policy Studies, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation.

1. Andrei Shoumikhin and Baker Spring, "Strategic Nuclear Arms Control for the Protect and Defend Strategy," Heritage Foundation *Background* No. 2266, May 4, 2009, pp. 15–16, at <http://www.heritage.org/Research/NationalSecurity/bg2266.cfm>.
2. The White House, "Joint Statement by the President of the United States of America and the President of the Russian Federation on the Expiration of the Strategic Arms Reduction Treaty (START)," December 4, 2009, at <http://www.whitehouse.gov/the-press-office/joint-statement-president-united-states-america-and-president-russian-federation-ex> (December 7, 2009).
3. "Text of the Treaty Between the United States of America and the Russian Federation on Strategic Offensive Reductions," at <http://www.armscontrol.org/documents/sort> (December 8, 2009).
4. For a description of this view among some Russians, see Shoumikhin and Spring, "Strategic Nuclear Arms Control for the Protect and Defend Strategy," p. 16.
5. *Ibid.*