Preventing Withdrawal from Arms Control Treaties: Applying Past Lessons to New START and Future Arms Control Treaties

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“Couples getting married do not negotiate a divorce clause”

Andrei Gromyko, Soviet Minister of Foreign Affairs during the negotiations of the Limited Test Ban Treaty (Bunn 1992, 38)

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Abstract: Skeptics of New START argue Russia will utilize the withdrawal clause to extract concessions from the US on missile defense. This paper explores the origins of the withdrawal language in New START and illustrates the two case arms control withdrawal cases: America’s withdrawal from the ABM Treaty and North Korea’s withdrawal from the NPT Treaty. Then, the paper outlines what rights Russia has to withdraw from New START and assess the chances of Russia withdrawing. Finally, the author offers recommendations for policy makers to minimize the chance of Russia withdrawing from New START and recommends arms control treaties allow unilateral withdrawal clauses over stipulated withdrawal clauses.

Key words: treaty law, nuclear policy, Russia, American foreign policy, missile defense
Introduction

President Barack Obama and Russian President Dmitry Medvedev signed the New Strategic Arms Reduction Treaty (New START) on April 8th, 2010. The US Senate consented to New START’s ratification on December 22nd, 2010, by a vote of 71-26. The treaty then went into force on February 5th, 2011. New START is a bi-lateral treaty that envisages the United States and the Russian Federation (“Russia”) to limit their respective deployed strategic nuclear arsenals to 1,550 warheads apiece; a decrease from the 2,200 deployed warhead ceiling outlined in the 2002 Strategic Offensive Reductions Treaty (SORT or Moscow Treaty). During Senate debate over New START, skeptics noted that Russian threats to withdraw from New START over American developments in missile defense would provide leverage to the Russians in future arms control and nonproliferation efforts with the United States. Sergei Lavrov, Russia’s Foreign Minister, stated in a press conference on April 6th, 2010, that Russia is “entitled to withdraw if US strategic missile defense begins to have a significant impact on the effectiveness of [sic] the [sic] Russian strategic nuclear forces” (Ministry of Foreign Affairs of the Russian Federation 2010). President Medvedev echoed the foreign minister’s comments by issuing a “unilateral statement” during the signing of New START. It stated that American attempts to augment missile defense capability in a quantitative or qualitative way that threatens Russian strategic nuclear forces will provide a basis for withdrawal (Kremlin).

Article XIV in New START stipulates that Russia or the United States give three months notice, in writing, to the other party on its intention to withdraw from New START based on “extraordinary events” related to the treaty that threatens the withdrawing party’s supreme national interests. This paper seeks to understand what negotiators meant by this turn of phrase and how actual implementation of article XIV would look in practice. The withdrawal clause in New START was taken nearly verbatim from previous arms control treaties including the Limited Test Ban Treaty (LTBT), the Antiballistic

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Missile (ABM) Treaty and the Nonproliferation Treaty (NPT). Since ratification of these arms control treaties there have only been two formal withdrawals: The United States withdrawal from the ABM Treaty in 2002 and the Democratic People’s Republic of Korea (“North Korea”) withdrawal from the NPT in 2003. This paper is divided into five different sections. First, it outlines how international law accommodates treaty withdrawal. Second, it provides a nuanced analysis on the withdrawal clauses in the LTBT, ABM treaty and NPT. Then, it briefly illustrates the North Korean and American withdrawal. Fourth, it applies these illustrations to New START in order to understand what rights Russia has to withdraw and the likelihood Russia will follow through with its threats to withdraw. Finally, recommendations are made to policy makers to minimize the chance of Russia withdrawing from New START and how to generally prevent future withdrawals in future multilateral arms control treaties.

**Withdrawing from Treaties: International Law**

The Vienna Convention on the Law of Treaties (Vienna Convention) is the authoritative source on bi-lateral and multi-lateral treaty interpretation. Article 2(a) of the Vienna Convention defines a treaty as “an international agreement concluded between States in written form and governed by international law.” Articles 26 and 54 permit withdrawal in “good faith” when it conforms with the provisions of the treaty or all parties consent to terminate the treaty. Furthermore, Article 57 states that if a treaty does not have a provision to withdraw then a party may still withdraw if the parties “intended to admit the possibility of withdrawal” or the right is “implied” by the nature of the treaty. Finally, Article states that a party may withdraw from a treaty when another party commits a “material breach.” Article 60 (3) defines a material breach as a repudiation of the treaty or a violation to a treaty provision that is “essential to the accomplishment” of the treaty (Vienna Convention). If a party commits a material breach, the other party has the right to suspend its performance, withdraw or do nothing. This legal right to withdraw would complement a party’s political right to withdraw based on extraordinary events. In other words, extraordinary events may be beholden to political whims of the time that were not considered while the
treaty was negotiated and signed. All the arms control treaties in this essay fit the criteria of being a treaty under the Vienna Convention and have provisions that permits withdrawal.

**Negotiating Divorce: Withdrawal from the Limited Test Ban Treaty and ABM Treaty**

The LTBT was the first major multilateral treaty between the nuclear weapon states [NWS] to control the use of nuclear weapons; the withdrawal clause would serve as a blueprint for all future arms control treaties (Shaker 1980, 884). Signed in 1963, the LTBT outlawed the testing of nuclear weapons in the atmosphere, outer space, underwater, or any method that would cause radioactive debris to collect outside the parties’ territory. Possible withdrawal from the LTBT was discussed between American, British and Soviet negotiators. Since the treaty was slated to be unlimited in duration, all sides agreed that establishing an understanding on withdrawal was vital. The Americans preferred to formalize a withdrawal procedure in writing while the Soviets viewed treaties as a marriage between states. In other words, discussing a withdrawal procedure was moot; any party, just like a husband or wife, had the inherent right to leave at any time they wished. Gromyko, enshrined this belief by expressing his frustration to American negotiators that married couples do not discuss divorce clauses before getting married (Bunn 1992, 38). While pre-nuptials between married couples may not have been vogue in the Soviet Union or the United States during the 1960’s, American negotiators were insistent that a formal withdrawal clause was essential for Senate consent of the treaty (Bunn 1992, 38; Schlesinger 1973, 828).

The result was a flexible withdrawal clause that suited all the negotiating parties. Article IV of the LTBT specifies that any party could withdraw from the treaty if extraordinary events jeopardized the supreme interests of the withdrawing signatory. The withdrawing party would need to give three months notice to all the parties of the treaty. While more formalistic then the Soviets would have wished, the withdrawal mechanism allowed the withdrawing party to determine what constituted an extraordinary event. The other parties would have no legal avenue if a disagreement over what constituted an extraordinary event occurred. Hence, withdrawal remains an inherent right to this day in the LTBT.
The United Kingdom and United States attempted to establish a threshold for what constituted an extraordinary event. Negotiators deemed the grounds for withdrawal included non-fulfillment of treaty obligations by a party; nuclear explosions by third parties (a veiled reference to China);\textsuperscript{iii} and occasions when it was not possible to identify the state conducting nuclear weapon tests. While the negotiators agreed that these conditions would serve as a general threshold point to excuse withdrawal, all sides agreed not to approximate an “exact boundary” for what constituted an extraordinary event (Shaker 1980, 887-88). Thus, The LTBT provides no oversight process or specific formula on what constitutes an extraordinary event or redress for parties opposing the withdrawing party’s decision.

The ABM Treaty was signed in 1972 and prohibited the United States and Soviet Union from testing, developing and deploying a nationwide ballistic missile defense system against strategic ballistic missiles. The raison d’état behind the ABM treaty was the belief that defensive systems, such as a national missile shield, perpetuated the arms race by encouraging the development of more sophisticated offensive weapons.

The withdrawal clause in the ABM treaty was taken nearly verbatim from the LTBT treaty, the only difference being that the withdrawing party in the ABM treaty was required to give 6-months notice as opposed to 3-months in the LTBT. Unlike the LTBT, concerns about an eventual Soviet or American withdrawal from the ABM treaty during negotiations were absent, with one exception. The United States gave a unilateral statement during the signing of the treaty. It stated that if a more comprehensive arms control treaty on offensive weapons was not reached, then the United States may withdraw from the treaty (Department of Defense Treaty Compliance, ABM unilateral statement). Consequently, unlike the LTBT, this gave future administrations little guidance on what the potential threshold for an extraordinary event might be. In the end, the withdrawal procedure from the ABM Treaty is practically a mirror image of the LTBT with no oversight mechanism built into the treaty for the other side to dispute a withdrawal claim.

**The Nonproliferation Treaty: A Conditional Withdrawal Clause**
The NPT was adopted in 1968, received Senate consent in 1969 and has been almost universally accepted since. The only non-parties are Israel, India, Pakistan and North Korea. The NPT stipulates that nuclear weapon states [NWS] may retain their nuclear weapons as long as they promise to prevent the proliferation of their nuclear weapons and know-how to nonnuclear weapon states [NNWS]. The NPT is often framed as an attempt to balance the have and have-nots of nuclear weapons. The grand bargain reached between NWS and NNWS was that NWS promised to work in “good faith” to eliminate their nuclear stockpiles, no specific deadline is given, while NNWS promised not to acquire nuclear weapons and use nuclear facilities for peaceful purposes. Both NWS and NNWS are required to adhere to safeguard inspections from the International Atomic Energy Agency (IAEA), a UN inspection agency, to verify that NNWS are not secretly acquiring nuclear weapons and that NWS are not proliferating nuclear weapon material or technology. The NPT was negotiated for almost 20 years; while disagreements constantly arose during that period, neither the Soviet Union nor the United States placed serious conditions which would prompt withdrawal after the treaty entered into force (Bunn 1992, 59-102).

Withdrawal from the NPT differs from the LTBT and ABM treaty in one important aspect. The NPT carries an additional caveat: a written notice of the extraordinary events that prompted withdrawal to the United Nation’s Security Council. This extra provision is not mere verbiage, but provides a “brake on hasty withdrawal” yet maintains the sacrosanct sovereign right for a country to withdraw from the treaty (Shaker 1980, 893). The required written statement to the Security Council was a procedural step to cause the withdrawing party further pause on how it would be perceived by the international community upon providing notice of withdrawal (Shaker 1980, 897). An odd dynamic of this procedure, however, is that the potential withdrawing party could present the justification for withdrawal to a member of the Security Council who is not a party of the treaty (Shaker 1980, 895).

This begs the question of what the Security Council can actually do in response to a withdrawal statement. The Security Council cannot accept or reject the actual withdrawal notice; however, the Security Council is the governing body in the United Nations charged with maintaining international
peace and security (UN Charter, Chapter V Article 24). The Security Council outlines what constitutes a threat to the peace and determines the appropriate action to take when a threat has appeared (UN Charter, Chapter VII articles 39-42). The Security Council defined nuclear proliferation as a threat to the peace in 1992 (United States Security Counsel, S/23500). Furthermore, the United Nations delegates powers to the Security Council to counter these threats to the peace. The Security Council may pursue political and economic isolation to outright military action (UN Charter, Chapter VII articles 41-42). However, even if the Security Council agreed that a breach of the peace occurred and wrangled an agreement that would not be vetoed by one of the permanent members (United States, Russia, France, United Kingdom, or China), it cannot act “without prejudice to the rights of the concerned party” (UN Charter, Chapter VII Article 40). In other words, a UN member who violates the peace does not completely waive its sovereignty rights under the UN Charter. Specifically, the UN Charter categorically outlines that the United Nations may not intervene in matters within the domestic jurisdiction but that this right also does not prejudice the enforcement measures available to the Security Council (UN Charter, Chapter II Article 7). Thus, while the withdrawal clause from the NPT has more teeth to deter a withdrawing party than the LTBT, the options available to the Security Council to punish a violator are ambiguous given the relationship between protecting a member’s sovereignty and the Security Council’s mission of maintaining international peace and security when a breach of the peace occurs.

Withdrawal in Action: The United States and North Korea

Rogue States and American Withdrawal from the ABM Treaty

No other arms control treaty between the United States and Soviet Union, and later Russia, went through as many political and legal strains as the ABM treaty. The most severe row concerning the ABM treaty occurred in 1983 when President Ronald Reagan announced the Strategic Defense Initiative (SDI
or Star Wars). SDI’s realization would have gone against the very core of the ABM Treaty, creating a national missile defense shield, which in Reagan’s words was designed to make nuclear weapons delivered through ballistic missiles “impotent and obsolete” (Atomic Archive, Reagan speech). Reagan initially attempted to interpret the ABM treaty in a way to accommodate Star Wars. Legislation enacted by the United States Congress and signed by Reagan, however, rejected this interpretation (Rhinelander 2001, 204).

The Soviets also tested the limits of the ABM treaty. In 1983, the Reagan administration announced that the Soviet Union was constructing a prohibited type of radar station near the Siberian city of Krasnoyarsk. Senior Reagan officials charged that the radar station was designed to track ballistic missiles. Soviet officials claimed the radar station was meant to track objects in space and retorted that American radar stations in Greenland and England also violated the ABM treaty (Earle 1988). The ABM treaty stipulates that the United States and the Soviet Union are only allowed to deploy radars meant to detect strategic ballistic missiles “along the periphery of its national territory and oriented outward” (Federation of American Scientists, Article VI (b)). Soviet officials did not dispute that Krasnoyarsk was not situated along the periphery of the Soviet Union. Consequently, some senior Reagan officials mulled that the Krasnoyarsk radar station was a “material breach” as understood in the Vienna Convention since the radar station violated a provision that was “essential to the accomplishment of the object or purpose of the treaty.” This would have provided the proper grounds for the United States to either suspend performance or withdraw from the ABM treaty (Vienna Convention, 60(3)(b)). In the end, Reagan did not declare the Krasnoyarsk station a “material breach” and did not take any action.

After the collapse of the Soviet Union in 1991 and the election of Bill Clinton, the ABM treaty continued to be a source of tension vis-a-vis the Soviet Union’s main successor state, Russia, and the United States. Clinton was the first American president to publicly consider withdrawing from the ABM treaty in order to deal with threats from “rogue states” such as Iran, Iraq and North Korea if Russia did
not accept changes to the ABM treaty to counter these new threats (Rhinelander 2001 Part I, 95). In the end, Clinton, like Reagan, did not withdraw.

During the 2000 presidential campaign, George W. Bush supported deep cuts in strategic nuclear warheads with Russia and promulgating a strong national missile defense program. After the September 11th attacks on New York City and Washington, DC, the Bush administration initially encouraged a “mutual withdrawal” from the ABM Treaty with Russia. President Vladimir Putin was open to acquiescing with President Bush’s desire to expand America’s missile defense abilities but was adamant about maintaining the ABM Treaty and linked a potential US withdrawal with a mutual Russian withdrawal from START, then in effect. Despite Putin’s threats, the White House made its formal withdrawal notice to Russia on December 13th, 2001 (Columbus 2003, 133-36). While President Putin believed American withdrawal was “mistaken”, the news did not wreck U.S.-Russian relations. America’s withdrawal from the ABM treaty did not bring Russian withdrawal from START or preclude the conclusion and signing of the Moscow Treaty (Columbus 2003, 97-98).

In its withdrawal statement, the United States gave its 6-month notice; stated that the ABM treaty was antiquated and gave two main reasons why withdrawal was necessary. First, the ABM treaty prevented the United States from developing a missile defense to counter rogue states and terrorist organizations that are acquiring weapons of mass destruction and have the potential to use long-range ballistic missile as a delivery platform to strike the United States and its allies. Second, the United States stated its relationship with Russia had fundamentally changed since the signing of the ABM treaty (Department of Defense Treaty Compliance, ABM Withdrawal Statement). While the US withdrawal statement implicitly connected the collapse of the Soviet Union and the threat of rogue states and terrorist organizations as an extraordinary event, this specific language was not utilized in the statement.

*North Korea’s NPT Withdrawal: Not Once but Twice*
North Korea is the only party to have withdrawn from the NPT treaty. North Korea gave its 3-month notice to withdraw from the NPT treaty on March 12th, 1993; a short period after a new South Korean President, Kim Yong Sam, and American President, Bill Clinton, transitioned into power (Oberdorfer 2001, 280). For over 89 days South Korean and American officials were indecisive on how to resolve the North Korean withdrawal statement. The debate ranged from offering diplomatic carrots to performing a surgical strike on North Korea’s reactor and plutonium site (Bunn and Rhinelander May 2005). On June 11th, 1993, the eve of the withdrawal becoming effective, North Korea and America issued a joint statement. The United States gave North Korea security assurances not to attack and agreed to continue political negotiations; in return, North Korea agreed to “suspend” its withdrawal from the NPT “as long as it considers necessary” (Oberdorfer 2001, 285-86). While withdrawal from the NPT was sidestepped, negotiations between North Korea, the United States, South Korea, and the IAEA to keep North Korea aligned with IAEA safeguard standards remained intransigent. North Korea’s political maneuvering made it a pariah to the international community. In November 1993, The United Nations General Assembly voted 140-1, North Korea being the only dissenting vote and China abstaining, to urge North Korea “to cooperate immediately” with the IAEA on inspections and safeguard measures (Oberdorfer 2001, 294). During this period the Security Council failed to issue any resolution in response to the withdrawal crisis; nonetheless, the withdrawal procedure provided a “break” from North Korea’s complete withdrawal.

In January 2003, approximately a decade after the first withdrawal crisis and as the United States was ramping up for its invasion of Iraq, North Korea declared an “effectuation” of its withdrawal from its 1993 withdrawal (Atomic Archive, North Korea). In other words, North Korea was not offering a fresh 3-month withdrawal notice, but building off the notice given in 1993. This gave the Security Council approximately 1 day to respond since the original withdrawal notice was frozen after 89 days. In its withdrawal statement, North Korea claimed its national sovereignty and supreme interests were being threatened by the United States. Specifically, North Korea claimed the IAEA inspection regime was a
“servant” of America’s “hostile policy” toward North Korea (Atomic Archive, North Korea). As two arms control experts put it bluntly, the Security Council “did nothing” in response to North Korea’s withdrawal statement and North Korea effectively withdrew from the NPT (Bunn and Rhinelander April/May 2005). North Korea then tested a nuclear weapon in 2006 and 2009.

New START: Analyzing Potential Russian Withdrawal

New START’s withdrawal procedure is a mirror image of the LTBT and the ABM treaty – the only exception being the 6-month notice requirement in the ABM treaty. Russia, unlike North Korea’s withdrawal from the NPT, would not have to present its withdrawal statement to an oversight committee, such as the Security Council. Since Russia is a party of the Vienna Convention, it is obliged to follow its interpretations on withdrawal. The Vienna Convention simply requires that a party withdraw based on the provisions of the treaty and that it be in “good faith.”

Russian officials have made it clear that if American missile defense capabilities threaten Russian strategic nuclear forces, it reserves the right to withdraw. This does not mean that America is legally bound to neglect missile defense development. It means that if America develops a national missile defense over the next 10 years, the envisioned life-span of New START, that could neutralize Russia’s strike or counterstrike option with its strategic warheads, then Russia would strongly consider withdrawing. The Pentagon, however, does not envision a Russian strategic missile attack or aim to counter one. In fact, the 2010 Ballistic Missile Defense Report seeks to enlist Russian cooperation in missile defense operations (Department of Defense, 4-5 & 12). Furthermore, the Pentagon admits that even if it desired to counter a massive Russian missile strike, missile defense technology would simply be unable to “cope” with it (Department of Defense, 13). Therefore, if Russia’s contingency plan to withdraw from New START truly hinges on American missile defense capability to counter its strategic arsenal, then withdrawal within New START’s lifespan is unlikely given the technical limitations of missile defense.
Over the course of 40 odd years of arms control negotiations and treaties between Russia and the United States, Russia has never withdrawn or been generally noncompliant with a nuclear disarmament treaty. Russia has threatened to withdraw from arms control decisions countless times, often due to disagreements over missile defense. For example, when the original START was signed between the United States and Soviet Union in 1991, the Soviet Union issued a unilateral statement stating that START would only be “viable and effective” if the ABM Treaty remained in force. A United States withdrawal from the ABM Treaty would constitute an extraordinary event and would force the Soviet Union to withdraw from START (Department of Defense Treaty Compliance, Soviet Statement). The United States withdrew from the ABM Treaty in 2002; Russia did not withdraw from START but concluded a new arms control treaty, Moscow Treaty, which further reduced deployed warheads on strategic weapons. Despite political spats between the United States and Russia on missile defense over the years, the State Department released a report in July 2010 stating that Russia was compliant with the original START verification measures until they elapsed in December 2009 (U.S. State Department, 8-9). Therefore, analyzing Russian unilateral statements on apprehension over missile defense development are not useful in predicting Russian behavior.

Negotiating records, on the other hand, might be useful in understanding the threshold limit that would need to be reached for a party to withdraw, as shown with the LTBT. However, much of the negotiating record on New START and other major arms control treaties remains classified, a fact that some experts say fuel skepticism for detractors (Sokolski 2010). Steve Pifer, an arms control expert at the Brookings Institute, said at a Brookings conference in July 2010 that negotiation records are rarely provided to the Senate. The two exceptions Pifer mentioned were the Intermediate-Range Nuclear Forces Treaty (INF) and the ABM treaty (Brookings 2010).

There is a schism in American media reports on the New START negotiating record. The New York Times reported that President Obama was adamant about keeping missile defense and strategic nuclear warhead reduction separate issues to the point where Obama became “exasperated” and was on
the verge of walking away from the treaty due to Russian intransience on the issue (Baker 2010). Dimitri Simes, President of the Nixon Center and long-time Kremlinologist, wrote a column in April claiming that contacts he had in Russian diplomatic circle were so ecstatic with the treaty that Russian officials directed Russian media outlets not to praise the treaty in order to prevent complications during Senate debate on consenting to the treaty (Simes 2010). Simes continued that Obama officials told the Russians not to worry about missile defense because it would not be a priority. Both of these stories, however, are heavily reliant on observations by outsiders relying on information disseminated from contacts involved with the treaty process and from negotiators speaking under anonymity.

New START is constructed in a way to let either the United States or Russia withdraw without any oversight by the other side or a neutral arbiter. If Russia, in good faith, believes that American missile defense system threatens its strategic nuclear arsenal, it has the right to withdraw. New START’s preamble, however, states that “current defensive systems do not undermine the viability and effectiveness of the strategic offensive arms of the parties.” This is a statement of admission by Russian officials on the current limitations of missile defense. Independent experts predict American missile defense capabilities will not threaten Russia’s strategic arsenal in the foreseeable future. A group of American and Russian nuclear weapon experts ran a statistical model measuring the effectiveness of Russian and American strategic nuclear deterrence against the backdrop of growing missile defense capabilities. Their conclusion was that even if the total nuclear arsenals of America and Russia dwindle to 1000 warheads, the continued deployment of missile defense systems will not upset Russia’s strategic arsenal (Blair, 11).

In sum, analyzing unilateral threats to withdraw are not helpful in understanding what would constitute an extraordinary event to cause withdrawal. Previous Russian-Soviet threats to withdraw from START over disagreements with American missile defense systems did not result in withdrawal when America continued developments of missile defense technology and then withdrew from the ABM Treaty. Russia has never withdrawn from an arms control treaty that was ratified by both the United
States and Russia, despite age-old disagreements over missile defense. Also, another extraordinary event not considered by experts and negotiators may prompt Russian withdrawal; America’s concern with rogue states and terrorist organizations was not present during the ABM treaty’s negotiations.

**Recommendations:**

**Preventing Russian Withdrawal in New START**

Minimizing Russia’s chances of withdrawing from New START will require balancing Russian concerns over missile defense and not confirming domestic American critics’ fear that Russia’s threat to withdraw from New START gives Russia a virtual veto on American missile defense options. While it would be unprecedented for Russia to withdraw from New START, it was also unprecedented for the United States to withdraw from the ABM Treaty. In order to pursue future arms control treaties with Russia and continue improving relations with Russia, the Obama administration and future presidents have three distinct policy options: 1) derail missile defense; 2) continue missile defense development without Russian cooperation; 3) ensure missile defense remains limited against rogue states with Russian cooperation.

Abolishing missile defense is untenable for President Obama or any future American president in the foreseeable future. President Obama campaigned hard for New START by stating it does not place significant limitation on American plans for missile defense during Senate consideration of the treaty. If President Obama were to abandon missile defense, it would be unrealistic to expect Republican support in the Senate on future arms control and nuclear nonproliferation measures; also, foreign policy elites would be weary of endorsing future initiatives of the President. New START won the support of all living Republican Secretary of States. All stated their support for New START under the notion that the treaty does not impede America’s options to explore effective missile defense (Baker, Eagleburger, Kissinger, Powell, Schultz 2010; Rice 2010). While canceling missile defense would not mean New START was the root of abolishment, the political backlash would no doubt link cancelation with deals made during
negotiations of New START and political calculations on future arms control deals with Russia. Therefore, canceling missile defense would be politically unfeasible now or in the foreseeable future.

Continuing missile defense development in Europe without Russian assistance is a realistic goal but not a wise choice for policy makers. Russia is the largest country in the world. Hence, if a ballistic missile from Iran, for example, headed towards the United States via Russian territory, the United States would only be able to counter the missile immediately after launch and after it leaves Russian territory. This would leave the United States with a minimum amount of time to shoot down the incoming missile. This is an unnecessary restriction to the United States to protect itself from such an attack. Not only would it strengthen the United States’ option to counter a ballistic attack, it would also enhance cooperation between the two countries. Also, excluding Russian cooperation will only inflame Russian policymakers and agitate fears that missile defense systems are ultimately aimed at Russia and not rogue states.

The last option is the most difficult, but the most prudent. Russian cooperation on missile defense may not speed up the effectiveness of missile defense, but it will keep both sides more honest on the actual capabilities of the system. In other words, Russian officials will understand the system is not aimed against them and would not be capable of countering Russia’s strategic arsenal. Pavel Podvig, a Russian physicist and expert on Russia’s nuclear arsenal, poignantly stated that missile defense collaboration between Russia and America would prevent political posturing on the issue and expose the limitations to Russia (Podvig 2011). It would be harder for Russia to withdraw from New START in “good faith” if its decision makers had a clear idea of intentions and capabilities of an American run missile defense system fielded in Europe.

Detractors will counter that Russia will drag its feet and do everything in its power to prevent America from fielding a missile defense system in Europe. There are signs, however, that Russia is not completely anathema to the idea of missile defense. General Nikolai Makarov, Russia’s General Staff
chief, made a bold claim that Russia plans to have an impenetrable missile shield by 2020 (Global Security Newswire, Russia Wants Impenetrable Shield by 2020). In addition, Yuri Solomonv, chief of the Moscow Institute for Thermal Technology, announced in March 2011 that claims of American missile defense systems threatening Russia’s nuclear arsenal was “complete nonsense.” (Global Security Newswire, Nukes not Undercut by U.S. Missile Plan). Russia would be put in an awkward spot politically and diplomatically if it withdrew from New START in “good faith” because of American missile defenses while simultaneously developing their missile defense own systems or having senior government officials question the threat missile defense systems pose to Russia.

Policymakers should not take Russian refusal to cooperate as meaning American and European decision makers should draw down missile defense development. Instead, America should pursue Russian cooperation in good faith and not allow missile defense to be held hostage to the implementation of New START. Figuring out Russia’s exact role will require negotiations between Russia and the United States and its NATO allies and will surely be met with complications. Future arms control treaties with Russia will pivot around developments in missile defense. Ensuring New START is not wrecked will require President Obama to continue missile defense development in Europe and the United States to counter critics at home while trying to utilize Russian cooperation in good faith without neglecting these systems. Some experts have suggested cooperation could be as simple as exchanging military attachés, joint observation of missile defense tests, and establishing a joint center for monitoring missile launches worldwide as the first steps toward enhancing cooperation (Blair 2010, 16). Ironing out the final details is no easy task, but leaders have faced more daunting challenges in the past. The idea of American officials inspecting Soviet nuclear weapon facilities during the original START negotiations in one of the most closed countries in the world at that time was unthinkable during much of the Cold War. Yet, it was accomplished and now robust inspections are considered a requirement for any viable arms control treaty.

Restructuring Withdrawal Clauses
There is no panacea to preventing withdrawal from arms control treaties. The major arms control treaties between Russia and America allow each country the freedom to withdraw from treaties if it is within the withdrawing party’s national interest. Creating conditions on withdrawal do not necessarily deter or create a disincentive for nations to withdraw as seen by the UN Security Council’s inability to prevent North Korea’s withdrawal from the NPT treaty. Stipulating conditions on withdrawal from an arms control treaty may give it more teeth, but may also deter nations from entering negotiations and talks from the onset. Also, failure to prevent withdrawal in a stipulated withdrawal could unravel the legitimacy of the treaty regime and cause other parties to question the effectiveness of the treaty. Therefore, until international institutions, such as the UN, are strong enough to deter and punish withdrawal in arms control treaties, policymakers are better off utilizing a withdrawal clause allowing a party to invoke extraordinary events as seen in the American-Russian arms control treaties rather than forcing conditional withdrawal clauses, like in the NPT.

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A unilateral statement is made during the signing of the treaty but is not legally binding since the statement is not contained within the treaty itself. It can, however, be used to help clarify a country’s position on parts that may appear ambiguous.
The United Kingdom, United States and Soviet Union were the original signatories of the LTBT. Fear of being locked into a legally binding treaty when future nuclear weapon states may emerge was of concern to the negotiating parties.