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A new START to begin with: recent developments in US-Russian strategic nuclear arms reductions

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Introduction

Nuclear arms control features high on the international agenda once again. The expression of new hopes and expectations by the major nuclear powers has stimulated worldwide debates and calls for serious efforts on an array of nuclear weapons-related topics. These include the future of tactical nuclear weapons in Europe, the strengthening of the nuclear Non-Proliferation Treaty, the value of no-first-use policies and security assurances, the nuclear test ban, the need for a fissile material cut-off treaty, and, last but not least, the end-goal of a nuclear weapons free world. Both the US nuclear posture review and the Russian strategic military doctrine of 2010 put less emphasis on strategic nuclear weapons for defence and security, albeit that 'no first use' policies have not been adopted. Top priority is given to preventing nuclear proliferation, combating nuclear terrorism and enhancing nuclear security (rather than advancing nuclear disarmament). In the build-up to the 2010 Review Conference of the nuclear Non-Proliferation Treaty, Russia and especially the US have been very active in raising issues and stimulating discussions. Among the many initiatives is the Nuclear Security Summit held in Washington on 12 and 13 April 2010. Shortly before that, the US and Russia signed the START follow-on treaty on April 8 in Prague. This was much later than originally envisaged.

The Strategic Arms Reduction Treaty (START) expired on 5 December 2009.[2] The Treaty, which was signed on July 31, 1991 and entered into force on 5 December 1994, was concluded for a period of fifteen years. Until shortly before its expiry, Presidents Obama and Medvedev publicly upheld the idea that a follow-on treaty would be finished before START would end. That timing would have fitted in well with the ambitious statements of Obama about the US commitment to a road towards a nuclear weapon free world, which he repeated on various occasions: in his address before the summit meeting of the UN Security Council on 24 September 2009, when accepting the Nobel Peace Prize on 10 December 2009 and in his State of the Union remarks of 27 January 2010. However, in the course of November 2009 it was already clear that the US and Russia were no longer committed to meeting the self-imposed deadline of expiry in the original treaty. Talks held on the sidelines of the climate summit in Copenhagen in December 2009 did not generate the breakthrough hoped for, either. Both countries, however, continued to insist that a final agreement was not far off. On 26 March 2010, an agreement was officially announced. The signing date for the follow-on treaty was set at 8 April in Prague.[3]

In this paper, the end of START and the current state of US-Russian strategic nuclear arms control will be briefly discussed, followed by an overview of the broader security context and some specific issues regarding the START follow-on treaty and the negotiations.

The end of START and US-Russian strategic nuclear arms control

Although it was reported in some media that START had remained in effect after December 5, 2009, the official statement by the US and Russia as the essential parties to START points in another direction. On December 4,

2 START (also called 'START I' to distinguish it from the START II treaty of 1993) was signed July 31, 1991, by the United States and the Soviet Union. Five months later, the SU dissolved, leaving four independent states in possession of strategic nuclear weapons: Russia, Belarus, Ukraine, and Kazakhstan. On May 23, 1992, the US and the four nuclear- capable states that used to be part of the former SU signed the 'Lisbon Protocol', which made all five states party to START. See, Arms Control Association, 'START I at a glance' (www.armscontrol.org/factsheets/start1).

3 See 'Treaty between the United States of America and the Russian Federation on measures for the further reduction and limitation of strategic offensive arms', 8 April 2010 (www.state.gov/documents/organization/140035.pdf) and Protocol (www.state.gov/documents/organization/140047.pdf).

2009, the following joint statement by Obama and Medvedev was made public:

> 'Recognizing our mutual determination to support strategic stability between the [US] and [The Russian Federation], we express our commitment, as a matter of principle, to continue to work together in the spirit of the START Treaty following its expiration, as well as our firm intention to ensure that a new treaty on strategic nuclear arms enter into force at the earliest possible date'.[4]

This official statement indicates that START is no longer in force and will not be continued. It would have been possible to extend the treaty, by five-year increments (Art. XVII.2), but the parties have chosen not to do so. The 1991 treaty, talks on which already started in 1982, was the last strategic nuclear arms reduction treaty in place with a firm basis in the Cold War. It was meant to help control the nuclear arms race between the US and the Soviet Union, subsequently the Russian Federation, at the strategic level. Also if one takes the position that nuclear arms control is first and foremost a political process, START was anyhow the legally binding seal on the mutual political commitments. The end of START has had important implications, even though the numbers of warheads and delivery vehicles are long below the lowest numerical limits of the treaty that were reached in December 2001 in accordance with the treaty's phased reduction deadlines. The termination of START has also ended the monitoring and verification regime, including inspections, established by it. For example, US officials had to leave the construction factory in the Russian town of Votkinsk, where they had been officially monitoring the assembly of the intercontinental ballistic missiles for the Russian strategic nuclear fleet ever since the signing of START.[5]

In itself the temporary or even the total absence of legally binding treaties is not the biggest of problems in the field of nuclear arms control. After all, it has happened more than once that an agreement was reached by way of unilateral actions or 'political' declarations and statements, made jointly or independently but mutually related. An example is the withdrawal and destruction of certain classes of deployed tactical nuclear weapons by the so-called Presidential Nuclear Initiatives — consisting of little more than two related speeches by Presidents Bush and Gorbachev in the autumn of 1991. The current moratoria on underground nuclear testing adhered to by the nuclear weapon states provide another example. From an international law perspective, however, political statements can be withdrawn at will: compliance is not mandatory and political promise is only a political debt. Still, a unilateral declaration by a state, even if it appears to be 'political' in nature, is capable of creating legally binding commitments for that state if the declaration is sufficiently clear and specific and the intent of the state to be legally bound by its declaration is recognizable. The legal basis is the state's acting in good faith in international relations, a principle which also accounts for the fact that other states may rely on obligations undertaken through the declaration and that the declaration cannot be revoked arbitrarily. To assess its legal relevance, the text of the declaration, together with the context and the circumstances in which it was formulated, are first and foremost of importance.[6]

When applying the above criteria to the joint declaration of 4 December 2009 cited above, it can be easily recognized that it was not sufficiently clear or specific so as to introduce new legally binding obligations. The words 'as a matter of principle', 'to work in the spirit', 'firm intention' and 'at the earliest possible date' point

4 See Joint Statement by Presidents Obama, Medvedev on START Treaty, 4 December 2009 (www.whitehouse.gov).

5 N. Kralev, 'US-Russia arms control treaty expires', *The Washington Times*, 5 December 2009 (www.washingtontimes.com/news/2009/dec/05/arms-control-treaty-expires/).

6 See International Law Commission, 'Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations', Article 7 (www.un.org/law/ilc).

at a cautious approach by both states and an inclination that they are unwilling to be bound to a designated course of action, let alone a circumscribed result. In addition, it is interesting to note what has not been included in the joint declaration: there is no reference to the statements of both Presidents from their meeting of early July 2009. On that occasion a 'Joint Understanding' was agreed concerning a successor treaty to START at an early date.[7] The most important element of the Joint Understanding was that the US and Russia shall downsize their strategic nuclear arsenals to numbers between 1,500 and 1,675 warheads each and that the delivery vehicles — i.e. heavy bombers, submarines and land-based intercontinental ballistic missiles — will be reduced to limits between 500 and 1,100 for each of the parties. The absence of any references to the Joint Understanding in the joint declaration of 4 December 2009 confirms that the ending of START and the conclusion of the new treaty, though highly interrelated, have been dealt with as separate issues.

What does this mean for the state of affairs as regards strategic nuclear arms reductions between the US and Russia today, about twenty years after the end of the Cold War? The main observation is that the existing Cold War practice of concluding extensively negotiated, detailed nuclear arms control treaties and maintaining those treaties as the cornerstones of strategic stability was largely abandoned in the post-Cold War era. In December 2001, the US unilaterally terminated the 1972 ABM Treaty, with effect as of 13 June 2002. One day later, Russia declared in response that it was no longer bound by its signature of the START II Treaty of 1993, thus ending efforts to bring that treaty into force. With the expiry of START on 5 December 2009, the START follow-on treaty, once in force, will be the only legal instrument in the field of nuclear strategic offensive reductions. The Strategic Offensive Reductions Treaty (SORT) signed on 24 May 2002 and the single contribution of Presidents George W. Bush and Poetin to nuclear arms control law, is superseded by the new START and terminates once it enters into force (Art. XIV.4 new START; otherwise SORT ends on 31 December 2012). SORT was designed as a treaty only at the instigation of Russia and even then resembles a codification of mutual unilateral declarations more than an international agreement.

With the Obama administration, the US again favours international treaty law in the field of nuclear arms control. Already in his — famous — speeches in London and Prague in early April 2009, as confirmed in the Joint Understanding, Obama emphasized that there will be a legally binding successor treaty to START, with new and verifiable reductions of the nuclear arsenals.[8] Like START, the successor treaty has a seven-year reduction-implementation period. It is concluded for a period of ten years, unless superseded by subsequent agreement, and can be extended with a maximum of five years. Like START, it has confidence-building, monitoring and verification mechanisms. The fact that the new treaty is modelled on START not SORT is a good sign, even though START is much more complex than SORT. The latter treaty does not have any monitoring or verification mechanisms nor does it contain 'hard' numerical limitations on strategic nuclear weapons. Moreover, SORT does not relate to delivery vehicles. In that respect the START successor treaty is a step forward in comparison to SORT. The same cannot be said for the numerical limitations therein, even though the new limit on deployed warheads is better than nothing. Like SORT, the new START recognizes each party's right to determine for itself the composition and structure of its strategic offensive arms and only limits operationally deployed warheads. It does not contain provisions with respect to the destruction of nuclear warheads once removed from active deployment. There is only provision for the elimination of certain delivery

7 See 'Joint Understanding for the START follow-on Treaty', 6 July 2009 (www.whitehouse.gov); see also 'President Obama holds a news conference with President Dmitry Medvedev of The Russian Federation', *Washington Post*, 6 July 2009 (www.washingtonpost.com).

8 See the Joint Statement by Obama and Medvedev at the occasion of the G-20 Summit in London, 1 April 2009 (www.whitehouse.gov); speech by Obama in Prague, 5 April 2009 (www.armscontrol.org/node/3626).

vehicles and declared facilities.

The new START sets aggregate limits consisting of 1,550 deployed warheads for each side. There is a combined limit of 800 deployed and non-deployed delivery vehicles, i.e., ICBMs and ICBM launchers, SLBMs and SLBM launchers, and heavy bombers equipped for nuclear weapons, and a separate limit of 700 deployed delivery vehicles. The required levels must be reached within seven years after entry into force of the treaty (which may be well after 2017). Those levels may seem impressive at first sight, but in comparison with the lowest levels in SORT — i.e. 1,700 warheads (the upper level in SORT being 2,200 warheads) at the end of 2012 — the difference is rather small. Regarding the delivery mechanisms the approach under START, simply put, was to count theoretical ('attributable') instead of real numbers. The US has, based on the counting rules of START, 5,916 nuclear warheads on 1,188 delivery systems while reportedly 'in reality' about 2,200 nuclear warheads on about 850 delivery systems remain today (which is primarily due to the fact that START counted the US B-1 bombers and four Trident submarines all of which no longer have nuclear tasks).[9] The current actual numbers are therefore already very close to the new ceilings. In addition, even though the limit of 700 deployed ICBMs and SLBMs including their launchers and heavy bombers equipped for nuclear armaments is noteworthy, each deployed (and each non-deployed) heavy bomber counts as a single delivery vehicle and as a single warhead toward the limit of warheads. In reality, these heavy bombers each can carry up to sixteen (Russian) or up to twenty (American) nuclear cruise missiles and nuclear bombs. The stated reason is that bombers do not pose a first- strike threat to either side and on a day-to-day basis only a few or no bombers are loaded with nuclear weapons, but reportedly Russian objections to all too complicated on-site inspections of heavy bomber air bases is really behind this simplified counting rule. Whatever the reasons, it is a fact that the number of nuclear warheads carried by heavy bombers can be up to twenty times larger than 'on paper', e.g. 500 where only 25 are counted. Hence, within the 'actual' warhead counting under the new treaty, in that each re-entry vehicle on a deployed ICBM or SLBM counts as a separate warhead, there continues to be flexibility, reminiscent of the virtual warhead counting under the 1991 START.

With the abundance of nuclear weapons, including old and outdated ones, in the arsenals of the US and Russia, together accounting for more than 95% of all the nuclear weapons in the world, it may seem that the strong political language of the past year could have been easily followed by concrete legal steps. The question arises as to why the START follow-up treaty has taken so much time to finish. This question brings us to the broader security context of US-Russian strategic nuclear arms reductions.

The security context of the START follow-on negotiations

The almost silent expiry of the 1991 START without a follow-on treaty being ready at the time may be termed a false start for the newly pledged US-Russian concentration on strategic nuclear arms reductions. It is clear that one important reason for the delay in concluding the follow-on treaty is the strong political opposition that President Obama has been facing in the US. A December 15, 2009, letter to the President by all 40 Republicans and one Democrat in the US Senate conveyed the message that further strategic nuclear arms reductions are considered unnecessary, or even harmful to US security interests. Indeed, at a time when the US has committed its military presence for the longer term in many (armed) conflicts around the globe, including in the framework of the fight against international terrorism, among the main concerns of many is not to ensure further nuclear arms reductions, but rather to invest in modernizing the existing nuclear arsenal. A related

9 See K. Reif, 'Obstacles to negotiating a New START Agreement', Center for Arms Control and Non-Proliferation, 30 October 2009 (www.armscontrolcenter.org). See also the First and the Second Agreed Statement in part nine of the Protocol to the new START.

complicating issue is the debate on the US ratification of the Comprehensive Nuclear Test Ban Treaty (CTBT). The Obama administration is adamant in its support for CTBT ratification but nuclear testing according to the opponents of that treaty is indispensable to ensure the future reliability of the modernized nuclear stockpile. Moreover, there are increasing difficulties which threaten the manageability of the goals of nuclear non-proliferation, peaceful nuclear applications and nuclear disarmament, caught as they are in an uneasy triad within the global nuclear non-proliferation regime. The long-anticipated risk that non-nuclear weapon states attempt to acquire a de facto nuclear weapon status has materialized over the past years (India, Pakistan, North Korea, at some point Iraq, now possibly Iran[10]). This has provided strong incentives to pledge further support for progress in efforts to end nuclear weapons proliferation, as for example in UN Security Council resolution 1887 (2009). On the one hand, this may in turn stimulate further nuclear arms reductions as a positive contribution to non-proliferation. On the other hand, the same situation puts an emphasis on the need, felt by many in the US and Russia, to continue to rely on nuclear weapons. Both in the US and Russia, strategic nuclear arms capabilities are still considered vital for defence and security purposes. This, in turn, has further consequences given the indivisible link between national and international security.

Nuclear weapons have always been a central element in the strategic concept of NATO which is currently under review (the draft of the new strategic concept is anticipated to be ready for negotiation among the NATO member states by late summer 2010). The transatlantic security link is most clearly visible in the US tactical nuclear weapons stored on the territory of certain European non-nuclear weapon states.[11] Russia has indicated in its new strategic military doctrine adopted on 5 February 2010 that it still considers the US and NATO to constitute fundamental threats to Russian military security. The US has repeatedly emphasized that Russia is a strategic partner but at the same time the US is not willing to conclude any security treaties with Russia in respect of Europe. Although in several Western European countries there have been calls by (former) politicians to remove all US nuclear weapons from Europe, describing them as obsolete remainders of the Cold War, it can be questioned whether anything will soon change. According to the NATO Secretary-General, the principles of the discussion within NATO are clear: first, that no member State will take unilateral decisions, and, second, that as long as there are nuclear weapons in the world, NATO will need a nuclear deterrent. The long-anticipated 2010 nuclear posture review indicates that the US, through NATO processes, will enter into consultations about the future basing of US nuclear weapons in Europe, but also that the US keeps investing in the technical capabilities to enable future tactical nuclear sharing and continues to be committed to providing a credible extended deterrence posture and capabilities.[12] Earlier a highly influential report, submitted by a bipartisan Congressional Commission on the strategic posture of the US, had already strongly suggested that the US government would continue its commitment to extended deterrence both at the strategic and non-strategic levels for its allies.[13] The security concerns of Eastern European States no doubt play a role. Clearly, the new START is closely connected to the 2010 US nuclear posture review. The first such review since early 2002, it was initially scheduled to be released by the end of 2009 but was postponed several times, because of conflicts within the Obama administration about the future size and role of US nuclear weapon arsenals.

10 On the legal aspects of the case of Iran, see N. Jansen Calamita, 'Sanctions, Countermeasures, and the Iranian Nuclear Issue', *Vanderbilt Journal of Transnational Law* 42, 5 (November 2009), pp. 1393-1442.

11 See e.g. National Resources Defense Council Report, 'US Nuclear Weapons in Europe' (February 2005), Appendix A (www.nrdc.org/nuclear/euro/contents.asp).

12 See US Department of Defense, 'Nuclear Posture Review Report', 6 April 2010 (http://www.defense.gov/npr/docs/2010%20Nuclear%20Posture%20Review%20Report.pdf), p. 27-28.

13 See 'America's Strategic Posture, The Final Report of the Congressional Commission on the Strategic Posture of the United States' (2009), pp. 13, 17, 29, 98-9, 123-5 (www.usip.org/files/America's_Strategic_Posture_Auth_Ed.pdf).

The Pentagon had already indicated in mid-2009 that agreement on a START successor treaty could only be reached after the nuclear posture review was complete. Republicans in the US Senate had even proposed to connect the limitations in the START follow-on treaty not only with the outcome of the US nuclear posture review, but also with the issue of tactical (non-strategic) nuclear weapons.[14] The latter is primarily motivated by US concerns about the exact numbers, as well as the physical protection, of the tactical nuclear weapons currently stored on Russian soil. The idea behind it is that reductions at the strategic level diminish the relative supremacy of the US since the relative supremacy of Russia at the non-strategic level remains unchallenged.[15] Tactical nuclear weapons, however, were not part of the 1991 treaty and remain outside the new START.

Apart from the bilateral and the regional security contexts, the START follow- on negotiations have been connected to the global security context, by way of the nuclear non-proliferation regime. Already at a G-20 summit in April 2009, Presidents Medvedev and Obama, in expressing their intention to demonstrate leadership by reducing the number of nuclear weapons in the world beginning with a legally binding START follow-on treaty, stated that they would do so 'in fulfilment of their obligations under Article VI' of the nuclear Non-Proliferation Treaty.[16] Until not too long ago, the US had favoured the interpretation that Article VI of the NPT was not specifically addressed to the nuclear weapon states, that it did not require the conclusion of legally binding agreements, and that the topic of nuclear arms reductions could not be considered independently from general disarmament.[17] The explicit change in approach by the US, in agreement with Russia, has raised expectations that the very inspiring words will be followed by concrete steps, the more so since the US and Russia have clearly accepted the obligation to reduce nuclear weapons as a matter of international law.[18] This is an important point of view, without a doubt shared by many participating states at the Review Conference of the NPT in May 2010 in New York. The signed START follow-on treaty is an undeniable concrete step in the right direction. However, that alone will not silence the critics who can rightly point to the slow pace and the very cautious approach towards numerical reductions in the still massive US and Russian strategic nuclear weapon stockpiles.

Some START follow-on issues

Added to the security context described above, there have been specific problems related to the START follow-on negotiations which may explain why it has taken much more time than originally envisaged to reach agreement on a definitive text. It is well known that one of the most pressing problems has been Russia's persistence to link 'offensive' strategic nuclear arms to 'defensive' strategic arms, in order to

14 See US Senate Republican Policy Committee, 'START Follow-on Dos & Don'ts', 30 September 2009, pp. 1, 8, 11 (http://rpc.senate.gov/public/_files/093009STARTFollowon DosandDontsms.pdf).

15 Though the exact numbers of the non-strategic nuclear stocks are not publicly known, the existence of a numerical advantage for Russia seems undisputed, with estimates in the range of between 3,000 and 5,000 Russian warheads and between 1,100 and 2,100 US warheads, see, e.g., M.A. Pomper et al., 'Breaking the US-Russian deadlock on nonstrategic nuclear weapons', Bulletin of the Atomic Scientists 4 December 2009 (www.thebulletin.org); WMD Commission, Weapons of Terror: Freeing the World of Nuclear, Biological, and Chemical Arms (2006), p. 97.

16 See 'Joint Statement by President Dmitriy Medvedev of the Russian Federation and President Barack Obama of the United States of America', the White House, Office of the Press Secretary, 1 April 2009 (www.whitehouse.gov).

17 See 'US Compliance with Article VI of the NPT', address by Assistant-Secretary of State for Arms Control Stephen Rademaker, 3 February 2005 (www.acronym.org.uk/docs/0502/doc13).

18 This appears to be in line with the interpretation given by the International Court of Justice, viz. that Art. VI NPT also requires that negotiations on nuclear disarmament are brought to a conclusion; see Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion 8 July 1996, 1996 ICJ Rep. 226, par. 105(F).

incorporate US missile defence plans and systems in the 'package'. The US has been determined in rejecting this linkage, which can hardly be a surprise after the decision to terminate the 1972 ABM Treaty prohibiting the development and making operational of defensive systems with specific ballistic missile interception capabilities. In substance, missile defence is not nuclear, the interception missiles are not considered to be ballistic missiles for the purposes of the new treaty and — according to the US — missile defence does not seek to defend against (Russian) strategic nuclear capabilities. It is therefore not illogical that the new START does not contain any restraints on testing, development or deployment of current or planned missile defence programmes. It only provides that missile defence interceptors shall not be placed in ICBM and SLBM launchers (in order to avoid 'mixed' strategic weapons combining offensive and defensive functions). Even though the new START, as was already indicated in the Joint Understanding of July 2009, contains a sentence in the preamble on the interrelationship of strategic offensive and strategic defensive arms, the US has always maintained that it was understood in the negotiations by both sides that missile defence is not part of the START follow-on treaty.[19] Indeed, it is stated in the preamble of the new START that 'current strategic defensive arms do not undermine the viability and effectiveness of the strategic offensive arms of the parties'. As a face-saver, and perhaps a warning in disguise, Russia has issued a 'unilateral statement' in connection with the treaty signing, indicating that a qualitative or quantitative build-up in the US missile defence system would justify Russia's withdrawal from the new START. The US interprets this statement to mean that if Russia believes that US missile defence affects strategic stability it may decide to pull out of the treaty.[20] This interpretation seems reasonable but it cannot prevent that, for example, Russia could threaten to leave the new START if the US modifies its currently existing ballistic missile interception capabilities. Republicans have already used the Russian unilateral statement to cast doubt on the value of the new START for the US, which indicates that the possible implications for the further development of US missile defence will remain an issue in the follow-up to treaty ratification.

Other reported issues include exactly which counting rules would be used and whether or not both partial and global ceilings would again be agreed. START contained separate ceilings for ground, sea and air-based delivery vehicles and also a global ceiling of 6,000 nuclear warheads irrespective of their method of delivery. The new START contains a ceiling of deployed warheads irrespective of their method of delivery and, in addition, has limits for combined deployed and non-deployed delivery vehicles and for deployed delivery vehicles only. The latter limit of 700 deployed delivery vehicles reflects the middle ground reached between the parties: the US, which at present has about 850 deployed strategic delivery vehicles, originally wanted to set the limit at 800, whereas Russia, which has fewer deployed delivery vehicles than the US, originally opted for a limit of 550. Critics of the new treaty in the US say that Russia under the agreed limits does not have to give up anything 'not already bound for its scrap heap'.

A related issue concerned non-nuclear (conventional) configurations of strategic weapons. Under START, there was consensus that non-nuclear arms 'existing' at the time of signing the treaty and mounted on delivery vehicles covered by it qualified as strategic offensive arms subject to the treaty, whereas any 'new' such non-nuclear systems according to the US were not covered by START, but according to Russia they were. That difference of opinion between the parties was not resolved definitively and instead it was agreed that an

19 See T. Collina, 'Administration pushes to Finish 'New START', Arms Control Today, September 2009 (www.armscontrol.org/act/2009_09/START).

20 See B. McKeon, 'A new START in Prague', The White House Blog, 8 April 2010 (http://www.whitehouse.gov/blog/2010/04/07/a-new-start).

ad hoc solution would be sought if a problem emerged.[21] Under the new treaty, a similar solution has been chosen regarding alleged 'new' types of strategic offensive arms (Art. V.2 new START) but there seem to be no constraints either on current or on planned long-range conventional strike capabilities. This was an important point for the Obama administration, since it was felt that the conventional strike capabilities of the US should be sufficient to deter virtually any non-nuclear attack against the US or its allies in order to allow the role of nuclear weapons in US security policies to be reduced.

Another issue which took much time to negotiate was the design of the exchange of information, notification and verification mechanisms. Under START, like other arms control treaties having their origin in the Cold War, control of compliance ('trust but verify') was the leading thought. It resulted in very lengthy and detailed verification protocols and annexes, joint understandings and other accessory documents to the treaty, all meant to ensure the verified implementation of the reductions and to create a treaty regime built on mutual confidence and security. As was already apparent from the Joint Understanding of July 2009 the parties under the new treaty have aimed for simplified and less costly measures as compared to the 1991 START, even though next to national technical means of verification, on-site inspections, exhibitions of launchers, data exchanges and notifications of certain arms and facilities are part of the compliance control mechanism of the new treaty (which has an extensive implementation Protocol to it, including ten agreed statements, as well as a technical annex). One specific verification-related problem has been that Russia, unlike the US, no longer wanted to exchange telemetric (flight-test) data or to submit technical data of newly deployed strategic missiles. This, however, has been due to a lack of reciprocity, creating inequality on this point, rather than a principled objection: whereas the US has not been developing new strategic missiles and therefore has nothing to report at present, Russia has. In particular, Russia has planned the operational deployment of its new mobile RS-24 strategic missile in 2010 or early 2011.[22] It is not entirely clear whether the RS-24 is a modified Topol-M class missile rather than a new design — that, too, would be revealed to the US if technical data would continue to be submitted in the START format. Russia has eventually conceded this point in that the RS-24 counts as an 'existing' type of ICBM as of the date of signature of the new treaty (Art. III.8 new START), but the exchange of telemetric data shall be on a parity basis and on no more than five launches per year (Art. IX new START and Protocol, part seven).

Even though the new START constitutes an important step towards improved relationships between the US and Russia, on crucial points the new treaty is still caught in a Cold War frame of strategic thinking. The decision to keep long-range heavy bombers with a nuclear task in service, next to hundreds of operationally deployed nuclear ballistic missiles that are ready to launch in minutes, is a strong reminder of Cold War scenarios preventing a disarming first-strike capability by a wide range of strategic second-strike capabilities. Moreover, the counting of warheads in the new treaty does not include non-deployed warheads. According to the US, non-deployed warheads inter alia 'hedge against technical or geopolitical surprise'[23] — again a reminder of Cold War logic. The probably many thousands of nuclear warheads held in storage by both parties today are unaffected by the new treaty. The only 'limit' that can be linked with non-deployed warheads is that no more than a hundred delivery vehicles can be available for non-deployed warheads. Then again, it takes

21 The compromise eventually reached was that if a concrete problem would emerge, a solution would be sought through the Joint Compliance and Inspection Commission established under Art. XV of START to promote the treaty objectives and its implementation. Under the new START, Art. XII, a Bilateral Consultative Commission shall have the same tasks.

22 See 'No RS-24 until 2011?' (http://russianforces.org/blog/2010/01/no_rs- 24_until_2011.shtml); T. Collina, 'START Stalls; Talks continue', Arms Control Today, January/February 2010 (www.armscontrol.org/act/2010_01-02/START).

23 See the Nuclear Posture Review Report (note 12), p. 38.

no more than a handful of heavy bombers to deploy another hundred nuclear warheads under the counting rules of the new START. In sum, in terms of reducing the strategic nuclear capabilities in the world the treaty is disappointing.

After the signing, ratification of the new START by the US Senate may still be difficult considering the required two-thirds majority and the current Republican opposition. Without ratification by both parties, the treaty cannot enter into force. Even then, signatory States under international law have an obligation not to defeat the object and purpose of the treaty pending its entry into force.[24] This means that the process of further reducing strategic nuclear weapons cannot be reversed as a matter of international law. Moreover, some articles of the new treaty, including parts of the monitoring and verification mechanisms of the Protocol to it, apply provisionally as of the date of signature (Protocol, part eight), as occurred under the 1991 treaty previously. Then again, when in force, the standard withdrawal clause, characteristic of arms control treaty law, allows each party to withdraw from the treaty (on three months' notice) if extraordinary events related to the subject-matter of the treaty have jeopardized its supreme interests (Art. XIV.3 new START). As mentioned, Russia may consider US missile defence upgrading to be sufficient for withdrawal. Apparently even the much debated use of the same standard clause by North Korea in order to withdraw from the NPT in 2003 has not changed the perceived need for maximum flexibility in arms control treaty law, even in this bipartite treaty with a limited duration of no more than ten to fifteen years.

Conclusion

With the original START having expired, the US and Russia have been taking more time than originally envisaged to reach agreement on the START follow-on treaty. The agreed further reductions of strategic offensive arms are, however, far from impressive. On crucial points, the new treaty is still a produce of Cold War strategic thinking. Regarding the future of nuclear arms reductions, much will depend on the developments in the political-strategic climate between the US and Russia and also on the regional (NATO) and global (nuclear non-proliferation regime) levels. Worldwide, expectations are high ever since President Obama announced his country's leadership in the reduction of nuclear weapons and cherished the vision of a nuclear weapon free world. It is however high time that the international attention shifts from a fixation on this latter, still utopian, end- goal, to the small but concrete legal steps towards further and more meaningful nuclear arms reductions. The new START should be only the beginning.

24 This rule of customary international law has been codified in Article 18 of the 1969 Vienna Convention on the Law of Treaties (1155 U.N.T.S. 331).

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