

# Background

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## An Independent Assessment of New START

*The New START Working Group*

**Abstract:** *The United States and Russia recently signed a new Strategic Arms Reduction Treaty (New START). An independent assessment by the New START Working Group raises questions about the treaty that should be considered important by all interested in national security and the integrity of the arms control process and its outcomes. Hopefully, a broad and bipartisan set of U.S. Senators will take up these questions as they pursue their solemn responsibility of providing advice and consent on New START.*

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Proponents of the new Strategic Arms Reduction Treaty (New START) suggest that the new Treaty not be judged against the standards of Cold War strategic arms treaties because contemporary conditions no longer require the treaty characteristics that Cold War conditions demanded of those earlier treaties. Even accepting that point, New START may be evaluated against other sets of standards. Those used in this brief assessment include the specific claims made on its behalf by the Obama Administration, in addition to comparisons to the post-Cold War 2002 Moscow Treaty and the 1994 START I Treaty (both treaties ran concurrently through December 2009).

### The Claimed 30 Percent Reduction of Strategic Warheads

The Obama Administration has made claims on behalf of New START that are based on comparisons to the Bush Administration's Moscow Treaty or to START I. For example, the Obama Administration claims that New START will reduce by 30 percent the

### Talking Points

The new Strategic Arms Reduction Treaty (New START) with Russia requires a detailed assessment by the Senate prior to its vote to consent to ratification. This initial review by the New START Working Group points to the following topics to which the Senate should pay special attention:

- The claimed 30 percent reduction in strategic warheads;
- A questionable design for the limits on strategic launchers;
- The lack of limits on multiple independently targetable reentry vehicles and payloads on missiles;
- An asymmetry between the U.S. and Russia regarding the limits on strategic delivery vehicles;
- The application of limits on conventionally armed strategic weapons;
- The lack of limits on tactical nuclear weapons; and
- Limits on U.S. missile defense options.

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number of deployed strategic warheads now permitted by the Moscow Treaty. If ratified by the U.S. Senate, New START would limit deployed strategic warheads to 1,550, while the Moscow Treaty limits the number of operationally deployed strategic nuclear weapons to the range of 1,700–2,200. Despite the superficial comparison (1,550 to 2,200 warheads) suggesting that New START reduces the number of deployed strategic warheads by 30 percent, such a comparison is deceiving, as will be discussed below. In general, the Moscow Treaty limitations running concurrently with the original START I Treaty required deeper reductions and were more restrictive than those contained in the New START treaty. (New START, if ratified, will supersede the Moscow Treaty.)<sup>1</sup>

In fact, despite Obama Administration claims to the contrary, New START's counting rules and apparent lapses will permit increases in Russian strategic force levels above the 1,700–2,200 deployed warhead limit of the Moscow Treaty. *RIA Novosti*, an official news agency of the Russian Federation, already has reported that given New START's counting rules, Russia will be able to retain 2,100 strategic nuclear warheads under New START, not 1,550.<sup>2</sup> Russia will be able to deploy even higher numbers under New START if it follows through on announced modernization programs, particularly the new heavy bomber. In addition Russia could deploy strategic nuclear systems that were limited or prohibited under START I, but appear not to be limited whatsoever under New START.

If Russia exploits the legal lapses in New START, there is no actual limit in the new Treaty on the

number of strategic nuclear warheads that can be deployed. The number of Russia's strategic nuclear warheads would be limited only by the financial resources it is able to devote to strategic forces, not by New START warhead ceilings—which would be the case without this new Treaty.

One of the biggest of these lapses is the bomber weapon counting rule. It is much more permissive than under the Moscow Treaty. Unlike the Moscow Treaty, which counts all nuclear warheads present at heavy bomber bases,<sup>3</sup> New START has a counting or attribution rule of one warhead per bomber.<sup>4</sup> That is, regardless of the actual number of weapons carried by a bomber or deployed at each base, each bomber will be counted as having a single weapon under New START's 1,550 ceiling. This allows the deployment of a large number of uncounted bomber warheads. Even with existing bombers, as *RIA Novosti* reported, "Under the Treaty, one nuclear warhead will be counted for each deployed heavy bomber which can carry 12-24 missiles or bombs, depending on its type."<sup>5</sup> There is no limit to the number of bomber weapons that may be carried by a bomber under New START because it omits the START I limit of 16–20 long-range nuclear air-launched cruise missiles (ALCMs) per bomber.<sup>6</sup> It also omits the START prohibition on arsenal aircraft that can carry very large numbers of nuclear long-range cruise missiles.<sup>7</sup> This New START counting rule alone would permit Russia legally to deploy hundreds of nuclear warheads over New START's supposed ceiling of 1,550 deployed warheads, and the number could be much higher if a new bomber is deployed. The repeated claims of a 30 percent reduction in the number of permitted warheads under New START are false.

1. The New START Treaty, Article XIV, paragraph 4.
2. Ilya Kramnuk, "New START Treaty based on Mutual Russian–U.S. Concessions," *RIA Novosti*, April 12, 2010, at <http://en.rian.ru/analysis/20100409/158499862.html> (April 28, 2010).
3. Ten percent of the warheads at bomber weapon storage areas were allowed to be considered as logistic spares and, therefore, were not counted as operationally deployed bomber warheads.
4. The New START Treaty, Article III, paragraph 3(b), and "Article-by-Article Analysis of the Treaty Between the United States of America and the Russian Federation on Strategic Offensive Reductions," at <http://www.state.gov/t/vci/trty/127129.htm#4> (April 28, 2010).
5. Kramnuk, "New START Treaty based on Mutual Russian U.S. Concessions."
6. The START Treaty, Article V, paragraph 20.
7. The START Treaty, Article V, paragraph 19(c).

## New START's Launcher Limits

In addition, several dozen prohibitions and limits in START I's Article V are completely gone (replaced by two limits on ballistic missile defense).<sup>8</sup> For example, unlike START I, there are no prohibitions on placing intercontinental ballistic missiles (ICBMs) on bombers, a delivery mode tested by the United States decades ago, and the START I limits on the maximum number of warheads that a ballistic missile can carry do not appear in New START.<sup>9</sup> Consequently, for the count of one warhead and one delivery vehicle, Russia could deploy aircraft loaded with MIRVed ICBMs (i.e., missiles with multiple independently targetable reentry vehicles).<sup>10</sup> This should not be considered far-fetched. During the negotiation of New START a Moscow publication suggested Russia should procure air-launched nuclear missiles based on Russian submarine-launched ballistic missiles (SLBMs).<sup>11</sup> This action was prohibited under START I; it would be legal under New START.

The Administration's rationale for New START's undercounting of bomber weapons as presented in the 2010 Nuclear Posture Review is the traditional point that bombers are recallable and slow to target and thus they are not "first strike" weapons.<sup>12</sup> However, if aircraft are armed with MIRVed ICBMs, they immediately lose these stabilizing characteristics. Under New START, aircraft could simply become another ICBM basing mode with greatly discounted warhead limits. This is one reason why New START's permissive counting rule for bomber weap-

ons combined with the absence of limitations on air-launched ICBM launchers may be regarded as a serious lapse.

New START also appears not to limit rail-mobile ICBMs whatsoever. While the Administration might be tempted to argue that at least deployed rail-mobile ICBMs, as distinct from launchers, are limited by the ceiling of 700 deployed delivery vehicles in Article II, that would require New START to include a definition of a deployed rail-mobile ICBM in the Treaty's Protocol. In fact, New START contains not a single word about rail-mobile launchers or rail-mobile ICBMs.

The START I limits, definitions, verification provisions, and provisions for bringing a rail-mobile launcher into accountability are all gone.<sup>13</sup> The generic New START definition of ICBM launcher does not describe a Russian-style rail-mobile ICBM launcher. New START deletes entirely all the START I definitions related to rail-mobile ICBMs. The START I rail-mobile ICBM launcher definition is quite different from the generic launcher definition in New START. The START I rail-mobile launcher definition reads, "The term 'rail-mobile launcher of ICBMs' means an erector-launcher mechanism for launching ICBMs and the railcar or flatcar on which it is mounted."<sup>14</sup>

The New START definition of a mobile ICBM launcher to be limited by the Treaty appears not to limit rail-mobile ICBMs because the definition of a mobile ICBM in New START describes a road-mobile launcher, not a rail-mobile launcher.<sup>15</sup> It

8. The New START Treaty, Article V, paragraph 3.

9. The START Treaty, Article V, paragraph 12.

10. In New START all heavy bomber armaments count as one warhead irrespective of the number they actually carry. See New START, Article III, paragraph 2(b). A heavy bomber equipped for nuclear armament is defined in the New START Protocol Section 1, definition 25 to include "nuclear air to surface missiles."

11. Mikhail Kardashev, "Offensive Armaments for Strategic Stability. In the Interests of Russia's Security, Ban on Air-launched Ballistic Missiles Should Be Lifted," *Moscow Nezavisimoye Voyennoye Obozreniye*, May 29, 2009, CEP20090601330007.

12. U.S. Department of Defense, *The Nuclear Posture Review Report*, April 2010, p. 21, at <http://www.defense.gov/npr/docs/2010%20Nuclear%20Posture%20Review%20Report.pdf> (April 28, 2010).

13. The START limits on mobile ICBMs appear in Article II, paragraph 1(biii), and Article IV, paragraph 1 (a) and (b). The SS-24 rail-mobile ICBM was constrained by the START Treaty (The START Treaty, Article III, paragraph 10(aii)). A rail-mobile ICBM launcher is defined in the START Treaty Definition Annex, definition 85. None of this appears in New START.

14. The START Treaty, The Protocol, definition 85.

reads, “an erector-launcher mechanism for launching ICBMs and the self-propelled device on which it is mounted.”<sup>16</sup> The START I definition of mobile ICBM launcher specifically included a “road-mobile launcher of ICBMs or a rail-mobile launcher of ICBMs.”<sup>17</sup> The key point here is that all of the START I limits and definitions related to rail-mobile ICBMs have been deleted from New START. It contains not a single word about rail-mobile launchers or rail-mobile ICBMs. There is nothing in the New START Treaty about when they would come into accountability or how they would be removed from accountability. Such procedures are essential to any claims of limitation on rail-mobile ICBM systems. A treaty amendment will be required if rail-mobile ICBMs are to be limited.

In the absence of New START limitations on rail-mobile ICBMs and launchers, an unlimited number of these could be deployed. It may even be possible to take a road-mobile SS-27 ICBM, including the MIRVed version, and put it on a rail car—and it would not count in any way against the New START limits because the earlier START I limits on rail-mobile launchers and non-deployed mobile ICBMs do not appear in New START.<sup>18</sup> The apparent lack of limitations on rail-mobile ICBM launchers may be quite significant given Russia’s history of deploying them and the renewed Russian interest, as expressed in the Russian press, in the deployment of rail-mobile ICBMs.<sup>19</sup>

In addition, unlike START I, New START appears to allow nuclear-armed ICBM-range missiles to be emplaced on surface ships in unlimited numbers, again with unlimited numbers of nuclear warheads.<sup>20</sup> This option again follows from New START’s elimination of all START I Article V limitations and prohibitions. The New START Treaty does prohibit deploying SLBM launchers on surface

ships.<sup>21</sup> However, launchers for any other type of nuclear-armed missile of intercontinental range can be deployed as long as the missile is not classified as an SLBM under New START.

The only ICBM launchers that can be considered numerically limited under New START are those defined specifically in the Treaty and Protocol. The deletion from New START of the many specific START I definitions and limitations on rail-mobile, air-launched, and sea-borne ICBM launchers and New START’s silence about them undercuts any basis for arguing that these types of launchers are now limited by New START. To the contrary, their obviously intentional exclusion from New START after being prominently defined and limited in START I suggests the intent *not to limit these types of launchers*.

### No MIRV or Payload Limits

All the START I limits on missile launch-weight, throw-weight, and RV numbers (testing and deployment) that were in START I Article II and Article V are absent from New START. Hence, the entire force of ICBMs and SLBMs could be “heavy” MIRVed ICBMs or “heavy” MIRVed SLBMs. It should be noted that the Obama Administration accepts the long-held view that heavily MIRVed ICBMs are particularly destabilizing. This is the reason presented in the Administration’s new Nuclear Posture Review for taking the step of deMIRVing all U.S. ICBMs. Yet, New START literally facilitates the apparent Russian trend to return to MIRVed ICBMs. Since New START also omits the START I limitation on throw-weight and the number of warheads that can be tested on an ICBM or SLBM, there is considerable added potential for breakout under New START. This again may be significant as Russia has announced that it is developing a new heavy ICBM.<sup>22</sup>

15. The New START Treaty, The Protocol, Section 1, definition 45.

16. The New START Treaty, The Protocol, Part 1, definition 45.

17. The START Treaty, Definition Annex, definition 64.

18. The START Limit appears in Article IV, paragraph 1 (a).

19. “Russian Strategic Missile Troops Will Have to Make Do with Limited Funding—Official,” Moscow *Interfax-AVN Online*, December 8, 2009, CEP20091210950240.

20. START prohibits such missiles in The START Treaty, Article V, paragraph 18 (a).

21. The New START Treaty, Article IV, paragraph 2.

## New START's Delivery Vehicle Limits Demand Only U.S. Reductions

During the New START negotiations, Colonel-General Nikolay Solovtsov, then commander of the Strategic Missile Troops, stated that no Russian missile launchers will be withdrawn under the terms of the treaty “if they have remaining service life. This approach will remain under the new treaty that will be signed with the USA to replace START-1....”<sup>23</sup> He was correct. After the signing of New START, General Nikolay Makarov, Chief of the Russian General Staff, reiterated that, “The Strategic Rocket Forces will not be reduced. The Forces will be armed with modern mobile missile launchers [the Topol-M and the RS-24 Yars].”<sup>24</sup>

Other than the 1,550 deployed warhead limit, the limits in New START are on strategic delivery vehicles: 700 deployed launchers and 100 additional non-deployed launchers are permitted, i.e., up to 800 deployed and non-deployed launchers are allowed. As the Russian Generals have stated, neither of these limits requires any reductions by Russia. The last Russian data declaration under the START I Treaty stated that Russia had a total of 809 delivery vehicles.<sup>25</sup> (In the same data declaration the U.S. listed 1,198.) Just after the signing of New START, the Russian press reported that, “The actual number of Russian carriers is already below 700, and the number of them, as well as of charges [warheads], will fall significantly after a number of missiles with expiring service times are removed from duty during the next few years.”<sup>26</sup>

The United States has never before agreed to strategic launcher limitations that would have no impact on Russia but would require reductions by the United States. New START also does not make apparent the number of Russian forces that will be declared to exist as the baseline because the New START data document is completely blank.<sup>27</sup> In contrast, the START I document was filled out.<sup>28</sup>

## New START Limits Conventional Warheads, but Not Tactical Nuclear Weapons

For decades, the United States has expressed deep concern about the large number of Russian tactical (shorter-range) nuclear weapons. In fact, a criticism of the 2002 Moscow Treaty properly leveled by Democratic Senators at the time was that it ignored Russia's tactical nuclear weapons. This is an area of nuclear weaponry that particularly concerns U.S. allies and in which Russia holds a 10:1 numeric advantage over the United States, according to the 2009 report of the bipartisan Congressional Strategic Posture Commission.<sup>29</sup> In turn, Russia has long expressed concern about the potential for U.S. advanced conventional strategic weapons, e.g., placing conventional warheads on ICBMs or SLBMs.

Under New START, U.S. conventional warheads on ICBMs and SLBMs are counted toward the Treaty's warhead and launcher limits, but tactical nuclear weapons are not counted. The fact that conventional warheads are limited is made clear in New START's language that its limits apply not only to nuclear but also to non-nuclear “ICBM warheads [and] SLBM warheads.”<sup>30</sup> An Administration fact

22. Yaroslav Vyatkin, “Who Benefits From Nuclear Disarmament?” *Moscow Argumenty Nedeli Online*, June 25, 2009, CEP20090625624001.

23. “Russian Missile Troops Commander Urges New START agreement with USA,” *Moscow Interfax-AVN Online*, May 17, 2009, CEP20090518950142.

24. “Russia Won't Reduce Strategic Rocket Forces,” *Moscow Interfax-AVN Online*, April 12, 2010, CEP20100412950218.

25. U.S. Department of State, Bureau of Verification, Compliance, and Implementation, “START Aggregate Number of Strategic Offensive Arms,” Fact Sheet, October 1, 2009, at <http://www.state.gov/t/vci/rls/130149.htm> (April 28, 2010).

26. Aleksey Nikolskiy, “Nothing to Reduce,” *Moscow Vedomosti*, April 10, 2010, CEP20100412358002.

27. The New START Treaty, The Protocol, Part 2.

28. *START* (Washington D.C.: Department of State, October 1991), pp. 131–241.

29. William J. Perry and James R. Schlesinger, *America's Strategic Posture: The Final Report of the Congressional Commission on the Strategic Posture of the United States* (Washington, D.C.: U.S. Institute of Peace, 2009), p. 13, at <http://www.usip.org/programs/initiatives/congressional-commission-the-strategic-posture-the-united-states> (April 28, 2010).

sheet regarding New START claims that “The Treaty in no way prohibits the United States from building or deploying conventionally-armed ballistic missiles.”<sup>31</sup> This claim is misleading. The same fact sheet later states, “Long-range conventional ballistic missiles would count under the Treaty’s limit of 700 delivery vehicles, and their conventional warheads would count against the limit of 1550 warheads.” Because the Treaty’s ceilings apply to conventionally armed ballistic missiles, they are as limited by the Treaty as are nuclear launchers and warheads. The preamble to the New START Treaty even contains the statement that the parties are “Mindful of the impact of conventionally armed ICBMs and SLBMs on strategic stability.”<sup>32</sup>

While New START is “mindful” of the impact on stability of conventional weapons that might carry the equivalent of less than a ton of TNT, it says nothing about the impact of tactical nuclear weapons with yields up to hundreds of thousands of tons of TNT and very long range. The Preamble omits any reference to tactical nuclear weapons. The New START Treaty even eliminates the START I limit on a particular type of tactical nuclear weapon, long-range submarine-launched cruise missiles (nuclear SLCMs).<sup>33</sup>

The Obama Administration’s Nuclear Posture Review announced the elimination of U.S. nuclear sea-launched cruise missiles.<sup>34</sup> In contrast, according to *RIA Novosti* in an article published during the New START negotiations, the new Russian “Graney-class nuclear submarines combine the ability to launch a variety of long-range cruise missiles (up to 3,100 miles) with nuclear warheads, and effectively

engage submarines, surface warships and land-based targets.”<sup>35</sup> According to the Deputy Commander of the Russian Navy, Vice Admiral Oleg Burtsev, Russia can “focus” on low-yield tactical nuclear weapons for these submarines.<sup>36</sup> Just after the signing of New START, *RIA Novosti* reported that the new Graney class submarines will also be carrying a 5,000-km range nuclear SLCM.<sup>37</sup> A 5000-km range nuclear cruise missile would allow Russian submarines from a single launch point to hit targets in the United States and Europe.

In short, New START limits conventional strategic forces of apparent concern to Russia, but omits any reference to tactical nuclear weapons that have been of concern to the United States and its allies for decades. The Administration has stated that it will address tactical nuclear weapons later. It is not clear, however, how or why Russia would agree to limits on its tactical nuclear weapons in the future when it has not done so in the past, and Moscow appears to have secured many if not all of its pertinent objectives in New START.

### **New START’s Limitations on Missile Defense**

Senior Administration officials have stated repeatedly that New START includes no limits whatsoever on ballistic missile defenses. Yet, in truth, New START contains many provisions relating to missile defense (including legal prohibitions) and could set the stage for further limitations without the advice and consent of the Senate.

The preamble to the New START Treaty adopts the position publicly expressed by Russian officials

30. The New START Treaty, Article II, paragraph 1.

31. U.S. Department of State, Bureau of Verification, Compliance, and Implementation, “Conventional Prompt Global Strike,” Fact Sheet, April 8, 2010, at <http://www.state.gov/t/vci/rls/139913.htm> (April 28, 2010).

32. The New START Treaty, the Preamble.

33. See declarations by the United States and Russia on policy concerning Nuclear Sea Launched Cruise Missiles.

34. U.S. Department of Defense, *The Nuclear Posture Review Report*.

35. “New Russian Nuclear Submarine to Enter Service in 2010,” *RIA Novosti*, December 23, 2009, at <http://en.rian.ru/russia/20091223/157333271.html> (April 28, 2010).

36. “Russia Could Focus on Tactical Nuclear Weapons for Subs,” *RIA Novosti*, March 23, 2009, at <http://en.rian.ru/russia/20090323/120688454.html> (April 28, 2010).

37. “Russia to Float New Nuclear Sub on May 7” *RIA Novosti*, March 15, 2010, at [http://en.rian.ru/military\\_news/20100315/158201700.html](http://en.rian.ru/military_news/20100315/158201700.html) (April 28, 2010).

on missile defense and implicitly adopts the deterrence theory known as Mutual Assured Destruction. “Stability” in this theory is predicated on each side’s ability to threaten the other with annihilation. Accordingly, a U.S. capability to “undermine” the viability and effectiveness of Russia’s strategic offensive arms is deemed destabilizing. This language appears to commit the United States to a logic that would dictate reductions in U.S. strategic defensive capabilities corresponding to the reduction in Russian strategic offensive capabilities. To wit, New START states:

Recognizing the existence of the interrelationship between strategic offensive arms and strategic defensive arms, that this interrelationship will become more important as strategic nuclear arms are reduced, and that current strategic defensive arms do not undermine the viability and effectiveness of the strategic offensive arms of the Parties....<sup>38</sup>

The right of Russian withdrawal from the Treaty based on U.S. missile defense deployment beyond “current strategic” capabilities is implicit in this Treaty language. The Chief of the International Treaty Directorate in Russia’s Defense Ministry during the negotiation of New START, General Yevgeniy Buzinskiy, provides precisely this interpretation: “The sides agreed that the present strategic defensive arms are not undermining the viability and effectiveness of their strategic offensives forces. This makes it possible for us, in case the Americans increase their strategic ABM system, to claim that they are not observing [the terms] of the treaty.”<sup>39</sup>

In addition to the language in the Treaty’s Preamble quoted above, the Treaty reads, “Each Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that

extraordinary events related to *the subject matter* of this Treaty have jeopardized its supreme interests.”<sup>40</sup> Missile defense is included in the subject matter of the Treaty, and it implicitly recognizes a right of withdrawal relating to strategic missile defense capabilities beyond current levels.

Of the three specific prohibitions in the Treaty, two are related to missile defense. Article V of the Treaty reads:

Each Party shall not convert and shall not use ICBM launchers and SLBM launchers for placement of missile defense interceptors therein. Each Party further shall not convert and shall not use launchers of missile defense interceptors for placement of ICBMs and SLBMs therein. This provision shall not apply to ICBM launchers that were converted prior to signature of this Treaty for placement of missile defense interceptors therein.<sup>41</sup>

This provision is linked to a definition of missile defense launcher and missile defense interceptor missiles that appears in the Protocol.<sup>42</sup> These definitions appear to risk bringing the systems the United States plans to deploy in Europe under the authority of the Bilateral Consultative Commission (BCC) because they establish a 5,500 km-missile range threshold for missile defense interceptors that are within Treaty constraints and subject to discussion in the BCC. The Protocol also describes related verification provisions that apply only to the U.S.<sup>43</sup> and prohibits the use of telemetry data for missile defense purposes.<sup>44</sup>

After months of forcefully denying that New START contains any limitations on missile defense, the Obama Administration now acknowledges its limitations on missile defense, but says that those

38. The New START Treaty, Preamble,

39. “Russia: Former Chief of MoD International Treaty Directorate Evaluates START-3,” *Parlamentskaya Gazeta*, April 16, 2010, CEP20100419358002.

40. The New START Treaty, Article XIV, paragraph 3. (Emphasis added).

41. The New START Treaty, Article V, paragraph 3.

42. The New START Treaty, The Protocol Part 1, definition 40 and 44.

43. The New START Treaty. Seventh Agreed Statement.

44. The New START Treaty, The Protocol, part 9, Sixth Agreed Statement.

limits are not burdensome because it does not *plan* to use ICBM or SLBM launchers for defensive interceptors; so the prohibition on such conversion is not a meaningful limit. This point obviously changes the question from whether New START contains limits on missile defense to whether this Administration finds the limits New START does contain to be burdensome. This revision of the Administration's claims regarding the new Treaty dismisses the possibility that a future administration could find that these limits on ballistic missile defense preclude important defensive options. New START prohibits some missile defense options but secures no corresponding limits on the types of offensive missile threats from Iran and North Korea that U.S. missile defenses are intended to address. The extent to which these ballistic missile defense limits in New START will create serious problems for U.S. and allied security in the future cannot now be known with precision.

The most serious threat to missile defense in the New START Treaty is contained in the power given to the Treaty compliance forum, the Bilateral Consultative Commission. The New START Treaty, like the START I Treaty, allows "Viability and Effectiveness" changes without Senate advice and consent.<sup>45</sup> However, the BCC authority in New START is much broader because the all-important definitions and Agreed Statements in the Treaty's Protocol can be changed by the BCC. Viability and Effectiveness changes are not supposed to impact the rights of the parties, but in arms control, as with the tax code, changing definitions can have substantive effects.

Missile defense is directly within the purview of the BCC. It is authorized to "Discuss the unique features of missiles and their launchers, other than ICBMs and ICBM launchers, or SLBMs and SLBM launchers, referred to in paragraph 3 of Article V of the Treaty, that distinguish such missiles and their

launchers from ICBMs and ICBM launchers, or SLBMs and SLBM launchers."<sup>46</sup> This provision specifically targets defensive interceptors. The BCC is authorized to "Agree upon such additional measures as may be necessary to improve the viability and effectiveness of the Treaty."<sup>47</sup> These agreements can be kept secret with the agreement of the parties.<sup>48</sup> Repeated significant changes involving missile defense could take place in secret and without Senate advice and consent. Such a broad mandate and authority is unprecedented and could affect defenses deployed at home and abroad given the Protocol's definition of missile defense launcher and interceptor.

## Conclusion

All previous strategic arms control efforts have faced questions. The foregoing independent assessment of New START raises questions that should be considered important by all interested in national security and the integrity of the arms control process and its outcomes. To the extent that New START itself is significant, so too are these questions; only muddled thinking could suggest that arms control in itself is significant but these points are not. Hopefully, a broad and bipartisan set of U.S. Senators will take up these questions as they pursue their solemn responsibility of providing advice and consent on New START.

—*The New START Working Group is being established by The Heritage Foundation to educate the Senate and the American people on the content of New START and its implications for the national security of the United States. The Working Group will include analysts from The Heritage Foundation and other organizations. The Working Group's papers will in some cases be authored by an individual participant. In other cases, as for this Background, the Working Group itself will be the author of record.*

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45. The New START Treaty, Article XV, paragraph 2.

46. The New START Treaty, The Protocol, Part 7, Section 1(c).

47. The New START Treaty, The Protocol, Part 6, Section 1, paragraph b.

48. The New START Treaty, The Protocol, Part 6, Section 5, paragraph 2.