

# WebMemo



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## New START: Clarification on Russia's Proposed Ratification Law Needed

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On January 14, the Russian Duma conducted a second reading of its proposed law for ratification of the New Strategic Arms Reduction Treaty (New START) on nuclear arms control with the United States. The Russian law, if adopted as currently written, is incompatible with the U.S. understanding of the treaty. This should bar the exchange of the instruments of ratification for New START and its entry into force.

These opposing understandings relate to at least two topic areas covered by the treaty's preamble, body, and ratification documents: (1) restrictions on missile defense deployments; and (2) conventionally armed strategic offensive arms (called Prompt Global Strike weapons on the U.S. side).

Accordingly, if the Duma's language is not incorporated into the Russian instrument of ratification, the President should make it clear to the Russians that the U.S. understandings prevail as a matter of international law. But if the Duma's language is incorporated into the Russian instrument of ratification, the President should make it clear to both the Senate and the Russians that he will not exchange the instruments, thus barring the treaty from going into force.

**Clear Requirements for the U.S. Instrument of Ratification.** Unlike the draft Duma ratification law, there is no ambiguity on the U.S. side in the relevant areas of missile defense and Prompt Global Strike. The Senate resolution of ratification contains understandings related to both subjects and clearly requires that the understandings appear in the U.S. instrument of ratification.

The understanding regarding missile defense states that New START imposes no limits on missile defense deployments (outside a narrow provision in Article V of the treaty that prohibits the conversion of offensive missile launchers to launchers of defensive interceptors and vice versa), that restrictive language on missile defense in New START's preamble is not legally binding, and that no limitations on missile defense deployments (beyond that included in Article V) may be imposed absent a formal amendment to the treaty.

The understanding regarding Prompt Global Strike states that New START does not impose any limitations, including deployment, of Prompt Global Strike systems that are not subject to other limitations of the treaty. Specifically, the exception extends to Prompt Global Strike systems "capable of boosted aerodynamic flight." The provision goes on to state that no such limitations can be imposed by treaty on the excepted systems unless the treaty is amended.

**The Duma's Draft Ratification Law.** The Duma's draft ratification law contains provisions that are diametrically opposed to those adopted by the U.S. They reveal that there is no meeting of the minds between the parties in these two areas.

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The Duma's draft ratification law conditions the ratification of New START on developing new strategic nuclear systems that are capable of defeating U.S. missile defenses. It imposes restrictions on missile defense beyond the narrow one found in Article V of New START. Taken together, these provisions are tantamount to a claim that the sweeping limitations on missile defense described in New START's preamble are legally binding on the parties.

Moreover, the Duma's law declares the "indisputable significance" of the preamble of the treaty, which proclaims an interrelationship between offensive and defensive weapons. It also prohibits the Russian side to share some important telemetry of existing and new missile system tests, thus seriously diminishing the treaty's effectiveness. These discrepancies and limitations are likely to set up the two sides for unnecessary disagreement in the future.

Regarding Prompt Global Strike systems, the Duma's draft ratification law states that *any* new type of strategic offensive arms—including, by implication, those capable of boosted aerodynamic flight—must be approved by New START's implementing body, the Bilateral Consultative Commission (BCC), prior to deployment. Giving the BCC this broad authority over Prompt Global Strike systems is totally at odds with the U.S. assertion that imposing limitations on certain categories of such systems requires amending the treaty.

**An Important Ambiguity.** The Duma's draft law does not make it clear whether these interpretations will be incorporated into the Russian instrument of ratification for New START. There is no such ambiguity on the U.S. side, where the Senate made it clear that its interpretations will be incorporated into the U.S. instrument of ratification.

This matter may well determine whether one side's interpretation will prevail over the other's. This is because one side, by accepting the instrument of ratification of the other side, implicitly acknowledges the other side's interpretations. Alternatively, if the two sides exchange instruments of ratification that contain understandings that are diametrically opposed to each other and the U.S.

upgrades its missile defense capabilities or deploys the specified type of Prompt Global Strike system, then Russia could charge the U.S. with material breach of the treaty.

The Senate's resolution of ratification does not permit President Obama to omit the two understandings on Prompt Global Strike systems and missile defense deployments in the U.S. instrument of ratification. Senators should remind the President of this and also demand two clarifications regarding his intentions:

1. If the Russian instrument of ratification does not incorporate the language the Duma appears prepared to adopt, then Senators should insist that Russian acceptance of the U.S. instrument of ratification means that the U.S. understandings prevail as matter of international law.
2. If the language the Duma appears ready to adopt is incorporated into the Russian instrument of ratification, then Senators should demand that the President not accept that instrument, because it will at best call into question and at worst nullify the understandings the Senate adopted.

**Morally, Politically, and Legally Bound.** The understandings the Senate adopted on Prompt Global Strike systems and missile defense deployments are not meant to just take up space. They represent the authoritative view of the U.S. government on the scope of the limitations in the treaty. President Obama is morally, politically, and legally bound to defend these understandings and the interests of the United States.

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