

**The 2002 Moscow Treaty:
Marking a New Strategic Relationship Between the United States and Russia**

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On 6 March 2003, the Senate unanimously consented to ratify the 2002 United States-Russia arms reduction treaty (Moscow Treaty),² marking a new era in relations between the two states. The Moscow Treaty codifies the significant reductions which were announced jointly by Presidents George W. Bush and Vladimir Putin in Washington, D.C., and Crawford, Texas in November 2001.³ Secretary of State Colin L. Powell wrote the following in his June 2002 Letter of Submittal of the Treaty to the President: “The Moscow Treaty is one important element of a new strategic framework, which involves a broad array of cooperative efforts in political, economic and security areas.”⁴

Background

Nuclear non-proliferation has been a fundamental policy of the United States since the conclusion of World War II, when the post-war effects of Hiroshima and Nagasaki became known. The past thirty years have witnessed three principal efforts, prior to the Moscow Treaty, to limit and reduce strategic arms. After nearly three years of negotiation from 1968-1971, the Strategic Arms Limitation Talks (SALT I) process resulted in passage of two critical agreements, the Anti-Ballistic Missile (ABM) Treaty⁵ and the Interim Agreement on the Limitation of Strategic Offensive Arms.⁶

The ABM Treaty prohibited the United States and the Soviet Union from developing, testing, and deploying a nationwide ABM system.⁷ The Interim Agreement put a cap on each side’s ICBM force by prohibiting the construction of any additional fixed, land-based launchers for ICBMs.⁸ Together these agreements marked the first successful effort of the superpowers to regulate their deployment of strategic offensive forces and defensive systems that could drive each to deploy even greater numbers of offensive nuclear forces.

The second effort culminated in the signing of the SALT II Treaty at the Vienna Summit by President Jimmy Carter and General Secretary Leonid Brezhnev on 18 June 1979.⁹ This agreement was intended to replace the Interim Agreement with a long-term comprehensive treaty providing broad limits on strategic offensive weapons systems. It provided for numerical limits including an equal aggregate limit on strategic nuclear delivery vehicles, launchers of MIRVed ICBMs, and heavy bombers with long-range cruise missiles.¹⁰

Never ratified, the treaty would have imposed numerous restraints on qualitative developments which could threaten future stability, such as the ban on heavy mobile ICBM launchers and heavy SLBMs, on the flight testing or deployment of new types of ICBMs, and on new types of strategic offensive systems. However, following the Soviet invasion of

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² Treaty on Strategic Offensive Reductions, May 24, 2002, U.S.-Russ., S. TREATY DOC. NO. 107-8 (2002) [hereinafter Moscow Treaty]. On 6 March 2003, the Senate unanimously voted 95-0 to approve the Resolution of Ratification (five Senators were absent). *See Moscow Treaty Approved*, WASH. POST, Mar. 7, 2003, at A3.

³ *See* Patrick E. Tyler, *The Bush-Putin Summit: News Analysis; Missile Impasse: The Shape of the Deal*, N.Y. TIMES, Nov. 16, 2001, at A12. The Moscow Treaty requires that the United States and Russia reduce and limit their strategic nuclear warheads to 1700-2200 each by 31 December 2012, a reduction of nearly two-thirds below current levels. *See* Moscow Treaty, *supra* note 2, at art. I.

⁴ Letter from Secretary of State Colin Powell to The President of the United States (June 20, 2002), available at <http://www.state.gov/t/ac/trt/18016.htm#3> [hereinafter Submittal Letter].

⁵ Treaty on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, U.S.-U.S.S.R., 23 U.S.T. 3435 [hereinafter ABM Treaty].

⁶ Interim Agreement on the Limitation of Strategic Offensive Arms, May 26, 1972, U.S.-U.S.S.R., 23 U.S.T. 3462 [hereinafter Interim Agreement].

⁷ *See* ABM Treaty, *supra* note 5, at arts. I(2), III, V.

⁸ *See* Interim Agreement, *supra* note 6, at art. I.

⁹ Treaty on the Limitation of Offensive Arms and Protocol Thereto, June 18, 1979, U.S.-U.S.S.R., S. EXEC. DOC. Y, 96-1, at 37 (1979) [hereinafter SALT II Treaty].

¹⁰ *See id.* at art. 3.

Afghanistan in 1979, the SALT II Treaty was not ratified and never entered into force.¹¹

The third effort was begun during President Ronald Reagan's first administration in 1981. This process centered on both strategic reductions (START) and intermediate-range forces (INF). The INF Agreement, signed on 8 December 1987, with advice and consent provided by the Senate on 27 May 1988,¹² required that "each party shall eliminate its intermediate-range and shorter-range ground missiles."¹³ The INF Treaty was significant in that it was the first treaty to ban an entire class of missiles (however armed). The Strategic Offensive Arms Reduction and Limitation of Strategic Offensive Arms (START) Treaty, entered into force in 1994, provided for very deep reductions in strategic land-based and sea-based missiles, launchers, and deployed heavy bombers, and the nuclear weapons attributed to them.¹⁴ It also contains significant qualitative limits on each sides' strategic forces and, like INF, includes detailed verification and inspection provisions unprecedented in their breadth and intrusiveness.¹⁵

The Moscow Treaty

The Moscow Treaty is brief, encompassing only five Articles. Article I, the central article in the treaty, provides:

Each party shall reduce and limit strategic nuclear warheads . . . so that by December 31, 2012 the aggregate number of such warheads does not exceed 1700-2200 for each Party. Each Party shall determine for itself the composition and structure of its strategic offensive arms, based on the established aggregate limit for the number of such warheads.¹⁶

As stated in the 20 June 2002 Letter of Submittal to the President: "The United States and Russia both intend to carry out strategic offensive reductions to the lowest possible levels consistent with their national security requirements and alliance obligation, and reflecting the new nature of their strategic relations."¹⁷ The Article I limits affect only "strategic nuclear warheads." The treaty by its own terms does not limit the number of U.S. or Russian delivery vehicles, as were implicated in the Strategic Offensive Arms Reduction and Limitation of Strategic Offensive Arms (START) Treaty.¹⁸ Thus, the number of inter-continental ballistic missiles (ICBMs) or submarine-launched ballistic missiles or their associated launchers or heavy bombers are not affected.

Each side has the flexibility to decide what counting methodology it will use to reach the treaty's limits. This flexibility represents a significant departure from the START Treaty, which contains very precise counting rules that attribute a specific number of warheads (encompassing both nuclear *and* non-nuclear) to each type of delivery vehicle (ICBM, SLBM or heavy bomber), irrespective of how many warheads may actually be deployed on a missile or bomber at any specific time.¹⁹ Thus, the numbers counted under the START Treaty may be different from both the number representing the capacity of the specific system and the actual number of warheads carried at any one time by that system.²⁰

¹¹ See 79 U.S. DEP'T OF STATE BULL. NO. 2028, at 23 (July 1979).

¹² Treaty on the Elimination of Intermediate-Range and Shorter-Range Missiles, Dec. 8, 1987, U.S.-U.S.S.R., S. TREATY DOC. NO. 100-11 (1988), available at <http://www.state.gov/www/global/arms/treaties/inf2.html> [hereinafter INF Treaty].

¹³ *Id.* at art. 1.

¹⁴ Treaty on the Reduction and Limitation of Strategic Offensive Arms, July 31, 1991, U.S.-U.S.S.R., S. TREATY DOC. NO. 102-20 (1991) [hereinafter START I Treaty].

¹⁵ See *id.* at arts. 11, 12.

¹⁶ Moscow Treaty, *supra* note 2, at art. I.

¹⁷ Submittal Letter, *supra* note 4.

¹⁸ START I Treaty, *supra* note 14.

¹⁹ See *id.* at art. 2. On 1 October 1992, the Senate gave its advice and consent to the ratification of the START Treaty (93-6). See JOHN NORTON MOORE, GUY B. ROBERTS, ROBERT F. TURNER, NATIONAL SECURITY LAW DOCUMENTS 450 n.1 (1995) (reprinting the Moscow Treaty). On 4 November 1992, the Supreme Soviet of the Russian Federation voted to ratify the START Treaty by a vote of 157-1 with twenty-six abstentions. See *id.* The Treaty entered into force in 1994 when all elements of the Lisbon Protocol were carried out. See *id.*

²⁰ A further difference between START and the Moscow Treaty is that the attributed number of warheads to be counted in START I includes any kind of warhead, non-nuclear (for example, high explosive, chemical or biological) or nuclear, while the Moscow Treaty includes only deployed nuclear warheads. See Moscow Treaty, *supra* note 2, at art. I; START I Treaty, *supra* note 14, at art. 1.

To reach the limits under the Moscow Treaty, the United States has decided to use the concept of “operationally deployed” warheads. As President Bush stated on 13 November 2001: “. . . the United States will reduce our operationally deployed strategic nuclear warheads to a level between 1,700 and 2,200 over the next decade, a level consistent with American security.”²¹ The article-by-article analysis the Administration transmitted to the Senate includes the following explanation of the term “operationally deployed:”

. . . in using the term “operationally deployed strategic nuclear warheads” the United States means reentry vehicles on ICBMs in their launchers, reentry vehicles on SLBMs in their launchers aboard submarines, and nuclear armaments loaded on heavy bombers or stored in weapons storage areas of heavy bomber bases. The United States also made clear that a small number of spare strategic nuclear warheads (including spare ICBM warheads) would be located at heavy bomber bases and that the United States would not consider these warheads to be operationally deployed strategic nuclear warheads.²²

Thus, under the Moscow Treaty, the United States will count the actual number of strategic nuclear warheads on missiles in their launchers and at bomber bases to reduce the level to between 1,700-2,200.²³ Another interesting aspect of this treaty is that it contains only a final reduction level to be achieved, with no interim reduction levels to be met during the term of the agreement. In practical terms, the requirements of Article I mean that both sides must determine for themselves how and when to implement their reductions in order to meet their final limits on time.

Further, “[t]he Treaty does not restrict a Party’s decisions regarding how it will implement the required reductions.”²⁴ It is expected that each side will plan in advance how to execute its own reductions and will do so in a timely and measured fashion. For instance, the U.S. already has outlined the first phase of its planned drawdown. In a report to Congress in January 2002, the Department of Defense outlined the U.S. plan to retire all fifty of its ten-warhead Peacekeeper ICBMs and remove four Trident submarines from strategic service by the end of Fiscal Year 2007.²⁵ In addition, the United States has indicated it will likely implement the additional required reductions through downloading—the removal of a subset of warheads currently deployed on missiles.

Article II of the treaty provides that, “[t]he Parties agree that the START Treaty remains in force in accordance with its terms.”²⁶ The importance of this article is that it confirms that the 1991 START Treaty is separate from the Moscow Treaty, and the former’s terms are not affected in any way by the new agreement. The START Treaty, with about 300 pages of text and protocols, contains detailed provisions for, among other things, data exchange, notifications, conversion and elimination procedures, and inspection and verification procedures, including continuous monitoring at certain missile production plants.²⁷ In contrast, the Moscow Treaty contains no such verification and inspection provisions, reflecting the President’s view that “[t]here is no longer the need to narrowly regulate every step we each take, as did Cold War treaties founded on mutual suspicion and an adversarial relationship.”²⁸

Article III of the Moscow Treaty establishes a Bilateral Implementation Commission (Bilateral Commission). It states: “For purposes of implementing this Treaty, the Parties shall hold meetings at least twice a year of a Bilateral Implementation Commission.”²⁹ This diplomatic forum will discuss issues related to implementation of the Treaty in its annual meetings. The Bilateral Commission will be separate and distinct from the Consultative Group for Strategic Security (CGSS), established by the Joint U.S.-Russia Declaration of 24 May 2002.³⁰

²¹ President George W. Bush, Press Conference at the White House, the East Room (Nov. 13, 2001), at <http://www.whitehouse.gov/news/release/2001/11/20011113-3.html>.

²² *Article-by-Article Analysis of the Treaty Between the United States of America and the Russian Federation on Strategic Offensive Reductions* (undated), at <http://www.state.gov/t/ac/trt/18016.htm#4> (last visited Jan. 21, 2005).

²³ *Id.* at art. I analysis (reflecting also that, “Russia did not state conclusively during the negotiations how it intends to carry out its reductions”).

²⁴ *Id.*

²⁵ See Dep’t of Defense Nuclear Posture Review Briefing submitted to Congress (Jan. 2002) (detailing NPR decisions made to reduce operationally deployed warheads to 1700-2200 over the next decade and that planned reductions will be completed in phases) (briefing slide presentation on file with author).

²⁶ Moscow Treaty, *supra* note 2, at art. II.

²⁷ See START I Treaty, *supra* note 14, at arts. 11, 12.

²⁸ Moscow Treaty, *supra* note 2, at iv.

²⁹ *Id.* at art. III.

Because the Moscow Treaty does not contain provisions for making “viability and effectiveness” changes to treaty obligations, the Bilateral Commission will not have the kind of authority to negotiate and bring into effect such changes, as do the implementing bodies for some other arms control treaties, such as the START Treaty’s Joint Compliance and Inspection Commission.³¹ As a result, any changes to the obligations under the treaty would have to be submitted to the Senate as amendments for advice and consent, unless the Senate agreed that submission was not required. Through the Bilateral Commission, as with any other U.S.-Russian diplomatic channel, the United States and Russia could negotiate and agree, for example, on procedures for implementing treaty obligations or for exchanging information on a party’s treaty implementation, as long as such agreements do not change treaty obligations.

As noted earlier, the CGSS, established by President Bush and President Putin at the Moscow Summit on 24 May 2002,³² is not a part of the treaty structure. Nevertheless, it can play an important role in the cooperation necessary to the effective implementation of the Moscow Treaty’s provisions. This group will be the principal mechanism through which the United States and Russia strengthen mutual confidence, expand transparency, share information and plans, and discuss strategic issues of mutual interest. As provided in the Joint Declaration, the CGSS will be chaired by the two countries’ Foreign and Defense Ministers.³³

Article IV consists of three paragraphs covering ratification, entry into force, duration and withdrawal:

1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of each Party. This Treaty shall enter into force on the date of the exchange of instruments of ratification.
2. This Treaty shall remain in force until December 31, 2012 and may be extended by agreement of the Parties or superseded earlier by a subsequent agreement.
3. Each Party, in exercising its national Sovereignty, may withdraw from this Treaty upon three months written notice to the other Party.³⁴

This three months’ notice period is shorter than has been typical in previous arms control agreements—six months notice was required in the case of the ABM Treaty, for instance.³⁵ Also, different from several prior agreements, this withdrawal clause is not tied to a party’s determination that extraordinary circumstances jeopardizing its supreme national interests exist.³⁶ The Moscow Treaty thus allows greater flexibility for both sides to respond to unforeseen circumstances, such as changes in the international environment, or the emergence of new threats.

Article V, the final provision in the treaty, sets forth the standard requirements for registration of the treaty with the United Nations pursuant to Article 102 of the UN Charter.³⁷

³⁰ Secretary of State Colin Powell observed in his July 9, 2002 written statement on the Moscow Treaty before the Senate Foreign Relations Committee that the Consultative Group would be “a broader forum to discuss issues of strategic significance and to enhance mutual transparency.” Statement for the Record, Secretary of State Colin L. Powell, subject: Senate Foreign Relations Committee Hearing 4 (9 July 2002) [hereinafter Powell Statement].

³¹ See START I Treaty, *supra* note 14, at art. 15(b) (providing that the Joint Compliance and Inspection Commission shall meet to “. . . agree upon such additional measures as may be necessary to improve the viability and effectiveness of this Treaty”).

³² See *Joint Declaration on the New Strategic Relationship Between the United States and Russia*, May 24, 2002, at <http://www.state.gov/t/ac/trt/18016.htm#13>.

³³ *Id.*

³⁴ Moscow Treaty, *supra* note 2, at art. IV.

³⁵ See ABM Treaty, *supra* note 5, at art. XV(2).

³⁶ See, e.g., Treaty on Further Reduction and Limitation of Strategic Offensive Arms, Jan. 3, 1991, U.S.-Russ., S. TREATY DOC. NO. 103-1, art. 6(4) (1993) [hereinafter START II Treaty]. The treaty states:

Each Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests. It shall give notice of its decision to the other Party six months prior to withdrawal from this Treaty. Such notice shall include a statement of the extraordinary events the notifying Party regards as having jeopardized its supreme interests.

Id. The START II Treaty was not ratified. See *id.*

³⁷ U.N. CHARTER art. 102(1). The U.N. Charter provides: “Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.” *Id.*

Verification of the Moscow Treaty Reductions

As is obvious from the review of the Moscow Treaty's operative provisions, there is no verification regime established by this treaty. It was determined, however, that U.S. security and the new strategic relationship with Russia do not require a tailored verification regime. Unlike prior arms control agreements with the Russians in which suspicion and distrust marked the relationship, the current approach taken by Presidents Bush and Putin is reflective of trust, openness, cooperation and predictability. As Secretary Powell stated in addressing verification in his 9 July 2002, testimony before the Senate Foreign Relations Committee:

I have submitted to the Congress a report required by Section 306 of the Arms Control and Disarmament Act on the verifiability of the Moscow Treaty. In that Report, I conclude that the Treaty is not constructed to be verifiable within the meaning of Section 306, and it is indeed not. A treaty that was verifiable under the old Cold War paradigm was neither required nor relevant in this case.³⁸

Another consideration in not seeking new verification measures in negotiating the Moscow Treaty relates to the existing framework established for the START Treaty. While the START provisions do not extend to the Moscow Treaty, and while the Moscow Treaty's verification provisions were designed with START's different counting rules in mind, the information obtained in monitoring START is relevant to the Moscow Treaty. The START verification regime, including its data exchanges,³⁹ on-site inspections,⁴⁰ and provisions concerning conversion and elimination,⁴¹ will continue through 2009 and add to the U.S.'s knowledge concerning the disposition of Russia's strategic nuclear warheads and the overall reduction in Russia's strategic forces. This will aid significantly in the U.S.'s confidence concerning Russian reductions under the Moscow Treaty.

Unless further extended, the START Treaty expires in 2009. For this reason, confidence in Russia's reductions under the new agreement beyond 2009 will depend upon information sharing established under the Moscow Treaty, information the United States has from other sources, and the expected maturity and transparency of the new strategic relationship between the two states. Of course, the United States will continue to devote national intelligence resources to monitoring the size and composition of Russian strategic forces.

In addition to these sources, the ongoing U.S. programs to assist Russia in eliminating its strategic offensive arms and enhance the safety and security of nuclear warheads in Russia will yield additional data on Russia's reduction efforts.⁴² Thus, the United States will gain significant insight into the disposition of Russia's strategic offensive forces through its national intelligence sources, bilateral assistance programs, the START Treaty, the work of the Consultative Group for Strategic Security, and the Bilateral Commission consultations. These data sources, when considered in the aggregate, should prove sufficient to provide confidence that Russia is continuing to meet its Moscow Treaty obligations.

The Moscow Treaty's Relationship to Nuclear Non-Proliferation Treaty Obligations

The Nuclear Non-Proliferation Treaty (NPT)⁴³ is the centerpiece of the global nuclear non-proliferation regime. This treaty, which was signed in 1968 and entered into force for the United States in 1970, represents the culmination of years of effort in the United Nations and special U.N. organizations, particularly the Eighteen Nation Disarmament Committee.⁴⁴ Article VI of the NPT reflects the agreement by the nuclear weapons states to seek an early end to the nuclear arms race and to seek nuclear disarmament as well as general and complete disarmament "under strict and effective international control."⁴⁵

While the fact that the Moscow Treaty does not call for the destruction of either delivery vehicles or nuclear warheads

³⁸ Powell Statement, *supra* note 30, at 7.

³⁹ START I Treaty, *supra* note 14, at art. 11(2); sec. 1 of the Notification Protocol.

⁴⁰ START I Treaty, *supra* note 14, at art. 11(3).

⁴¹ *Id.* art. 11(8).

⁴² See, e.g., Cooperative Threat Reduction Act of 1993, Pub. L. No. 103-160, tit. xii and the Freedom Support Act of 1991, Pub. L. No. 102-511, section 502.

⁴³ Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483 [hereinafter Non-Proliferation Treaty].

⁴⁴ See, e.g., John Rhinelander, *Arms Control in the Nuclear Age*, in MOORE, *supra* note 19, at 579.

⁴⁵ Non-Proliferation Treaty, *supra* note 43, at art. VI.

may cause some observers to question whether it represents an “effective” measure “relating to nuclear disarmament” called for in Article VI, the Moscow Treaty is consistent with that article’s recognition that disarmament can only be achieved through a step-by-step process. Article VI specifically sets no timelines or specific milestones.⁴⁶ It recognizes that while the elimination of nuclear weapons is a key goal, it is a goal that will not be reached quickly or without enormous effort. The Moscow Treaty represents an important step in the process of reductions called for in Article VI of the NPT.⁴⁷

Conclusion

The Moscow Treaty represents a continuation of the United States and Russia’s long-standing process to regulate, reduce, and increase transparency concerning the nuclear-capable forces of each country. At the same time, it represents a departure from the past, because it reflects the fact that Russia is not the Soviet Union, and that our mutual relationship is no longer adversarial.

Thus, the Moscow Treaty provides deep reductions in strategic nuclear warheads, but in a much more flexible manner and without the extensive verification and implementation provisions that we relied upon for the INF and START Treaties. As Chairman John Warner of the Senate Armed Services Committee observed in a 21 October 2002 letter to then-Chairman Joseph Biden and Senator Jesse Helms of the Senate Foreign Relations Committee:

In my view, the strength of the Moscow Treaty is in its simplicity. This Treaty is not like any that we have seen before. It is the first arms control treaty to embody the post Cold War U.S.-Russian relationship. In negotiating this Treaty, both sides consciously rejected the Cold War mentality of distrust and hostility that previously had required lengthy negotiations, and extensive legal structures and detailed verification regimes to ensure that both sides would abide by their obligations. This simplicity puts the focus where it belongs—on the deep equitable reductions to strategic nuclear warheads which are the centerpiece of the Moscow Treaty.⁴⁸

As noted by Senator Warner, the most important feature of this arms control agreement is the deep reductions it will achieve. It will reduce the arsenals of both sides from the present levels of approximately 6000 START-accountable warheads to 1700-2200 deployed strategic nuclear warheads.

The Moscow Treaty is clearly an important step forward in the U.S.-Russian strategic relationship. The Treaty requires the United States and Russia to continue on the path of deep reductions in deployed strategic nuclear warheads, while at the same time preserving flexibility to meet unforeseen strategic changes. It reflects the new era in which Cold War suspicion has been replaced by trust and cooperation with a major power that is no longer an adversary, but an important U.S. partner.

⁴⁶ No preceding arms control treaty, to include SALT, SALT II, START, START II or INF, required warhead elimination because of the difficulties associated with verifying destruction. These prior treaties dealt with the elimination of launchers and delivery vehicles, not warhead elimination. The Moscow Treaty similarly does not deal with warhead elimination, only removal from deployed status.

⁴⁷ Some of the U.S. warheads removed from deployed status as required by the Moscow Treaty will be used as spares, some will be stored, and some will be destroyed.

⁴⁸ Letter from Senator John Warner, to Senators Joseph R. Biden, Jr. & Jesse Helms (Oct. 21, 2002) (on file with author) (detailing the importance of the Moscow Treaty).