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The “New START” Treaty: Did the Russians Have Their Fingers Crossed?

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In its current form, the “New START” treaty is not one to which the Senate may unconditionally give its consent to ratification. The two parties to the treaty—the United States and the Russian Federation—cannot agree upon the meaning of its terms, and therefore there is nothing to which the Senate can consent.

It stands to reason that when two nations negotiate a bilateral treaty—especially one dealing with nuclear weapons—both parties should share the same understanding regarding the terms of the treaty. Yet that appears not to be the case in regard to the new strategic arms reduction treaty¹ signed by President Barack Obama and Russian President Dmitry Medvedev on April 8 in Prague.

Russia’s Condition of Unilateral Withdrawal. The broad terms of the “New START” treaty are (or should have been) straightforward: The U.S. will reduce a certain number of its strategic offensive arms in return for a reciprocal obligation by the Russian Federation to reduce its offensive strategic arms.

The Russians, however, have agreed to reciprocate such reductions only if an additional condition is met by the U.S.—that the U.S. pursue its ballistic missile defense program only to such an extent that the Russian Federation approves, and if not, the Russians will exercise their right to withdraw from the treaty. Specifically, Russian Foreign Minister Sergei Lavrov stated that Russia would have the right to withdraw from the treaty if “the U.S.’s build-up of its missile defense strategic potential in numbers and quality begins to considerably affect the efficiency of Russian strategic nuclear forces.”²

A statement from the office of the Russian president made explicit the official Russian position on the treaty:

The Treaty between the Russian Federation and the United States of America on the Reduction and Limitation of Strategic Offensive Arms signed in Prague on April 8, 2010, can operate and be viable only if the United States of America refrains from developing its missile defence capabilities quantitatively or qualitatively.

Consequently, the exceptional circumstances referred to in [the withdrawal provision] of the Treaty include increasing the capabilities of the United States of America’s missile defence system in such a way that threatens the potential of the strategic nuclear forces of the Russian Federation.³

Thus, based on their statements, it would appear that the Russians believe that the New START treaty is as much about missile defense as it is about strategic arms reduction.

That belief is justified since language referring to such a linkage was included as a perambulatory clause to the treaty. Specifically, in the preamble, both

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parties agreed to recognize “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.”

No “Meeting of the Minds.” U.S. officials, including Secretary of State Hillary Clinton, give short shrift to the perambulatory language. For example, at a speech on the day following the signing of the New START treaty, Secretary Clinton said, “Now, one aspect of our deterrent that we specifically did not limit in this treaty is missile defense. The agreement has no restrictions on our ability to develop and deploy our planned missile defense systems or long-range conventional strike weapons now or in the future.”

Secretary Clinton’s Russian counterpart, however, certainly believes that there is linkage in the treaty between offensive and defensive arms and that the linkage is legally binding: “Linkage to missile defense is clearly spelled out in the accord and is legally binding,” Lavrov said on the day the treaty was signed.⁴

Some arms control groups believe that the perambulatory language is non-binding.⁵ Although it is true that the linkage to missile defense is part of the preamble and is not operationalized elsewhere in the treaty, a general rule of treaty interpretation is that treaties shall be interpreted in accordance with

their context, which shall comprise, among other things, the preamble to the treaty.⁶

Either way, what is clear is that there is a disagreement between the U.S. and Russia regarding the terms of the treaty. Like any contract between two people, there must be a “meeting of the minds” between two parties to a treaty as to what obligations the parties are legally bound to meet. If there is no such meeting of the minds, it is questionable that the parties have mutually agreed to be bound to the same treaty terms.

No Agreement, No Ratification. The U.S. Senate is charged with giving (or refusing) its consent to any treaty put before it and thus must resolve any ambiguity as to the terms of the New START. Based on statements from the Obama Administration and the Russian Federation, it is clear not only that the issue of missile defense—a matter crucial to both parties—remains unresolved but that a wide gulf regarding that issue exists between the two nations.

It does not advance the interests of the U.S. for the Senate to give its consent to a treaty whose terms were in dispute even before the ink was dry on the President’s signature.

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1. Treaty between the Russian Federation and the United States of America on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, April 8, 2010, at <http://eng.kremlin.ru/text/docs/2010/04/225211.shtml> (April 13, 2010).
2. Lyubov Pronina, “Russia May Exit Accord If U.S. Pursues Missile Plan (Update 1),” *BusinessWeek*, April 6, 2010, at <http://www.businessweek.com/news/2010-04-06/russia-may-exit-new-arms-deal-if-u-s-boosts-missile-defense.html> (April 14, 2010).
3. Russian Federation, statement on missile defense, April 8, 2010, at <http://eng.kremlin.ru/text/docs/2010/04/225214.shtml> (April 14, 2010). Article XIV(3) of the treaty states: “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.”
4. *Ibid.*; Pronina, “Russia May Exit Accord.”
5. See, e.g., Daryl G. Kimball, “New START Good for U.S. and International Security, Deserves the Senate’s Support,” Arms Control Association, April 8, 2010, at <http://www.armscontrol.org/pressroom/NEWStartStatement>. (April 14, 2010): “As previous U.S.-Russian nuclear arms control agreements did, New START will merely acknowledge the offensive-defensive relationship in the nonbinding preamble.”
6. See Vienna Convention on the Law of Treaties, May 22, 1969, at Article 31. While the U.S. is not a party to the convention, it considers many of its provisions to constitute customary international law on the law of treaties.