

USE OF FORCE, ARMS CONTROL, AND NONPROLIFERATION

United States Initiates Withdrawal from Intermediate-Range Nuclear Forces Treaty

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On February 2, 2019, the United States formally notified Russia that it would withdraw from the Intermediate-Range Nuclear Forces (INF) Treaty in six months and that, effective immediately, it was suspending its performance under the treaty in light of Russia's material breach.¹ This decision came more than three months after the Trump administration indicated that the United States was planning to withdraw from the treaty.²

In a statement issued on February 1, President Trump declared:

For far too long, Russia has violated the Intermediate-Range Nuclear Forces (INF) Treaty with impunity, covertly developing and fielding a prohibited missile system that poses a direct threat to our allies and troops abroad. Tomorrow, the United States will suspend its obligations under the INF Treaty and begin the process of withdrawing from the INF Treaty, which will be completed in 6 months unless Russia comes back into compliance by destroying all of its violating missiles, launchers, and associated equipment. Our NATO Allies fully support us, because they understand the threat posed by Russia's violation and the risks to arms control posed by ignoring treaty violations.

The United States has fully adhered to the INF Treaty for more than 30 years, but we will not remain constrained by its terms while Russia misrepresents its actions. We cannot be the only country in the world unilaterally bound by this treaty, or any other. We will move forward with developing our own military response options and will work with NATO and our other allies and partners to deny Russia any military advantage from its unlawful conduct.

My Administration remains committed to effective arms control that advances United States, allied, and partner security, is verifiable and enforceable, and includes partners that fulfill their obligations. For arms control to effectively contribute to national security, all parties must faithfully implement their obligations. We stand ready to engage with Russia on arms control negotiations that meet these criteria, and, importantly, once that is done, develop, perhaps for the first time ever, an outstanding relationship on economic, trade, political, and military levels. This would be a fantastic thing for Russia and the United States, and would also be great for the world.³

¹ U.S. Dep't of State Press Release, U.S. Intent to Withdraw from the INF Treaty (Feb. 2, 2019), at <https://www.state.gov/secretary/remarks/2019/02/288722.htm> [<https://perma.cc/6AHW-3FNZ>] [hereinafter State Dep't INF Withdrawal Press Release].

² For discussion of these earlier events, as well as background on the INF treaty and the underlying disputes between the United States and Russia regarding it, see Jean Galbraith, *Contemporary Practice of the United States*, 113 AJIL 132, 139–41 (2019) (also describing the broader trend of withdrawal from international agreements by the Trump administration and discussing the constitutional distribution of powers between the political branches with respect to withdrawal from treaties).

³ White House Press Release, Statement from the President Regarding the Intermediate-Range Nuclear Forces (INF) Treaty (Feb. 1, 2019), at <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-intermediate-range-nuclear-forces-inf-treaty> [<https://perma.cc/2G4B-Y9JD>] [hereinafter White House Press Release].

The State Department followed up the next day to implement this announcement. In a press release, it noted Russia's material breach of the INF treaty and stated that "[i]n accordance with customary international law, the United States has suspended its obligations under the INF Treaty, effective today, in response to Russia's material breach."⁴ The statement went on:

[T]oday the United States provided Russia and other Treaty Parties with formal notice that the United States will withdraw from the INF Treaty in six months, pursuant to Article XV of the Treaty. The United States has concluded that extraordinary events related to the subject matter of the Treaty arising from Russia's continued noncompliance have jeopardized the United States' supreme interests, and the United States can no longer be restricted by the Treaty while Russia openly violates it. If Russia does not return to full and verifiable compliance with the Treaty by eliminating all 9M729 missiles, their launchers, and associated equipment in this six-month period, the Treaty will terminate.⁵

In response to the U.S. announcement, the Russian Foreign Ministry issued a statement placing sole responsibility for the collapse of the agreement on the United States:

By [triggering withdrawal from the INF Treaty], Washington, whose compliance with the INF Treaty we questioned for many years, has entered the path towards destroying the treaty, thereby delivering yet another crushing blow at the arms control system that took decades of painstaking efforts to create. This move will certainly have dramatic and far-flung consequences for the entire architecture of international security and strategic stability, primarily in Europe. Responsibility for this will rest fully and squarely with the United States.

Russia has done its best to preserve the treaty. We tried many times to engage the Americans in a professional discussion and proposed practical initiatives that could help settle mutual complaints. Showing goodwill, we adopted unprecedented transparency measures that went beyond the framework of the treaty obligations. However, all

⁴ State Dep't INF Withdrawal Press Release, *supra* note 1 (specifically referencing Russia's "noncompliant missile system—the SSC-8 or 9M729"); *cf.* Vienna Convention on the Law of Treaties, Art. 60(1), 1155 UNTS 331, 8 ILM 679 (1969) (providing that "[a] material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part"); *id.* Art. 60(2)(b)–(c) (providing with respect to multilateral treaties that a party who is "specially affected by the [material] breach" may suspend its own performance "in the relations between itself and the defaulting State" and further that any party "other than the defaulting State" may suspend its performance if the material breach "radically changes the position of every party with respect to the further performance of its obligations under the treaty"). On December 4, 2018, Secretary of State Pompeo had declared that Russia was in material breach of the INF Treaty and warned that the United States would suspend its treaty obligations in sixty days unless Russia complied with its obligations under the Treaty. U.S. Dep't of State Press Release, Press Availability at NATO Headquarters (Dec. 4, 2018), at <https://www.state.gov/secretary/remarks/2018/12/287873.htm> [<https://perma.cc/KU5F-P4F9>].

⁵ State Dep't INF Withdrawal Press Release, *supra* note 1. The termination clause in the INF treaty provides in part that "[e]ach 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 withdraw to the other Party six months prior to withdrawal from this Treaty." 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, Art. XV(2), U.S.-USSR, Dec. 8, 1987, 1657 UNTS 2 [hereinafter INF Treaty]. Because the treaty was made between the United States and the Soviet Union, not only Russia but also the other successor states to the Soviet Union are parties to the originally bilateral INF treaty.

our attempts were disregarded or blocked by the United States, which has long opted for destroying the INF Treaty so as to remove any restrictions that hindered the build-up of its missile potential.

In light of the new threats created by Washington, we will have to take the necessary measures to ensure our national security. Russia reserves the right to reciprocate by launching the design, production and deployment of ground-launched intermediate- and shorter-range missiles.⁶

In a publicized meeting between Russian President Vladimir Putin and his foreign and defense ministers that same day, Putin vowed a “symmetrical” response to the U.S. decision and announced that he was suspending Russia’s participation in the INF Treaty.⁷ He also expressed his support for Russian development of a “land-based hypersonic intermediate-range missile” while stating that Russia should not “be drawn into an expensive arms race.”⁸ Russia also signaled that challenges lie ahead for the New START Treaty, which was implemented to limit the number of nuclear warheads that Russia and the United States deploy. In remarks on February 1, Deputy Foreign Minister Sergei Ryabkov stated, “I truly fear that the New START treaty may have the same fate as the INF Treaty. . . . It may just expire on February 5th, 2021, and not be prolonged.”⁹

Despite their disagreement over the impetus for the U.S. withdrawal, both the United States and Russia share a common concern that China has been able to expand and modernize its weapons arsenal unconstrained by the INF Treaty. More than a decade earlier, Russia expressed concerns to the Bush administration that other nuclear powers—particularly China—were not bound by the treaty and proposed expanding it to include them.¹⁰ Similarly, Trump administration officials have indicated that they would be willing to conclude an agreement similar to the INF Treaty that included China and other nuclear powers.¹¹ Following the announced U.S. withdrawal, China expressed regret at the U.S. decision but made clear its opposition to the “multilateralization” of the INF Treaty.¹²

⁶ Russian Foreign Ministry Press Release, Foreign Ministry Statement (Feb. 2, 2019), at http://www.mid.ru/en/web/guest/maps/us/-/asset_publisher/unVXBj4Z6e8/content/id/3495846 [<https://perma.cc/YCX6-LC9C>].

⁷ Kremlin Press Release, Meeting with Sergei Lavrov and Sergei Shoigu (Feb. 2, 2019), at <http://en.kremlin.ru/events/president/news/59763> [<https://perma.cc/GC5W-RDHQ>].

⁸ *Id.*

⁹ Anne Gearan, Paul Sonne & Carol Morello, *U.S. to Withdraw from Nuclear Arms Control Treaty with Russia, Raising Fears of a New Arms Race*, WASH. POST (Feb. 1, 2019), at https://www.washingtonpost.com/world/national-security/us-to-withdraw-from-nuclear-arms-control-treaty-with-russia-says-russian-violations-render-the-cold-war-agreement-moot/2019/02/01/84dc0db6-261f-11e9-ad53-824486280311_story.html?utm_term=.51d77709feaa (quoting this statement). By its terms, the New START Treaty expires ten years after entry into force. Treaty on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, U.S.-Russ., Art. XIV(2), Apr. 8, 2010, TIAS No. 11-205. The Treaty entered into force when the instruments of ratification were exchanged between the United States and Russia, which took place on February 5, 2011. *Id.* Art. XIV(1); U.S. Dep’t of State Press Release, Annual Report on Implementation of the New Start Treaty (Jan. 2018), at <https://www.state.gov/t/avc/rls/rpt/2018/280538.htm> [<https://perma.cc/4FHR-LKTZ>]. The Treaty will therefore expire on February 5, 2021, unless it is renewed.

¹⁰ David E. Sanger & William J. Broad, *U.S. Suspends Nuclear Arms Control Treaty with Russia*, N.Y. TIMES (Feb. 1, 2019), at <https://www.nytimes.com/2019/02/01/us/politics/trump-inf-nuclear-treaty.html>.

¹¹ *Id.*

¹² Chinese Foreign Ministry Press Release, Foreign Ministry Spokesperson Geng Shuang’s Remarks on the US Suspending INF Treaty Obligations and Beginning Withdrawal [*sic*] Process (Feb. 2, 2019), at https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1635268.shtml [<https://perma.cc/AX49-8KBF>].

The U.S. invocation of the withdrawal clause came after consultation with European allies, who were reportedly dismayed when the Trump administration initially signaled its plans to withdraw in October 2018.¹³ By the time withdrawal was officially triggered in February 2019, U.S. allies in Europe were prepared for the decision. North Atlantic Treaty Organization (NATO) Secretary General Jens Stoltenberg said that the United States had announced its intent to withdraw “with the full support of all NATO Allies,” and that, while ready to continue engaging with Russia, NATO was “preparing for a world without the INF Treaty.”¹⁴ Speaking frankly at the Munich Security Conference, Chancellor Angela Merkel of Germany described the collapse of the INF Treaty as “really bad news” that was “unavoidable” following “not decades, but years of violations of the terms of the treaty by Russia.”¹⁵ She observed that “it leaves us with a very interesting constellation: a treaty that was essentially designed for Europe, an arms reduction treaty that directly affects our security, has been cancelled by the United States of America and Russia And we are left sitting there.”¹⁶ She added that “we will obviously make every attempt to facilitate further arms reduction. The answer cannot be a blind arms race.”¹⁷

U.S. Military Undergoes Restructuring to Emphasize Cyber and Space Capabilities

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Since entering office, President Trump has taken steps to restructure the U.S. military to raise the profile of both its cybersecurity and space capabilities. The administration has elevated U.S. Cyber Command to a Unified Combatant Command and has implemented policies signaling a shift toward a more offensive cybersecurity mindset. The administration has also begun the process of establishing a U.S. Space Command, as well as pursuing a plan to create a new branch of the military centered around space-related operations. Although this restructuring does not by itself implicate international law, it might do so if it results in operational changes.

On August 18, 2017, President Trump released a presidential memorandum directing the secretary of defense to establish U.S. Cyber Command as a Unified Combatant

¹³ See Galbraith, *supra* note 2, at 140.

¹⁴ NATO Press Release, Press Conference by NATO Secretary General Jens Stoltenberg Following the Meetings of NATO Defence Ministers (Feb. 13, 2019), at https://www.nato.int/cps/en/natohq/opinions_163394.htm [<https://perma.cc/Y5DF-NX7M>].

¹⁵ Office of the German Federal Chancellor Press Release, The Chancellor at the 55th Munich Security Conference (Feb. 16, 2019), at <https://www.bundestkanzlerin.de/bkin-en/news/-all-of-us-together-will-be-needed-says-chancellor-1581236> [<https://perma.cc/3TGA-ZCM4>].

¹⁶ *Id.*

¹⁷ *Id.*