

# FROM START TO FINISH?

*H. John Goodell & Alexander T. Simpson*<sup>1</sup>

INTRODUCTION .....	441
I. HISTORY OF NUCLEAR ARMS CONTROL TREATIES LEADING TO NEW START .....	442
II. PROVISIONS FOR A NEW START .....	448
III. AS A CONTINUED START WITH RUSSIA, NEW START HAS SOME POSITIVE COMPONENTS .....	449
IV. ALTHOUGH A POSITIVE STEP, NEW START IS BASED ON AN OUTDATED THREAT; THE U.S. MUST CONSIDER ALTERNATIVE APPROACHES ....	452
CONCLUSION.....	457

## INTRODUCTION

On February 5, 2011, the latest nuclear arms reduction treaty between the United States and Russia—the New Strategic Arms Reduction Treaty (New START)<sup>2</sup>—entered into force.<sup>3</sup> New START includes provisions for reducing strategic warheads, nuclear launchers, and heavy bombers;<sup>4</sup> it also mandates inspections and demonstrations to guarantee compliance with the

---

1. Article by H. John Goodell and Alexander T. Simpson. Captain Goodell is a graduate of Vanderbilt University and the University of Wisconsin School of Law. Having just completed a tour as an Army prosecutor, he currently serves as a Recruiting Officer for the JAG Corps. Mr. Simpson is a graduate of Kenyon College and the University of Maryland School of Law. He is the law clerk for the Honorable James A. Kenney III of the Maryland Court of Special Appeals.

The views expressed herein are the authors' own and do not necessarily reflect the official policy or position of the Army Judge Advocate Recruiting Office, the United States Army, the U.S. Department of Defense, the Maryland Court of Special Appeals, the State of Maryland or the U.S. Government. Captain Goodell wishes to thank his wife, Cara, for her assistance in the editing of the initial drafts. Mr. Simpson wishes to thank his family for its support.

2. Treaty Between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, U.S.-Russia, Apr. 8, 2010, S. Treaty Doc. No. 111-5 [hereinafter New START Treaty], *available at* [www.state.gov/documents/organization/140035.pdf](http://www.state.gov/documents/organization/140035.pdf).

3. Press Release, Dep't of State, New START Treaty Entry into Force (Feb. 5, 2011) [hereinafter New START Press Release], *available at* <http://www.state.gov/r/pa/prs/ps/2011/02/156037.htm>.

4. New START Treaty, *supra* note 2, art. II.

parameters of the treaty.<sup>5</sup> While New START is in effect until 2021 with the possibility of a five-year extension,<sup>6</sup> ultimately it affords the United States only a modicum of immediate security, for the arms reduction of Russia is simply not the critical priority it once was. Although NEW START is undoubtedly a positive step towards nuclear arms control, if the world is to become a truly safer place, the United States must either include other nations in this quest or take unilateral action.

## I. HISTORY OF NUCLEAR ARMS CONTROL TREATIES LEADING TO NEW START

As long as war and the escalation of the use of force have existed, there have also been attempts at appeasement and peace. In 1955, Harold Stassen, President Eisenhower's Special Assistant for Disarmament, presciently concluded that the elimination of nuclear weapons was an "impractical goal."<sup>7</sup> Initially, it appeared that global momentum supported that position: in 1958, President Eisenhower, prompted by the environmental problems caused by nuclear fallout announced a unilateral nuclear testing moratorium,<sup>8</sup> and the Soviet Union, the United States' longtime nuclear adversary, soon followed suit. But—predictably—the United States resumed its weapons testing via "Operation Nougat,"<sup>9</sup> after the Soviets changed course to execute the largest nuclear test ever conducted.<sup>10</sup>

The Cuban Missile Crisis in 1962 brought the United States and the Soviet Union to the brink of nuclear war.<sup>11</sup> While the Cuban Missile Crisis was a time of endemic fear, its resolution was also a watershed, acting as a catalyst for future nonproliferation and arms control treaties. Although the terms of its conclusion did not force either side to accept significant changes in its planned nuclear forces, the formal negotiations were often one of the few channels for communication between the United States and Soviet

---

5. *Id.* art. XI.

6. *Id.* art. XIV. Of course, an alternative option would be to create a successor treaty upon NEW START's expiration.

7. David S. Jonas, *The New U.S. Approach to the Fissile Material Cutoff Treaty: Will Deletion of a Verification Regime Provide a Way Out of the Wilderness?*, 18 FLA. J. INT'L L. 597, 606 (2006) (citing GUY B. ROBERTS, U.S. AIR FORCE INST. FOR NAT'L SEC. STUDIES, THIS ARMS CONTROL DOG WON'T HUNT: THE PROPOSED FISSILE MATERIAL CUT-OFF TREATY AT THE CONFERENCE ON DISARMAMENT 16-17 (2001)). However, Stassen also urged a full accounting of the past production of nuclear material for all nations with nuclear weapon capability.

8. David S. Jonas, *The Comprehensive Nuclear Test Ban Treaty: Current Legal Status in the United States and the Implications of a Nuclear Test Explosion*, 39 N.Y.U. J. INT'L L. & POL. 1007, 1011 (2007) [hereinafter *CTBT Current Legal Status*] (citing GALLERY OF U.S. NUCLEAR TESTS, <http://nuclearweaponarchive.org/Usa/Tests/> (last visited Jan. 20, 2012)).

9. *Id.*

10. *Id.*

11. *Id.*

Union.<sup>12</sup> Indeed, by 1963, the United States, the Soviet Union, and England had agreed the Partial Test-Ban Treaty (PTBT),<sup>13</sup> which prohibited nuclear weapons tests in the atmosphere, outer space, and underwater,<sup>14</sup> although it did not address underground testing.<sup>15</sup>

The United States and the Soviet Union signed their first formal nuclear limitation agreements in May 1972.<sup>16</sup> This set of agreements, known as the Strategic Arms Limitation Talks (SALT I),<sup>17</sup> produced two important arms control accords: the Interim Agreement on Certain Measures with Respect to the Limitation of Strategic Offensive Arms (Interim Agreement on Offensive Arms) and the Treaty on the Limitation of Anti-Ballistic Missile Systems.<sup>18</sup>

The Interim Agreement on Offensive Arms contained serious inequities for the United States in terms of the number of arms control concessions made to the Soviet Union.<sup>19</sup> The Agreement placed a freeze on the number of launchers for intercontinental ballistic missiles (ICBMs) and submarine-launched ballistic missiles (SLBMs) that the United States and Soviet Union could deploy, and the parties settled that they would not begin construction of new ICBM launchers after June 1972.<sup>20</sup> Both countries also acquiesced to a hold on the production of SLBM launchers and modern ballistic missile submarines, though they could add SLBM launchers if they retired old ICBM launchers.<sup>21</sup> But when the Agreement was signed, the United States had 1,054 ICBM launchers, and the Soviet Union had 1,618 ICBM launchers.<sup>22</sup> Clearly, by both raw numbers and percentiles, there was a tremendous imbalance in the arms control concessions made by the United States compared to those made by the Soviet Union.

12. AMY F. WOOLF, MARY BETH NIKITIN & PAUL K. KERR, CONG. RESEARCH SERV., RL 33865, ARMS CONTROL AND NONPROLIFERATION: A CATALOG OF TREATIES AND AGREEMENTS 2 (2010).

13. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, Aug. 5, 1963, 14 U.S.T. 1313, 480 U.N.T.S. 43.

14. *Nuclear Nonproliferation: Chronology of Key Events*, INT'L ATOMIC ENERGY AGENCY, [http://www.iaea.org/Publications/Factsheets/English/npt\\_chrono.html](http://www.iaea.org/Publications/Factsheets/English/npt_chrono.html) (last visited Dec. 23, 2011) [hereinafter *Nuclear Nonproliferation*].

15. *CTBT Current Legal Status*, *supra* note 8, at 1011.

16. WOOLF, NIKITIN & KERR, *supra* note 12, at 4.

17. Interim Agreement Between the United States of America and the Union of Soviet Socialist Republics on Certain Measures with Respect to the Limitation of Strategic Offensive Arms, U.S.-U.S.S.R., May 26, 1972, 23 U.S.T. 3462 [hereinafter SALT I], available at <http://www.fas.org/nuke/control/salt1/text/salt1.htm>.

18. WOOLF, NIKITIN & KERR, *supra* note 12, at 4.

19. Ronald F. Lehman II, *International Arms Restraint By Treaty, Law, and Policy*, in NATIONAL SECURITY LAW 523, 564 (John Norton Moore & Robert F. Turner eds., 2d ed. 2005).

20. See WOOLF, NIKITIN & KERR, *supra* note 12, at 4 (“A protocol to the Treaty indicated that the United States could deploy up to 710 SLBM launchers on 44 submarines, and the Soviet Union could deploy up to 950 SLBM launchers on 62 submarines.”).

21. *Id.*

22. *Id.*

These startling disparities spurred the passage of the Jackson Amendment<sup>23</sup> by Congress.<sup>24</sup> The amendment mandated that all future arms control agreements would have to contain equal limits for the United States and Soviet Union.<sup>25</sup> In reality, the Jackson Amendment set the tone for all future agreements on nuclear arms control between the United States and the Soviet Union/Russia,<sup>26</sup> including a second Strategic Arms Limitation Treaty (SALT II).<sup>27</sup>

During the seven years of negotiations that ultimately led to the signing of SALT II in June 1979, the United States sought limits on quantitative as well as qualitative changes in Soviet forces.<sup>28</sup> Like those leading to SALT I, the SALT II negotiations prompted contentious debates in Congress—debates that were likely just as furious as their counterparts in the Russian Duma.<sup>29</sup> Ultimately, the United States and the Soviet Union reached an agreement that placed a “numerically equal limit on each nation’s nuclear forces.”<sup>30</sup>

Both countries agreed to a total of 2,400 ICBM launchers, SLBM launchers and heavy bombers, with this number declining to 2,250 by the end of 1980.<sup>31</sup> Within this total, the treaty contained sublimits for weapons with multiple independent reentry vehicles (MIRVs), such as MIRVed ICBMs, MIRVed SLBMs, MIRVed air-to-surface ballistic missiles (ASBMs), and heavy bombers.<sup>32</sup> SALT II also limited each country’s ability to create the new, modern missile programs that might encourage a resumption of the arms race.<sup>33</sup>

Dr. Randall Forsberg, Cardinal John Krol, Coretta Scott King, and various other religious leaders promoted this disarmament, testifying before the Senate Foreign Relations Committee that strategic equivalence was not an absolute necessity when both countries have thousands of nuclear warheads.<sup>34</sup> But these supporters of SALT II were assailed by their

23. Jackson Amendment to FY1972 Congressional Defense Authorization and Appropriation Budget Act, September 11, 1972. H.R.J. Res. 1227, 92d Cong. 746, 86 Stat. 746 (1972).

24. *Id.*

25. *Id.*

26. Lehman, *supra* note 19, at 567.

27. Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Strategic Offensive Arms, June 18, 1979 [hereinafter SALT II], available at <http://www.state.gov/www/global/arms/treaties/salt2-1.html>.

28. WOOLF, NIKITIN & KERR, *supra* note 12, at 5.

29. JESWALD W. SALACUSE, LEADING LEADERS: HOW TO MANAGE SMART, TALENTED, RICH AND POWERFUL PEOPLE 144 (2006) (citing WILLIAM URY, GETTING PAST NO: NEGOTIATING WITH DIFFICULT PEOPLE 61-62 (1991)).

30. WOOLF, NIKITIN & KERR, *supra* note 12, at 5.

31. SALT II, *supra* note 27, art. 3.

32. WOOLF, NIKITIN & KERR *supra* note 12, at 5.

33. *See* SALT II, *supra* note 27.

34. *See The Salt II Treaty: Hearing Before the S. Comm. on Foreign Relations*, 96th Cong. 127 (1979) (statement of Cardinal John Krol of Philadelphia, Pennsylvania), available

opponents as comprising a “sort of priesthood” who believed ratification of SALT II to be an absolutely necessary step to avoid Mutually Assured Destruction for both countries and thus the world at large.<sup>35</sup>

Critics of SALT II were greatly concerned with submitting to what they perceived as a Soviet threat that could not be trusted.<sup>36</sup> According to Professor Eugene Rostow, one-time Dean of Yale Law School and future Director of the Arms Control and Disarmament Agency:

The notion that Soviet-American relations have improved in recent years, that the Cold War is over, and that negotiation has been substituted for confrontation is a dangerous symptom of auto-intoxication. The Cold War is not over. On the contrary, it is worse than ever, featured by Soviet threats and thrusts on a far greater scale than those of the simple days of the Berlin airlift and the crisis in Greece. But as things get worse, many Americans insist on telling each other that they are getting better. SALT II is a case in point. If ratified in its present form, it would be an act of submission on our part, legitimizing Soviet superiority—a great Soviet victory in the Cold War, and so perceived everywhere in the world. But this [Carter] Administration keeps repeating that SALT II would be a step towards stability, detente, and peace.<sup>37</sup>

Ultimately, the opposition to SALT II was victorious: although both countries signed the treaty, it never received the advice and consent of the Senate once President Carter withdrew it due to the Soviet invasion of Afghanistan.<sup>38</sup> However, both governments agreed to abide by its principles.<sup>39</sup>

In the intervening years between SALT II and the New START Treaty, the United States and Russia engaged in several other important treaties that led to New START.

---

at [http://www.archive.org/stream/saltiitreatyhear04unit/saltiitreatyhear04unit\\_djvu.txt](http://www.archive.org/stream/saltiitreatyhear04unit/saltiitreatyhear04unit_djvu.txt) (“Are we not justified in asking today, is strategic equivalence an absolute necessity?”).

35. See Peter Hannaford, Remarks at the Phi Beta Kappa N. Cal. Ass’n, Presidential Leadership and the Nature of Change (Feb. 13, 2009), available at <http://www.pbk.org/home/FocusNews.aspx?id=245> (describing the proponents of arms control and START II, including President Jimmy Carter, Hannaford alludes to a superiority complex on the part of these proponents against opponents of the treaty, such as future President Ronald Reagan).

36. *The Salt II Treaty: Hearing Before the S. Comm. on Foreign Relations*, 96th Cong. 31 (1979) (statement of Eugene V. Rostow), available at [http://www.archive.org/stream/saltiitreatyhear04unit/saltiitreatyhear04unit\\_djvu.txt](http://www.archive.org/stream/saltiitreatyhear04unit/saltiitreatyhear04unit_djvu.txt).

37. *Id.* at 32. It is worth noting that Professor Rostow was the highest-ranking Democrat at one point in President Reagan’s Administration, and that many Democrats did not share his views on the subject of SALT II—a concept that becomes especially obvious during the question and answer session between he and then-Sen. Joe Biden (D-DE) in the referenced portion of these hearings. See *id.* at 7-11.

38. Lehman, *supra* note 19, at 568-69.

39. *Id.* at 569.

While SALT I and II and the Intermediate-Range Nuclear Forces Treaty (INF) took considerable steps towards reducing the intermediate and short range threats, they did not directly address the issue of nuclear weaponry. The Strategic Arms Reduction Treaty (START I),<sup>40</sup> ratified by the U.S. Senate on October 1, 1992,<sup>41</sup> was the first nuclear arms *reduction* treaty, successfully slashing both the United States' and Russia's arsenal of nuclear warheads—from over 10,000 to 6,000.<sup>42</sup> Amid the breakup of the Soviet Union, enabling START I's success was the Lisbon Protocol,<sup>43</sup> which offered a coherent structure whereby participating former Soviet republics<sup>44</sup> could safely return nuclear weapon material to the Soviet Union for dismantlement.<sup>45</sup>

Under the terms of the treaty, each side limited its deployment to 4,900 warheads on ICBMs and SLBMs.<sup>46</sup> In particular, the United States emphasized restrictions on the heavy ICBMs feared to threaten a first strike against the U.S.<sup>47</sup> As was the case with the INF Treaty that preceded it, START I contained a fairly complex and thorough implementation and verification regime.<sup>48</sup>

START I, unlike many of its arms control predecessors, did not face intense scrutiny (and was sufficiently desirable to trigger attempts at a START II Treaty).<sup>49</sup> Its painless enactment was partially due to the global security crisis following the breakup of the Soviet Union, as observers wondered what would happen to the former Soviet Union's nuclear

---

40. Treaty on the Reduction and Limitation of Strategic Offensive Arms, July 31, 1991, U.S.-U.S.S.R., S. Treaty Doc. 102-20 (1991) [hereinafter START I Treaty], available at <http://www.state.gov/www/global/arms/starhtml/start/start1.html>.

41. WOOLF, NIKITIN & KERR, *supra* note 12, at 8.

42. Leah Pettitt, *Weapons of Mass Destruction Stockpiled in Russia: Should the United States Continue to Implement Programs Designed to Reduce and Safeguard These Weapons?*, 16 TRANSNAT'L L. 169, 181, (2002) (citing Secretary of State Colin L. Powell, Statement on the Achievement of the Final Reductions Under the START Treaty (Dec. 5, 2001)). The Treaty thus accomplished its goal of decreasing both countries' nuclear stockpiles by 30-40%. See *Background Briefing for Reporters: The START Follow-On Agreement and Beyond*, ARMS CONTROL ASS'N (June 19, 2009), <http://www.armscontrol.org/node/3711>.

43. Protocol to the Treaty between the United States of America and the Union of Soviet Socialist Republics on Reduction and Limitation of Strategic Offensive Arms, May 23, 1992, S. Treaty Doc No. 102-32, 102d Cong., 2d Sess. (1992), available at <http://www.acq.osd.mil/tc/treaties/start1/protocols/lisbon.htm>.

44. Russia, Belarus, the Ukraine, and Kazakhstan became signatories. *Id.*

45. *Id.*

46. START I Treaty, *supra* note 40.

47. START I restricted each nation to 1,540 such warheads, a "50% reduction in the number of warheads deployed on the SS-18 ICBMs in the former Soviet republics." WOOLF, NIKITIN & KERR, *supra* note 12, at 9.

48. Pettitt, *supra* note 42 (asserting that the parties to the treaty will continue to meet with the Joint Compliance and Inspection Commission in order to resolve issues of compliance and further implementation).

49. *Id.*

weapons.<sup>50</sup> While today that fear has largely abated, for Presidents George H. W. Bush and Bill Clinton it was of great concern.<sup>51</sup>

The momentum of START I led both countries to pursue START II, whose arms reduction measures served as a bellwether of the conclusion of the Cold War: priority had moved away from crisis stability and toward reductions and control.<sup>52</sup> But in June 2002, Russia withdrew from the START II treaty in response to U.S. withdrawal from the Anti-Ballistic Missile Treaty (ABM).<sup>53</sup>

In the end, the failure of START II appears to have had minimal impact, as President George W. Bush set into motion a plan to reduce U.S. missile forces dramatically.<sup>54</sup> The aborted START II treaty was officially superseded by the Strategic Offensive Reduction Treaty (SORT),<sup>55</sup> agreed to by Presidents Bush and Putin in November 2001 and signed at the Moscow Summit on May 24, 2002.<sup>56</sup> Without having to compromise on the

50. See, e.g., *The Former Soviet Union: Russia, Ukraine, Kazakhstan, and Belarus*, FED’N AM. SCIENTISTS, <http://www.fas.org/irp/threat/prolif96/fsu.html> (last visited Jan. 21, 2012), <http://www.fas.org/irp/threat/prolif96/fsu.html>. Under the Goals and Interests section of the article, it states:

The fundamental interests of the United States regarding Russia and the independent states of the former Soviet Union, as articulated by President Clinton, are to reduce the nuclear threat, to support the development of these states as stable democracies, and to assist them to establish market economies. Within these broad foreign policy goals, the United States has five primary national security interests in this region: implementing START I and II and all other arms control agreements, and safeguarding the enormous nuclear arsenal that is the legacy of the Cold War; deterring the use of nuclear weapons should a strategic reversal occur in the former Soviet Union and a regime emerge which is hostile to U.S. interests; preventing the proliferation of NBC weapons; maintaining regional stability in and among the nations of the former Warsaw Pact; and avoiding reestablishing an antagonistic global rivalry with Russia.

51. *Id.*

52. Lehman, *supra* note 19, at 580.

53. *Id.* at 581. Facing the new security threats posed by a post-9/11 world as those of the Cold War past dissipated, the Bush Administration sought to withdraw from the ABM, for, under the provisions of the ABM, the United States could not defend itself from a missile attack. See Press Announcement, Office of the Press Secretary, Announcement of Withdrawal from the ABM Treaty (Dec. 13, 2001), *available at* <http://www.acq.osd.mil/tc/treaties/abm/ABMwithdrawal.htm> (noting that “[p]rincipal among these [new] threats are weapons of mass destruction and their delivery means wielded by terrorists and rogue states”). Simply put, September 11, 2001 changed the way that the Bush Administration viewed arms control outside the confines of the nuclear arena.

54. Lehman, *supra* note 19, at 581.

55. Treaty Between the United States of America and the Russian Federation on Strategic Offensive Reductions, U.S.-Russ., May 24, 2002, S. Treaty Doc. No. 107-8 (2002) [hereinafter SORT], *available at* <http://www.armscontrol.org/documents/sort>.

56. See Lehman, *supra* note 19, at 581.

issues that doomed START II,<sup>57</sup> both countries agreed to reduce operationally deployed strategic nuclear warheads to 1,700 from 2,200 by 2012.<sup>58</sup> Several years later, with the SORT Treaty set to expire, the Obama Administration began working on an extension of SORT that would eventually become New START.<sup>59</sup>

## II. PROVISIONS FOR A NEW START

On February 5, 2011, the latest nuclear arms reduction treaty between the United States and Russia, New START, entered into force.<sup>60</sup> The New START Treaty deserves praise for containing key provisions that compel the nuclear arms reduction of both countries and verify compliance.

New START decreases to 1,550 the number of deployed strategic nuclear warheads of both Russia and the United States from the post-SORT number of 1,700,<sup>61</sup> although both countries retain the right to determine the composition of their own strategic offensive arms.<sup>62</sup> The deployed and non-deployed strategic launchers and heavy bombers are limited to 800 for each country,<sup>63</sup> while, within those limits, the deployed strategic launchers and heavy bombers are cut to 700—modest cuts by the standards of previous nuclear arms reductions treaties.<sup>64</sup> The treaty also re-establishes a comprehensive verification protocol providing for eighteen on-site inspections per year,<sup>65</sup> which advocates of New START claim as perhaps

---

57. “[T]wo factors were to determine the fate of START II. One was the continuing difficulty the Russian Federation believed it would have maintaining forces that would reach the START II ceilings without the MIRVed ICBMs banned by START II. The Second was that while the United States was divided internally over whether to withdraw from the ABM Treaty, some deployments seemed more probably in time no matter which political party controlled the White House.” *Id.*

58. SORT, *supra* note 55.

59. See President Obama, Secretary Clinton, Secretary Gates & Admiral Mullen, Briefing on the Announcement of the New START Treaty (Mar. 26, 2010) [hereinafter Announcement of New START], available at <http://www.jcs.mil/speech.aspx?id=1345> (describing New START as an extension of the nuclear arms reduction started under the previous SORT and START Treaties).

60. New START Press Release, *supra* note 3. New START received Senate ratification on December 22, 2010 despite twenty-six Republicans voting against passage. Eli Lake, *Senate Ratifies New START; Obama Gets ‘Reset’ with Russia*, WASH. TIMES, Dec. 22, 2010, <http://www.washingtontimes.com/news/2010/dec/22/senate-ratifies-new-start-obama-gets-reset-with-ru/>.

61. New START Treaty, *supra* note 2, art. II.

62. *Id.* The Second Provision under Article II states, “Each Party shall have the right to determine for itself the composition and structure of its strategic offensive arms.” *Id.*

63. *Id.*

64. *Id.*

65. New START Press Release, *supra* note 3 (outlining how the New START Treaty requires each country to exchange updated nuclear databases every six months for the duration of the treaty). The Fact Sheet also outlines how the New START Treaty requires



the most critical aspect of the treaty.<sup>66</sup> Two types of inspections are permitted.

Type One Inspections concentrate exclusively on weapon sites that hold deployed and non-deployed strategic offensive arms.<sup>67</sup> The inspections confirm the accuracy of declared data on deployed and non-deployed strategic offensive arms, ascertain the total number of nuclear warheads situated on designated deployed ICBMs and deployed SLBMs, and verify the number of nuclear armaments declared by each country to be on their respective designated deployed heavy bombers.<sup>68</sup> Type Two Inspections focus solely on sites with non-deployed strategic offensive arms, and can also include confirmation of the conversion/elimination of strategic offensive arms, and ratification that certain facilities have been eliminated.<sup>69</sup> According to the New START Treaty language, each side is allowed to conduct ten Type One inspections and eight Type Two inspections annually.<sup>70</sup>

Unless superseded by a subsequent agreement, New START will remain in force for the next decade.<sup>71</sup> Both Russia and the United States have the right to seek, with the agreement of the other country, an additional five-year extension.<sup>72</sup> And both parties have the right to withdraw from the treaty, “if [either decides] that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests.”<sup>73</sup> While arguably not as relevant of its Cold War era predecessors, New START has captured much of the framework that made those predecessors successful.

### III. AS A CONTINUED START WITH RUSSIA, NEW START HAS SOME POSITIVE COMPONENTS

Advocates of New START argue that the treaty will make the United States and the world safer<sup>74</sup>—but to what degree? Secretary of State Hillary Clinton and Secretary of Defense Robert Gates submit that New START will create “a more stable, predictable and cooperative relationship between

---

that each country will exchange updated nuclear databases every six months for the duration of the treaty.

66. Hillary Rodham Clinton & Robert M. Gates, Op-Ed., *Why the Senate Should Ratify the New START*, WASH. POST, Nov. 15, 2010, available at <http://www.state.gov/secretary/rm/2010/11/150878.htm>.

67. New START Treaty, *supra* note 2, art. XI.

68. *Id.*

69. *Id.*

70. New START Press Release, *supra* note 3.

71. New START Treaty, *supra* note 2, art. XIV.

72. *Id.*

73. *Id.*

74. See, e.g., George P. Schultz et al., Op-Ed, *Deterrence in the Age of Nuclear Proliferation*, WALL ST. J., Mar. 7, 2011, available at [http://cisac.stanford.edu/news/william\\_j\\_perry\\_why\\_we\\_need\\_a\\_new\\_deterrence\\_strategy\\_20110307](http://cisac.stanford.edu/news/william_j_perry_why_we_need_a_new_deterrence_strategy_20110307).

the world's two leading nuclear powers. . . It will help solidify the 'reset' of U.S. relations with Russia, which has allowed us to cooperate in pursuit of our strategic interests."<sup>75</sup> Other exponents cite a broader focus. Former Secretaries of State George Schultz and Henry Kissinger, former Secretary of Defense William Perry, and former Sen. Sam Nunn (D-GA) effectively argue that there is

no basis for maintaining a structure of deterrence involving nuclear weapons deployed in ways that increase the danger of an accidental or unauthorized use of a nuclear weapon, or even a deliberate nuclear exchange based on a false warning. Reducing the number of operationally deployed strategic nuclear warheads and delivery vehicles with verification to the levels set by the New Start Treaty is an important step in reducing nuclear risks.<sup>76</sup>

However, they also recognize that while nuclear arms reduction is in the best interest of the United States' national security, for "as long as nuclear weapons exist, America must retain a safe, secure and reliable nuclear stockpile primarily to deter a nuclear attack and to reassure our allies through extended deterrence."<sup>77</sup> Critics of New START argue that the treaty undercuts this very concern. Spearheaded in Congress by Sen. Jon Kyl (R-AZ), they take aim at New START as being "in the service of a utopian ideal of nuclear zero."<sup>78</sup> Sen. Kyl believes that the President's plan underfunds missile defense and every delivery system except next-generation nuclear submarines, amounting to a continuation of a weak policy of missile defense.<sup>79</sup> Secretaries Clinton and Gates disagree: New START "will not restrict [the United States'] ability to modernize our nuclear forces. On the contrary, the United States will continue to maintain a robust nuclear deterrent based on [a] 'triad' of delivery systems: intercontinental ballistic missiles, submarine-launched ballistic missiles and heavy bombers for nuclear armaments."<sup>80</sup>

75. Clinton & Gates, *supra* note 66.

76. Schultz et al., *supra* note 74. Similarly, during the 2004 Presidential election debates, both President George W. Bush and Sen. John Kerry (D-MA) endorsed the assessment that nuclear proliferation was the "single most serious threat to the national security of the United States." *Transcript: First Presidential Debate*, WASH. POST, Sept. 30, 2004, [http://www.washingtonpost.com/wp-srv/politics/debatereferee/debate\\_0930.html](http://www.washingtonpost.com/wp-srv/politics/debatereferee/debate_0930.html).

77. Schultz et al., *supra* note 74.

78. Jon Kyl, Op-Ed., *The New START Treaty: Time for a Careful Look*, WALL ST. J. (July 8, 2010), available at <http://online.wsj.com/article/SB10001424052748704293604575343360850107760.html>.

79. *Id.*

80. Clinton & Gates, *supra* note 66. The article concludes by discussing the Obama Administration proposed fiscal support for the United States' nuclear weapons program, which is an estimated in the several hundred Billion Dollar range:

To sustain and modernize these systems, the administration has proposed spending well over \$100 billion during the next decade . . .

More broadly speaking, while staunch supporters of U.S. nuclear proliferation and defense may claim that the United States needs more than 1,500 nuclear warheads, the reality is that even modest reductions in nuclear stockpiles afford DoD the ability to continue to fund a wartime military while sacrificing little of America's "power projection." As Secretary Clinton acknowledged, "We do not need such large arsenals to protect our nation and our allies against the two greatest dangers we face today: nuclear proliferation and terrorism."<sup>81</sup>

In fact, Sen. Kyl maintains that there is actually no need for this type of treaty at all: "The treaty's main purpose is to oblige Russia and the U.S. to make specified reductions in their nuclear arsenals. But Russia would be making the reductions for financial reasons anyway, so we've agreed to concede something for nothing."<sup>82</sup> Given Russia's public desire to reduce its nuclear arsenal, as both maintenance and complex verification regimes place a heavy burden on Russia's treasury,<sup>83</sup> Sen. Kyl's position is not without merit. But in claiming that the United States has conceded something for nothing, Sen. Kyl overlooks the financial realities of nuclear disarmament, as the maintenance of the U.S. nuclear arsenal costs more than \$52 billion each year<sup>84</sup> and ultimately promotes the distrust of a fading old foe.

Former Assistant Secretary of State Paula DeSutter, now of the Heritage Foundation, also attacks New START as being an ineffective verification system perpetrated by the Russians and coalesced to by the Obama

---

. The administration has proposed spending \$7 billion for this purpose in the current fiscal year—a nearly 10 percent increase—and more than \$80 billion to modernize our nuclear weapons complex over the next decade, including a major life-extension program for current warheads. In all, the administration proposes spending more than \$180 billion on the infrastructure that sustains our nuclear weapons and the means to deliver them—a substantial investment in the credibility and efficacy of America's nuclear deterrent.

*Id.*

81. Announcement of New START, *supra* note 60.

82. Kyl, *supra* note 78.

83. SUSAN WILLETT, COSTS OF DISARMAMENT—DISARMING THE COSTS: NUCLEAR ARMS CONTROL AND NUCLEAR REARMAMENT 28 (2003), available at <http://www.unidir.org/pdf/ouvrages/pdf-1-92-9045-154-8-en.pdf> (stating that the Russian Defense Budget shrunk by 62% during the 1990s after the U.S.S.R. dissolved, and even a moderate reduction in the Russian Strategic Rocket Force would yield a long term savings of 19 billion roubles over 15 years.). See also *New Start: Russia and America Agree to Sharp Cuts in Their Deployed Warheads and Delivery Systems*, ECONOMIST, May 27, 2010 <http://www.economist.com/node/15796394>.

84. See STEPHEN I. SCHWARTZ & DEEPTI CHOUBEY, CARNEGIE ENDOWMENT FOR INT'L PEACE, NUCLEAR SECURITY SPENDING: ASSESSING COSTS, EXAMINING PRIORITIES (2009), available at [http://carnegieendowment.org/files/nuclear\\_security\\_spending.pdf](http://carnegieendowment.org/files/nuclear_security_spending.pdf) (detailing the spending for fiscal year 2008).

Administration.<sup>85</sup> She contends that the under the terms of the treaty it will be more difficult than ever to verify which warheads have been previously inspected:

[T]he ID number assigned to each warhead and launcher will be assigned by the Russians—in whatever way they choose. They could assign the same number to multiple mobile missile launchers and warheads, and when U.S. inspectors determine that the number of warheads on, say, the fourth missile they inspect, is the same as on the first, the Russians need only assert that the U.S. happened to request an [accountability of] a missile they had already inspected.<sup>86</sup>

To Secretary DeSutter and others, prematurely forcing New START through Congress only exacerbated these defects, as it foreclosed the Senate from conducting due diligence on the effectiveness of the verification regimes created by New START.<sup>87</sup>

But these arguments fall flat: “the goal of verification is to confirm the data that is provided by each country in the mandatory data exchanges required by the treaty,” not to haggle over minutia like the assignment of Identification Numbers.<sup>88</sup> “Unlike START I, New START requires each country to declare the actual number of rockets that each individual missile carries, rather than simply setting the maximum number of rockets that a particular type of missile *could* carry.”<sup>89</sup> Consequently, the data gathered as a result of New START may be “much more accurate than [that collected] under START I, since it eliminates the over-counting of warheads on missiles.”<sup>90</sup> And finally, the Senate had ample time—more than six months—to provide advice and consent on the treaty; it was not “forced” through the legislature.<sup>91</sup>

#### IV. ALTHOUGH A POSITIVE STEP, NEW START IS BASED ON AN OUTDATED THREAT; THE U.S. MUST CONSIDER ALTERNATIVE APPROACHES

While possessing some merit, New START is emblematic of a dated approach to strategic arms control that—with its heavy focus on formal

85. Paula DeSutter, *Don't Expect New START to Fill the Gaps Left by START Termination*, NAT'L REV. ONLINE (Aug. 17, 2010), <http://www.nationalreview.com/corner/244007/don-t-expect-new-start-fill-gaps-left-start-termination-paula-desutter>. See also Mark Donaldson, *New START Verification: Inspecting the Critics' Arguments*, ALL THINGS NUCLEAR (Aug. 27, 2010), <http://allthingsnuclear.org/post/1020155049/new-start-verification-inspecting-the-critics#>.

86. DeSutter, *supra* note 85.

87. Michaela Bendikova, *Stop Rushing New START!*, THE FOUNDRY (Nov. 15, 2010, 3:00 PM), <http://blog.heritage.org/?p=46618>.

88. Donaldson, *supra* note 85.

89. *Id.*

90. *Id.*

91. Announcement of New START, *supra* note 59.

treaties, contentious negotiations, rigid warhead and launcher ceilings, and immense, detailed verification regimes—in practice does not efficiently safeguard America.<sup>92</sup> The expense of the treaty, coupled with the unwillingness of other nations to make similar commitments, ultimately renders New START a well-intentioned but poorly executed attempt at nonproliferation. In its stead, the United States should explore new options—both multi- and unilateral—capable of addressing a modern reality: the rise of nuclear states with links to terrorism.

The impetus behind New START is based on a diplomatic blueprint that presupposes Russia to be a dangerous, Cold War enemy. But the posture of the United States' one-time adversary has dramatically changed. Today, Russia's nuclear policy is no longer based on aggression, but rather on deterrence and defense.<sup>93</sup> It is through this lens that the costs of New START must be scrutinized. Like its forbearers, it required many years to complete at a great expense to U.S. taxpayers—from the manpower expended in drafting and negotiating,<sup>94</sup> to the actual maintenance of the warheads themselves.<sup>95</sup>

Meanwhile, despite the strengthening of relations between America and Russia in the time since SALT I, non-traditional terrorism threats have arisen. At the time of the Cuban Missile Crisis, only four nations had full nuclear weapon capabilities: the United States, the Soviet Union, England, and France.<sup>96</sup> Today, there are nine nations believed to possess nuclear weapons,<sup>97</sup> including Israel,<sup>98</sup> North Korea, and Pakistan.<sup>99</sup> Recognizing this

92. NAT'L INST. FOR PUB. POLICY, RATIONALE AND REQUIREMENTS FOR U.S. NUCLEAR FORCES AND ARMS CONTROL 12 (2001), available at <http://www.nipp.org/National%20Institute%20Press/Archives/Publication%20Archive%20PDF/volume%201%20complete.pdf>.

93. ALEXI ARBATOV, CARNEGIE ENDOWMENT FOR INT'L PEACE, GAMBIT OR ENDGAME? THE NEW STATE OF ARMS CONTROL 5 (Mar. 2011), available at <http://www.scribd.com/doc/51933099/Gambit-or-Endgame-The-New-State-of-Arms-Control> Today. "Russia maintains nuclear forces to retaliate against [(1)] a nuclear strike," (2) "a chemical, biological, or radiological attack," or (3) "a conventional attack that threatens the existence of the state." *Id.* at 10.

94. See WILLETT, *supra* note 83, at 109 (stating that the United States has spent more than \$7 billion negotiating the various START Treaties with Russia).

95. See Stephen I. Schwartz & Deepti Choubey, Op-Ed., *The Cost of Nuclear Security*, L.A. TIMES, Jan. 12, 2009, <http://articles.latimes.com/2009/jan/12/opinion/oeschwartz12> (asserting that it costs the U.S. \$29 billion annually to maintain its nuclear arsenal).

96. *Nuclear Nonproliferation*, *supra* note 14. China would soon follow suit, testing its first nuclear bomb on October 16, 1964. *Id.*

97. *Status of World Nuclear Forces*, FED'N OF AM. SCIENTISTS, <http://www.fas.org/programs/ssp/nukes/nuclearweapons/nukestatus.html> (last visited Jan. 21, 2012).

98. Luke Harding & Duncan Campbell, *Calls for Olmert to Resign After Nuclear Gaffe*, GUARDIAN (London), Dec. 12, 2006, <http://www.guardian.co.uk/world/2006/dec/12/germany.israel>.

development, in their article, *Reformulating the Nuclear Nonproliferation Regime: Al-Qaeda, Global Terrorism, and the Rogue State Paradigm*, authors David S. Jonas and Christopher Swift presciently envision two nuclear weapon scenarios that could eventually cause tremendous instability to world peace:

In the first scenario, Islamic extremists from the North Caucasus or Central Asia might seize fissile material or even an operational warhead from aging Soviet-era installations. In the second, Taliban supporters operating within Pakistan's Pashtun-majority Northwest Frontier Province could potentially penetrate that state's military command structure and launch a coup d'état, thus bringing that nation's nuclear arsenal under the control of Islamic extremists with alleged ties to al-Qaeda. In each instance, non-state actors would overcome the logistical challenge of developing weapons by appropriating existing assets from weak or negligent nation-states.<sup>100</sup>

With the rise of nuclear states with links to terrorism, the United States must move away from costly, bilateral treaties with Russia and instead embrace alternatives to stamp out the danger posed by these new threats. The United States can so act (1) by initiating multilateral treaty talks with the countries which wield great influence over these upstarts—such as China, which holds sway over North Korea—or (2) by forsaking the expensive and cumbersome treaty process for the voluntary, unilateral disarmament of many of the nuclear weapons which languish at great taxpayer expense.<sup>101</sup>

In order to aggressively pursue total nuclear disarmament in accordance with Article VI of the Non-Proliferation Treaty (NPT)<sup>102</sup>—and if greater global security is to be achieved by limiting the availability of nuclear material to terrorist sources—the United States and Russia must encourage other nations, like China, to hold multilateral talks. Secretaries Schutz, Kissinger, *et al.* understand that eventually there must be nuclear arms control action by other members of the “nuclear club,” for “[t]here is an inherent limit to U.S. and Russian nuclear reductions if other nuclear

---

99. *N. Korea Paid Pakistan for Nuclear Weapons Tech*, CBC.CA, July 7, 2011, <http://www.cbc.ca/news/world/story/2011/07/07/nuclear-pakistan-nkorea.htmlhtml.html>.

100. David S. Jonas & Christopher Swift, *Reformulating the Nuclear Nonproliferation Regime: Al-Qaeda, Global Terrorism, and the Rogue State Paradigm*, 13 UCLA J. INT'L L. & FOREIGN AFF. 337, 343 (2008) (footnotes omitted).

101. Although given today's financial climate, the costs of such maintenance may actually compel a nuclear reduction prematurely.

102. Treaty on the Non-Proliferation of Nuclear Weapons, art. VI, opened for signature July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161, available at <http://www.fas.org/nuke/control/npt/text/npt2.htm> (“Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control.”).

weapon states build up their inventories or if new nuclear powers emerge.”<sup>103</sup> Indeed, as the United States and Russia reduce their stockpiles, other nuclear states make no such commitments.<sup>104</sup> And for the United States to be certain as to whether other nations are increasing their nuclear arsenals—or in the case of Iran, constructing them<sup>105</sup>—there must be multilateral treaty initiatives with reliable verification regimes that include nations other than the United States and Russia. Moreover, common sense suggests that unilaterally reducing its nuclear weaponry while only Russia follows suit is not an efficient means of diplomacy for the United States.

This approach would serve the United States and Russia particularly well in regard to their mutual security concerns about China.<sup>106</sup> For their part, the Chinese have stated that they will not consider multilateral arms reduction negotiations until the United States and Russia achieve “drastic” or “substantial” reductions—i.e., more than 50%—in their own nuclear arsenals.<sup>107</sup> With this in mind, the United States might propose a sharp cut in its nuclear arms ratio in order to tempt China to the bargaining table, for example, a 5:1 nuclear arms reduction if China were to exert its considerable sway over North Korea and Pakistan. As an incentive, the United States could also offer to encourage the participation of Pakistan’s enemy, India, in these multilateral talks.

The goals of multilateral negotiations would be a comprehensive verification regime among all nations, and a reduction of nuclear arms by all parties involved. But perhaps more importantly, by encouraging China to

103. Schultz, Perry, Kissinger & Nunn, *supra* note 74.

104. See *Status of World Nuclear Forces*, *supra* note 97. The Federation of American Scientists provides an estimate of each country’s nuclear arsenal as follows:

<u>Country</u>	<u>Operational Strategic</u>	<u>Operational Nonstrategic</u>	<u>Reserve</u>	<u>Military Stockpile</u>	<u>Total Inventory</u>
Russia	2,430	0	5,500	8,000	11,000
United States	1,950	200	2,850	5,000	8,500
France	290	n.a.	?	~300	~300
China	0	?	~180	240	240
United Kingdom	160	n.a.	65	225	225
Israel	0	n.a.	80	80	80
Pakistan (all estimates)	0	n.a.	90-110	90-110	90-110
India (all estimates)	0	n.a.	80-100	80-100	80-100
North Korea (all estimates)	0	n.a.	<10	<10	<10

105. Catherine Philp, *Barack Obama Accuses Iran of Attempt to Build a Nuclear Bomb*, SUNDAY TIMES (London), Feb. 10, 2010, [http://www.timesonline.co.uk/tol/news/world/middle\\_east/article7021192.ece](http://www.timesonline.co.uk/tol/news/world/middle_east/article7021192.ece).

106. It may especially benefit Russia, who views its geographical proximity to China as a relevant security concern. See ARBATOV, *supra* note 93, at 6-7.

107. *Country Profiles: China*, NUCLEAR THREAT INITIATIVE, <http://www.nti.org/db/china/darmpos.htm> (last updated Dec. 2011).

bring Pakistan and North Korea to the bargaining table, the United States could assert greater control over two dangerous nations with nuclear weapon capabilities.

Of course, it is entirely possible that China has no intention of weakening its nuclear arsenal and is posturing on the global stage—a belief held by some opponents of American nuclear arms control.<sup>108</sup> Regardless, the United States stands to lose very little by reaching out to nations like China if the expenses associated with the maintenance of its nuclear arsenal may force a reduction anyway. If the United States does not attempt to bring more nations to the negotiating table and a terrorist organization gains control of a nuclear weapon, the political consequences of a nuclear attack on American soil may very well be much more damaging than the political cache surrendered by agreeing to reductions with China or other nations at 5:1 ratio (or higher).

Alternatively, the President of the United States could propose to unilaterally reduce the United States' nuclear arsenal. The heavy expenditures on weapons maintenance, verification regimes, and treaty negotiations mean that it may be more economical to reduce our nuclear arsenal alone. Although the President would likely be labeled weak on defense issues, he or she could present this plan as a cost-saving endeavor designed to reduce the budget. If ever it was politically plausible to encourage peaceful nuclear arms reductions, the current economic downturn and bipartisan accord as to the necessity of budget cuts<sup>109</sup> present the perfect opportunity.<sup>110</sup> Of course, it would also be a positive step toward American compliance with Article VI of the NPT.

Unilaterally reducing its nuclear stockpiles in lieu of the treaty track would not only reduce U.S. spending, it would also serve as a signal to the world that nuclear arms control is not merely a U.S.-Russian endeavor,<sup>111</sup>

---

108. *Id.*

109. See Alan Silverleib & Tom Cohen, *Democrats, Republicans Agree on a Budget Deal*, CNN (Apr. 9, 2011), <http://edition.cnn.com/2011/POLITICS/04/08/congress.budget/index.html>.

110. Whether this *realpolitik* resonates with Congress remains to be seen. At least one member of the U.S. Senate, is aware of this reality. Sen. Richard Lugar (R-IN) actually cited the expensive maintenance costs as a reason why he broke party ranks and voted for ratification of New START. See Press Release, U.S. Sen. Dick Lugar, Lugar: Romney Misinformed on New START Treaty (July 8, 2010), available at <http://lugar.senate.gov/record.cfm?id=326277> (stating that New START helps us “focus our defense resources effectively”).

111. It may also encourage other nations, including Russia—the United States' partner in the SALT and START Treaties—to curtail their stockpiles without the lengthy and often contentious process of bilateral or multilateral treaties.



but something to which all nations should aspire pursuant to Article VI of the NPT.<sup>112</sup>

Currently, with only the United States and Russia committed to treaties like New START that require an accurate accounting and decommissioning of nuclear weapons, it seems less likely that the other countries with nuclear weapons will ever disarm in accordance with the NPT, absent a change of course by the U.S. or Russia.

## CONCLUSION

If countries such as China, Pakistan and North Korea have no intention of complete nuclear disarmament, treaties like New START arguably function less to reduce the nuclear stockpiles of the United States and Russia and more to continue the dialogue between two nations that have already appeared willing to support transparency and a nuclear drawdown. While this is certainly a positive step toward greater nuclear disarmament, the United States—as a global leader—does not need expensive bilateral negotiations with Russia to encourage global nuclear arms reductions. Unprompted American nuclear arms reduction would say as much, if not more, about the United States' commitment to the principles of the NPT.

By unilaterally reducing its nuclear arms with the hope that others follow suit, or alternatively, by striving to bring more parties to the negotiation table, the United States could drastically alter the world's nuclear landscape and achieve long-term and meaningful nuclear arms control. In doing so, the United States could save substantial sums of money on the nearly \$53 billion it spends per year on nuclear weapons and maintenance.<sup>113</sup> While New START is a positive step in the direction of nuclear arms control, it is based on an outdated model of diplomacy and is responsive to a Russian nuclear threat that has long since faded. Ultimately, New START is less efficient and effective than these other means of diplomacy.

---

112. At some point, the United States, Russia, and the other members of the “nuclear club” will face the crossroads of whether to abandon *completely* their nuclear stockpiles in accordance with the NPT.

113. SCHWARTZ & CHOUBEY, *supra* note 84.

