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Russian Violations of the INF and New START Treaties

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There is new evidence of possible Russian violations of the INF and New START Treaties. Unfortunately, the Obama administration is not open with the American people about Russian noncompliance, despite the legal requirement under U.S. law, 22 U.S.C. 2593a, for an annual report with “a specific identification, to the maximum extent practicable in unclassified form, of each and every question that exists with respect to compliance by other countries with arms control, nonproliferation, and disarmament agreements with the United States.” In 2014, after considerable media pressure, the Obama administration acknowledged “that the Russian Federation was in violation of its obligations under the INF Treaty not to possess, produce, or flight-test a ground-launched cruise missile (GLCM) with a range capability of 500 km to 5,500 km, or to possess or produce launchers of such missiles.”¹ Prior to this acknowledgement, State Department compliance reports strongly implied there were no INF Treaty compliance issues. They read, “The Parties to the Treaty last met in the Special Verification Commission in October 2003. There were no issues raised during this reporting period.”² Even now, the Obama administration has not revealed which Russian cruise missile violates the INF Treaty other than to say that it is intermediate-range.³ (Congressman Mac Thornberry (R-Texas), chairman of the House Armed Services Committee, has stated this missile is nuclear.)⁴

The House Armed Services Committee has put Russian noncompliance into some perspective:

According to the testimony of senior officials of the Department of State, the Russian Federation is not complying with numerous treaties and agreements, including the INF Treaty, the Open Skies Treaty, the Biological Weapons Convention, the Chemical Weapons Convention, the Vienna Document, the Budapest Memorandum, the Istanbul Commitments, the Presidential Nuclear Initiatives, the Missile Technology Control Regime, and the Russian Federation has recently withdrawn from the Treaty on Conventional Armed Forces in Europe (CFE).⁵



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We are clearly dealing with a pervasive problem of noncompliance that involves virtually all of the arms control agreements.⁶ Former Under Secretary of State William Schneider has observed, “A half-century of experience with successive administrations confronting Moscow’s non-compliance suggests that the Treaty-based approach to nuclear stability is fatally flawed.”⁷ It is so because our primary negotiating partner has a consistent stark pattern of cheating on agreements reached.

Since the House Armed Services Committee report was issued in 2015, there have been more reports of possible Russian violations of the INF Treaty and the New START Treaty. In December 2015, Brian McKeon, Principal Deputy Under Secretary of Defense, told the House Foreign Affairs Committee that the U.S. objective was to “preserve the viability of the INF Treaty by convincing Russia to come back into compliance with those obligations.”⁸ Yet, the Obama administration has so far failed to get Russia to comply with its INF obligations, and it appears that Russia will pay no penalty for its violations of the INF Treaty.

Regarding Russian New START compliance, the Obama administration states that there are “implementation-related questions,” but it won’t say what they are.⁹ In 2014, Brian McKeon (then a senior NSC official) stated that in September 2010 the Senate had been informed of a potential compliance issue that “implicated possibly New START, possibly INF.”¹⁰ The Obama administration has said nothing more about it. In a response to a question by Bill Gertz about whether Russia was violating the dismantling provisions of the New START Treaty, the State Department even asserted, “The New START treaty forbids releasing to the public data and information obtained during implementation of the treaty....This would include any discussion of the results of inspection activities undertaken by the United States or the Russian Federation.”¹¹ This assertion is an apparent distortion of a Treaty provision which applies only to arms control inspectors. The Treaty states, “The inspecting Party shall ensure that its *inspectors* not publicly disclose information obtained during inspection.”¹² (Emphasis added). The Secretary of State is not an arms control inspector.

The original START Treaty had the same provision as New START regarding inspector confidentiality.¹³ Yet, in 2005, the U.S. Department of State published a compliance report that concluded Russia was violating START Treaty inspection provisions. It stated: “Russian RV [reentry vehicle] covers, and their method of emplacement, have in some cases hampered U.S. inspectors from ascertaining that the front section of the missiles contains no more RVs than the number of warheads attributed to a missile of that type under the Treaty.”¹⁴ Regarding confirmation of missile type during inspections, the report concluded, “Russia prevented U.S. inspectors from exercising their Treaty right to measure launch canisters for SS-24 ICBMs contained in rail-mobile launchers that are located within the boundaries of an inspection site, in contravention of paragraphs 1 and 6 of Annex 1 to the Inspection Protocol.”¹⁵ These conclusions were obviously based upon information provided to the U.S. government by its inspectors.

The U.S. Department of State has a long history of trying to avoid public disclosure of Soviet/Russian arms control violations. Sven Kraemer, Director of Arms Control in the Reagan administration’s NSC staff, records, “...new interagency efforts to assess Soviet violations of the SALT II agreement were blocked by the Department of State during 1981,” and, after this there were “delaying tactics and resistance within the government bureaucracy, especially in the State Department, ACDA and parts of CIA.”¹⁶

In the Obama administration, decisions with regard to public information release on arms control compliance appear to be made on the basis of the administration’s perceptions of whether informing the public would advance or hurt its arms control agenda. The 2010 State Department compliance report,



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for example, stated that, “The United States raised new compliance issues since the 2005 Report,”¹⁷ but did not say what they were.

Russian Compliance with the INF Treaty

Current Russian apparent INF Treaty non-compliance issues relate to the core prohibitions in the INF Treaty. For example, Russia has announced that it is developing a hypersonic cruise missile called the Zircon. According to state-run *RT*, the Zircon has “a rumored range of at least 400km (1,000km, according to other reports)...”¹⁸ *RT* (and state-run *Ria Novosti*) reported that the “*Zircon hypersonic missiles are already there, and testing from a ground-based launching site has begun.*”¹⁹ (Emphasis in the original) This may or may not be a violation of the INF Treaty depending on what type of launcher was used. There is also a report that Russia plans to attack U.S. naval vessels with a hypersonic missile launched from the “...Plesetsk base of strategic missiles...”²⁰ Although the described attacks were of INF-range, the report did not identify the type of missile involved which is critical to a compliance assessment. In light of the pattern of Russian arms control violations, Russian development of a hypersonic GLCM with prohibited range is plausible.

Distinguished Russian journalist Pavel Felgenhauer has noted, “According to the defense ministry’s *Star TV* channel, Iskander missiles deployed in Crimea can wipe out the US MD [missile defense] base in Romania, but there is a problem: the Tarkhankut Peninsula – the westernmost part of Crimea closest to the base in Deveselu – is still some 700 kilometers away, while the official range of the Iskander-M ballistic missile is 500 km, as mandated by the INF [treaty]. *Star TV* explains: The range of the Iskander may be easily extended ‘to several thousand kilometers by using long-range Kalibr cruise missiles (Tzvvezda.ru, November 14, 2014).’”²¹ In 2015, the Kalibr was launched 1,500-km to attack Syria from Russian ships.²² In December 2015, President Putin revealed the Kalibr and KH-101 cruise missiles, used in these attacks, “can be equipped either with conventional or special nuclear warheads.”²³ This suggests another possible compliance problem because a ground-launched Kalibr using an Iskander mobile launcher would be a violation of the INF Treaty which bans GLCMs with ranges of between 500-5,500 kilometers.

In addition, in July 2016, *Interfax*, Russia’s main unofficial news agency, reported, “The Bastion coastal defense [cruise missile] system has an operational range of 600 kilometers and can be used against surface ships of varying class and type...”²⁴ If this report is true, the Bastion would also violate the INF Treaty.

There is some similarity between these types of reports and the early (2008) Russian press reports, which appeared in both state and non-state media, of a Russian GLCM with a range banned by the INF Treaty.²⁵ These reports were seemingly ignored for years by the Obama administration – until 2014.²⁶ Michael Gordon, writing in *The New York Times*, said that “by the end of 2011, officials say it was clear that there was a compliance concern.”²⁷ When asked about this story, the State Department press spokesman confirmed it.²⁸

The intermediate-range GLCM that the Obama administration says is an INF Treaty violation may be only the tip of the iceberg. Since 2007, there have been many Russian press reports that another GLCM, the R-500, has a range prohibited by the INF Treaty.²⁹ In 2014, Pavel Felgenhauer “said the missile (R-500) has been tested at a range of 1,000 km,” but the “range could be extended up to 2,000-3,000 km by adding extra fuel tanks.”³⁰ There has been no unclassified State Department compliance report on the R-500. Under Secretary of State Rose Gottemoeller has said the R-500 is not the missile determined to be in violation of the Intermediate Range Nuclear Forces Treaty.³¹ This statement, however, is not the same as saying that the R-500’s range is compliant with the INF Treaty.



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Pavel Felgenhauer has also reported, "...Moscow plans to covertly quit the 1987 treaty on medium and short-range missiles" because the Russian S-300 and the S-400 air defense missiles, the new S-500 air and missile defense interceptor and the Moscow ABM interceptors are nuclear armed and can function as "dual-use...conventional or nuclear medium- or shorter-range ballistic missiles."³² The surface-to-surface capability of the S-300 and S-400 has been confirmed, respectively, by the President of Belarus and TASS, the main official Russian news agency.³³ The INF Treaty contains an exception to allow for missile defense and air defense interceptors missiles used "solely" for air or missile defense, but that exception would be lost if it also had a surface-to-surface role.³⁴ If Felgenhauer is correct, at least two of the missiles he mentions would violate the INF Treaty.³⁵ Again, there has been no unclassified State Department compliance report on these missiles.

Russia is also developing the RS-26 Rubezh ballistic missile, an apparent intermediate-range missile masquerading as an ICBM (a possible violation or circumvention of both the INF Treaty and the New START Treaty).³⁶ According to state-run *Sputnik News* it carries four 300-kt warheads.³⁷ It may not be able to fly to ICBM range with its normal payload.³⁸ Indeed, according to *Rossiyskaya Gazeta*, a Russian Government daily newspaper, it has "a combat radius from 2,000 km."³⁹ Once again, there has been no unclassified compliance report by the Department of State. In March 2015, a source in the Russian Defense Ministry told *Interfax*, "The Americans have not put forth any official complaints with regards to the RS-26 rocket..."⁴⁰

According to Under Secretary of State Gottemoeller, "...the RS-26 ballistic missile is not the missile of INF concern, as some have speculated."⁴¹ Yet, the Obama administration has not prepared an unclassified compliance report or even issued an unclassified legal analysis to support this conclusion. This is important because the INF Treaty was the first Treaty subject to the Biden condition (named for former Senator now Vice President Joseph Biden) which states that a Treaty must be interpreted consistent with how it was authoritatively interpreted to the Senate.⁴² During the INF Treaty ratification process, the Reagan administration provided the U.S. Senate an authoritative interpretation of the INF Treaty in a letter by Assistant Secretary of State Ed Fox. According to the Biden condition, this interpretation, if applied to the testing of the RS-26, as described by the Russian government and in the Russian press, would result in the finding of a Treaty violation.⁴³ State Department handling of the RS-26 issue is apparently the only breach of the Biden condition in U.S. arms control treaty interpretation since it was established in 1988. The only option available to the State Department is either to apply the Fox letter interpretation or provide a compelling legal analysis explaining why it is wrong. It has done neither.

Russian Compliance with the New START Treaty

The Russian RS-26 missile may also be connected to a potential problem with the New START Treaty. Well-connected Russian journalist Viktor Litovkin, writing in state media, reports, "The new [Russian] rail-based missile systems will be equipped with the MS-26 (sic) Rubezh multiple-warhead missile..."⁴⁴ The problem with this is that Russian rail-mobile ICBMs may not be numerically limited by the New START Treaty because the previous START Treaty mobile launcher definition was changed in New START to exclude rail-mobile ICBMs.⁴⁵ The Obama administration has stated that it will consider rail-mobile ICBMs as limited by the New START Treaty, but absent a definition that actually captures them, this has little legal basis. The U.S. Senate resolution of ratification for New START makes up a definition that is not contained in the New START Treaty and requires a Treaty amendment to put language on rail-mobile ICBMs into the New START Treaty. The New START Treaty resolution of ratification states, "...an erector-launcher mechanism for launching an ICBM and the rail car or flatcar on which it is



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mounted would be an ICBM launcher,” and goes on to require any new Treaty language involving mobile ICBMs must be “considered to be an amendment to the New START Treaty...and will be submitted to the Senate for advice and consent.”⁴⁶ During the New START ratification process then-Senator Jon Kyle (R-AZ) stated, “It is clear from the [Senate Foreign Relations Committee] report that the language would not cover rail-mobile systems if Russia were to reintroduce them. It is clear we would have to rely upon the Russians’ good offices, good intentions, to reach some kind of an agreement with us in the Bilateral Consultative Commission. There are no assurances that will be done.”⁴⁷ Konstantin Kosachyov, the head of the Russian State Duma’s International Affairs Committee, took very strong exception to the effort by the Senate Foreign Relations Committee “to apply the New START Treaty to rail-mobile ICBMs in case they are built.”⁴⁸

In addition, the December 2015 revelation by President Putin that the Russian KH-101, a 5,000-km range air-launched cruise missile (ALCM), which was supposed to be conventional – only, was actually nuclear capable,⁴⁹ brings up a number of possible Russian New START Treaty violation issues. Any aircraft that launches a nuclear-capable ALCM of over 600-km range becomes accountable as a heavy bomber under New START.⁵⁰ In 2012, the commander of the Russian Air Force Colonel-General Alexander Zelin stated that the Su-34 long-range strike fighter would be given “long-range missiles...Such work is under way and I think that it is the platform that can solve the problem of increasing nuclear deterrence forces within the Air Force strategic aviation.”⁵¹ A single test of a long-range nuclear-capable ALCM from a Su-34 would turn all Su-34s into heavy bombers under New START.⁵² This would dramatically increase the number of delivery vehicles Russia must dismantle in order to comply with New START in 2018. It is obvious that the Russians have no intention of declaring the Su-34 a heavy bomber.

There are also open reports of long-range nuclear ALCMs on the Russian Backfire medium bomber, which raises the same compliance issues as raised by the Su-34.⁵³ Neither the Su-34 nor Backfire compliance issues have been subject to an unclassified State Department compliance report.

In addition, in December 2014, Russian ICBM force Commander Colonel-General Sergey Karakayev said, “There are currently around 400 missiles [ICBMs] with warheads on combat duty.”⁵⁴ Yet, Russia’s declared strategic force numbers make it legally impossible for Russia to have more than about 300 ICBMs “with warheads on combat duty.”⁵⁵ The declared number of Russian deployed delivery vehicles in this time period was only in the 515-528 range.⁵⁶ These numbers must include not only the deployed ICBM force but also the deployed heavy bomber force and the deployed SLBM force.

Indeed, there is now significant evidence that Russia does not plan to comply with the New START limits when they come into effect in February 2018, even ignoring the issue of whether the Su-34 and Backfire are Treaty-accountable heavy bombers.⁵⁷ The actual number of deployed Russian strategic nuclear warheads has increased considerably; the Russians are now 185 deployed warheads above the Treaty limit, an increase of 198 since New START entry-into-force in 2011.⁵⁸ Ongoing nuclear modernization, particularly mobile RS-24 ICBMs, will further increase the number of strategic nuclear warheads and delivery vehicles Russia will have to remove from accountability to comply with New START. Indeed, even the oldest existing Russian strategic forces, the Delta III ballistic missile submarines, remain operational and one reportedly is undergoing an overhaul,⁵⁹ which suggests that Russia plans to maintain them for a significant period of time. According to Bill Gertz, “‘The Russians are doubling their [nuclear] warhead output,’ said one [Obama administration] official. ‘They will be exceeding the New START [arms treaty] levels because of MIRVing these new systems.’”⁶⁰

Even if Russia were to comply with New START, the actual number of deployed Russian warheads will likely far exceed the stated New START ceiling of 1,550 – in part because of the bomber counting rule. State-run *Sputnik News* says Russia will have 2,100 actual deployed strategic nuclear warheads



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under New START.⁶¹ Hans Kristensen and Robert Norris, of the Federation of American Scientists, write that Russia will have approximately 2,500 actual strategic nuclear weapons by 2025.⁶² That conclusion predates Russia's announced a program to build at least 50 new Tu-160 bombers,⁶³ which could push this number to over 3,000 deployed warheads when the bombers are completed. It could go even higher. Russia has announced modernization programs now underway that could circumvent the New START Treaty limits including two bomber types, a rail-mobile ICBM, a nuclear-powered nuclear-armed drone submarine and, reportedly, an air-launched ICBM which either do not count under New START or count at a severely discounted level.⁶⁴

The Obama administration appears not to be pressuring Russia to comply with the INF and New START Treaties. There is no indication that the Obama administration has done anything to close the New START loopholes discussed above. It reportedly may offer Russia a five year extension of the New START Treaty,⁶⁵ apparently without resolving any of the outstanding compliance issues or dealing with the circumvention issues. If so, it would limit the options of the Presidents who will be elected in 2016 and 2020. While the reported offer, if made, will likely be rejected by Russia,⁶⁶ the mentality behind it explains why U.S. arms control efforts so frequently fail to achieve positive national security benefits: ignoring arms control violations merely ensures more of the same behavior.

In conclusion, Russia's aggressive behavior in the international arena, including its consistent violation of agreements, poses a growing threat to our national security as well as that of our friends and allies. As a 2016 report of the National Institute for Public Policy underscored, "Russian foreign military actions, defense initiatives, markedly expanded conventional and nuclear arms programs, internal repression, and egregious arms control non-compliance appear to be elements of an increasingly assertive and threatening agenda."⁶⁷ Russian arms control violations are giving Russia military advantages at a time when they are threatening war in Europe and the first use of nuclear weapons. Russia appears to be regaining the capabilities that were eliminated 25 years ago by the INF Treaty and threatening NATO security. In stark contrast, the U.S. continues to comply with the INF Treaty as well as other arms control commitments which the Russians violate with seeming impunity.

As President Obama rightly said in his famous 2009 Prague speech, "Rules must be binding. Violations must be punished. Words must mean something."⁶⁸ Even well negotiated arms control agreements such as the INF Treaty have no value absent compliance. Yet Russia seems committed to a policy of non-compliance while Washington largely looks away.

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