

# DISCUSSION DRAFT – New START Treaty Resolution of Advice and Consent to Ratification – September 3, 2010

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Resolution of Advice and Consent to Ratification of the New START Treaty

Resolved, (two-thirds of the Senators present concurring therein),

## SEC. 1. SENATE ADVICE AND CONSENT SUBJECT TO THE CONDITIONS IN SECTION 2, THE UNDERSTANDING IN SECTION 3, AND THE DECLARATIONS IN SECTION 4.

The Senate advises and consents to the ratification of the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, done at Prague April 8, 2010, with Protocol, including Annex on Inspection Activities to the Protocol, Annex on Notifications to the Protocol, and Annex on Telemetric Information to the Protocol, all such documents being integral parts of and collectively referred to in this resolution as the “New START Treaty” (Treaty Document 111–5), subject to the conditions of section 2, the understanding of section 3, and the declarations of section 4.

## SEC. 2. CONDITIONS.

The advice and consent of the Senate to the ratification of the New START Treaty is subject to the following conditions, which shall be binding upon the President:

### (1) REDUCTIONS.—

(A) ENTRY INTO FORCE.—The New START Treaty shall not enter into force until the instruments of ratification have been exchanged in accordance with Article XIV of the Treaty.

(B) CONSULTATION REQUIREMENT.—If the New START Treaty does not enter into force, and if the President plans to implement reductions of United States strategic nuclear forces below those currently planned and consistent with the Moscow Treaty, the President shall—

(i) consult with the Senate regarding the effect of such reductions on the national security of the United States; and

(ii) take no such reductions until he submits to the Senate his determination that such reductions are in the national security interest of the United States.

(2) PRESIDENTIAL CERTIFICATION AND REPORT ON NATIONAL TECHNICAL MEANS.—Not later than 90 days after the entry into force of the New START Treaty, the President shall certify that United States National Technical Means, in conjunction with the verification activities provided for in the Treaty, are sufficient to ensure effective monitoring of compliance by the Russian Federation with the provisions of the Treaty. This certification shall be accompanied by a report to the Senate indicating how United States National Technical Means, including collection, processing, and analytic resources, will be utilized to ensure effective monitoring. Such report may be supplemented by a classified annex.

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## SEC. 3. UNDERSTANDING.

The advice and consent of the Senate to ratification of the New START Treaty is subject to the following understanding, which shall be included in the instrument of ratification:

(1) STRATEGIC RANGE NON-NUCLEAR WEAPON SYSTEMS.—It is the understanding of the United States that—

(A) The United States will not consider future, strategic range non-nuclear weapon systems that do not otherwise meet the definitions of this Treaty to be “new kinds of strategic offensive arms” subject to the New START Treaty.

(B) Pursuant to Paragraph 2 of Article V of the Treaty, if one Party deploys a new kind of strategic range arm for delivering non-nuclear weapons that it asserts is not a “new kind of strategic offensive arm” subject to the Treaty, and the other Party challenges that assertion, the deploying Party would be obligated to attempt to resolve the issue within the framework of the Bilateral Consultative Commission.

(C) There is no requirement in the Treaty for the deploying Party to delay deployment of the new system pending such resolution.

## SEC. 4. DECLARATIONS.

The advice and consent of the Senate to ratification of the New START Treaty is subject to the following declarations:

(1) MISSILE DEFENSE.—

(A) UNITED STATES POLICY.—Pursuant to the National Missile Defense Act of 1999 (P.L. 106-38), it is the policy of the United States “to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate).”

(B) GENERAL LACK OF LIMITATIONS ON DEPLOYMENT OF MISSILE DEFENSES.—The New START Treaty does not impose any limitations on the deployment of missile defenses other than the requirements of paragraph 3 of Article V of the Treaty, which the Secretary of Defense testified “will not constrain the United States from deploying the most effective missile defenses possible, nor impose additional costs or barriers on those defenses.”

(C) NEW START TREATY NOT AN IMPEDIMENT TO MISSILE DEFENSE PROGRAM DEVELOPMENT.—The director of the Missile Defense Agency testified to the Committee on Foreign Relations of the Senate that the Treaty “reduces constraints on the development of the missile defense program in several areas” and “does not constrain our plans to execute the U.S. Missile Defense program.”

(D) UNILATERAL STATEMENT OF RUSSIAN FEDERATION WILL NOT INHIBIT UNITED STATES.—The unilateral statement issued by the Russian Federation on missile defense does not impose a legal obligation on the United States and will have no practical

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impact.

(E) NEW START TREATY CONSISTENT WITH NATIONAL MISSILE DEFENSE ACT.—The New START Treaty will not impede any missile defense deployments that are currently planned or might be required during the life of the Treaty, and it is therefore fully consistent with United States policy as established by the National Missile Defense Act of 1999.

### (2) AMENDMENTS AND THE BILATERAL CONSULTATIVE COMMISSION.—

(A) Article XV, paragraph 1 of the Treaty provides that amendments to the Treaty “shall enter into force in accordance with the procedures governing entry into force of this Treaty,” which means that all amendments to the Treaty shall be submitted to the Senate for its advice and consent to ratification.

(B) Pursuant to Article XV, paragraph 2 of the Treaty, the Bilateral Consultative Commission may reach agreement without resorting to the procedure in paragraph 1 only on changes to the Protocol, and only if such changes do not affect substantive rights or obligations under the Treaty.

(C) The Bilateral Consultative Commission thus cannot bring into effect any change that affects substantive rights or obligations under the Treaty without the advice and consent of the Senate.

### (3) UNITED STATES COMMITMENTS ENSURING THE SAFETY, RELIABILITY, AND EFFECTIVENESS OF ITS NUCLEAR FORCES.—The United States is committed to ensuring the safety, reliability, and effectiveness of its nuclear forces. To this end, the Senate declares the following:

(A) The United States is committed to proceeding with a robust stockpile stewardship program, and to modernizing nuclear weapons production capabilities, for the purposes of ensuring the safety, reliability, and effectiveness of the United States nuclear arsenal at the New START Treaty levels and meeting requirements for hedging against possible international developments or technical problems, in conformance with United States policies and in order to underpin deterrence.

(B) The United States is committed to maintaining United States nuclear weapons laboratories and protecting the core nuclear weapons competencies associated with the laboratories.

(C) The United States is committed to providing the resources needed to achieve these objectives at a minimum at the levels set forth in the 10-year plan provided to Congress by the President pursuant to section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2549), as adjusted periodically to adapt to updated understandings of costs and requirements.

(4) PROMPT GLOBAL STRIKE.—The Senate declares that the New START Treaty should not and will not inhibit the United States from the development of technically and financially effective options for conventional prompt global strike or the deployment of such systems, when ready, in the numbers needed for United States national security.

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(5) RAIL-MOBILE ICBMS.— It is the sense of the Senate that any ICBM that was designed to be launched from a rail-mobile launcher would be counted as an ICBM under this Treaty, and any rail-mobile launcher for such an ICBM would be counted as an ICBM launcher under this Treaty.

(6) COOPERATIVE THREAT REDUCTION.—The Senate affirms that the Cooperative Threat Reduction (CTR) Program has made an invaluable contribution to the safety and security of weapons of mass destruction, including nuclear weapons and materials in Russia and elsewhere, and that the President should continue the CTR Program and CTR assistance to the Russian Federation, including for the purpose of facilitating implementation of this Treaty.

(7) ASYMMETRY IN REDUCTIONS.—It is the sense of the Senate that, in conducting the reductions mandated by the New START Treaty, the President should regulate reductions in the United States strategic nuclear forces so that the number of accountable strategic offensive arms under the New START Treaty possessed by the Russian Federation in no case exceeds the comparable number of accountable strategic offensive arms possessed by the United States to such an extent that a strategic imbalance endangering the national security interests of the United States results.

(8) COMPLIANCE.—

(A) IN GENERAL.—The New START Treaty will remain in the interests of the United States only to the extent that the Russian Federation is in strict compliance with its obligations under the Treaty.

(B) ANNUAL REPORT.—As full and faithful implementation is vital to realizing the benefits of the New START Treaty, the Senate calls upon the President to submit to the Committees on Foreign Relations and Armed Services of the Senate not later than January 31 of each year beginning with January 31, 2012, a report providing—

(i) details on each party's reductions in strategic offensive arms between the date the Treaty entered into force and December 31, 2011, or, in subsequent reports, during the previous calendar year;

(ii) a certification that the Russian Federation is in full compliance with the terms of the Treaty, or a detailed discussion of any noncompliance by the Russian Federation, the military significance of such noncompliance, and the implications of such noncompliance for continued United States adherence to the Treaty;

(iii) an assessment of the operation of the transparency mechanisms of the New START Treaty, including the extent and usefulness of exchanges of telemetric information; and

(iv) an assessment of whether a strategic imbalance exists that endangers the national security interests of the United States.

(9) EXPANDING STRATEGIC ARSENALS IN COUNTRIES OTHER THAN THE RUSSIAN FEDERATION.—It is the sense of the Senate that if, during the time the New START Treaty remains in force, the President determines that there has been such an expansion of the strategic arsenal of any country not party to the New START Treaty that the supreme

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interests of the United States are jeopardized, the President should consult on an urgent basis with the Senate to determine whether adherence to the New START Treaty remains in the national interest of the United States.

(10) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of advice and consent to the ratification of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter Range Missiles, together with the related memorandum of understanding and protocols (commonly referred to as the “INF Treaty”), approved by the Senate on May 27, 1988, and condition (8) of the resolution of advice and consent to the ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE ) of November 19, 1990 (commonly referred to as the “CFE Flank Document”), approved by the Senate on May 14, 1997.

(11) TREATY MODIFICATION OR REINTERPRETATION.—The Senate declares that any agreement or understanding which in any material way modifies, amends, or reinterprets obligations of the United States or the Russian Federation under the New START Treaty, including the time frame for implementation of the Treaty, should be submitted to the Senate for its advice and consent to ratification.

(12) SELF-EXECUTION.—The New START Treaty is self-executing. The Treaty does not confer private rights enforceable in United States courts.

(13) CONSULTATIONS.—Given the continuing interest of the Senate in the New START Treaty and in continuing strategic offensive reductions to the lowest possible levels consistent with national security requirements and alliance obligations of the United States, the Senate expects the President to consult with the Senate prior to taking actions pursuant to paragraphs 2 or 3 of Article XIV of the Treaty.

(14) TACTICAL NUCLEAR WEAPONS.—

(A) SECURITY AND REDUCTION OF TACTICAL NUCLEAR WEAPONS.—The Senate calls upon the President to pursue, following consultation with allies, an agreement with the Russian Federation that would address the disparity between the tactical nuclear weapons stockpiles of the Russian Federation and of the United States and secure and reduce tactical nuclear weapons in a verifiable manner.

(B) ENGAGEMENT WITH RUSSIAN FEDERATION.—Recognizing the difficulty the United States has faced in ascertaining with confidence the number of tactical nuclear weapons maintained by the Russian Federation and the security of those weapons, the Senate urges the President to engage the Russian Federation with the objectives of—

(i) establishing cooperative measures to give each party to the New START Treaty improved confidence regarding the accurate accounting and security of tactical nuclear weapons maintained by the other party; and

(ii) providing United States or other international assistance to help the Russian Federation ensure the accurate accounting and security of its tactical nuclear weapons.

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### (15) FURTHER STRATEGIC ARMS REDUCTIONS.—

(A) IN GENERAL.—Recognizing the obligation under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, “to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at any early date and to nuclear disarmament and on a treaty on general and complete disarmament under strict and effective international control,” and in anticipation of the ratification and entry into force of the New START Treaty, the Senate calls upon the other nuclear weapon states to give careful and early consideration to corresponding reductions of their own nuclear arsenals and calls upon the President to seek agreement on further mutual nuclear arms reductions to the extent consistent with United States national security interests and alliance obligations.

(B) FORM OF FURTHER OBLIGATIONS.—The Senate declares its intention to consider for approval international agreements that would obligate the United States to reduce or limit the Armed Forces or armaments of the United States in a militarily significant manner only pursuant to the treaty power as set forth in article II, section 2, clause 2 of the Constitution of the United States.