

On August 2, in a response to a request from Chairman of the Senate Foreign Relations Committee Bob Corker, the Administration offered a more extended explanation of the May and June strikes:

The United States has sufficient legal authority to prosecute the campaign against al-Qa'ida and associated forces, including against the Islamic State of Iraq and Syria (ISIS). This legal authority includes the 2001 Authorization for the Use Military Force (AUMF) which authorizes the use of military force against these groups. Accordingly, the Administration is not seeking revisions to the 2001 AUMF or additional authorizations to use force.

The 2001 AUMF also provides authority to use force to defend U.S., Coalition, and partner forces engaged in the campaign to defeat ISIS to the extent such use of force is a necessary and appropriate measure in support of counter-ISIS operations. As Secretary Tillerson indicated in his testimony before the Committee on June 13, 2017, our purpose and reason for being in Syria are unchanged: defeating ISIS. The strikes taken by the United States in May and June 2017 against the Syrian Government and pro-Syrian-Government forces were limited and lawful measures to counter immediate threats to U.S. or partner forces engaged in that campaign. The United States does not seek to fight the Syrian Government or pro-Syrian-Government forces. However, the United States will not hesitate to use necessary and proportionate force to defend U.S., Coalition, or partner forces engaged in the campaign against ISIS.

As a matter of international law, the United States is using force in Syria against al-Qa'ida and associated forces, including ISIS, and is providing support to Syrian partners fighting ISIS, such as the Syrian Democratic Forces, in the collective self-defense of Iraq (and other States) and in U.S. national self-defense. Upon commencing airstrikes against ISIS in Syria in September 2014, the United States submitted a letter to the U.N. Security Council consistent with Article 51 of the U.N. Charter explaining the international legal basis for its use of force. As the letter explained, Iraq has made clear that it faces serious threats of continuing armed attacks from ISIS, operating from safe havens in Syria; the Syrian Government has shown it cannot, or will not, confront these safe havens. The Government of Iraq has requested the United States lead international efforts to strike ISIS sites and strongholds inside Syria to end armed attacks on Iraq, to protect Iraqi citizens, and to enable Iraq to control its borders. Moreover, ISIS threatens Iraq, U.S. partners in the region, and the United States. Therefore, consistent with the inherent right of individual and collective self-defense, the United States initiated necessary and proportionate actions in Syria against ISIS in 2014, and those actions continue to the present day. Such necessary and proportionate measures include the use of force to defend U.S., Coalition, and U.S.-supported partner forces from threats by Syrian Government and pro-Syrian Government forces.<sup>44</sup>

*United States Alleges Russia Continues to Violate INF Treaty*  
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The Intermediate-Range Nuclear Forces Treaty (INF Treaty), signed by Ronald Reagan and Mikhail Gorbachev in 1987, obligates the parties “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.”<sup>1</sup> In 2014, the State Department reported

<sup>44</sup> Letter from Charles Faulkner, *supra* note 30.

<sup>1</sup> 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, U.S.-U.S.S.R., Dec. 8, 1987, 1657 UNTS 485, available at <https://www.state.gov/t/avc/trty/102360.htm#text> [hereinafter INF Treaty]; see also Marian Nash Leich, *Contemporary Practice of the United States*, 82 AJIL 341 (1988).

that Russia was in violation of its obligation not to possess intermediate- or short-range missiles.<sup>2</sup> Russia denied the violation and expressed its own doubts about the United States' compliance with the INF Treaty; the meetings and discussions that followed did not resolve either state's concerns.<sup>3</sup> Subsequent State Department reports in 2015 and 2016 continued to express concern about Russia's violation.<sup>4</sup>

In October 2016, two members of Congress wrote a letter to then-President Obama, observing that "the situation regarding Russia's violation has worsened and Russia is now in material breach of the Treaty."<sup>5</sup> They did not publicly elaborate on the nature of the violation, but urged Obama to impose sanctions to respond to it. According to a press report, the letter was prompted by concerns raised by some U.S. officials that "Russia is producing more missiles than are needed to sustain a flight-test program, spurring fears that the Kremlin is moving to build a force that could ultimately be deployed."<sup>6</sup> The State Department declined to comment.<sup>7</sup> The Obama administration took the unusual step of calling for a meeting of the Special Verification Commission, which was established by the INF Treaty to preside over compliance issues.<sup>8</sup> The commission met in November 2016; publicly, the U.S. State Department revealed only that "the United States, Belarusian, Kazakh, Russian, and Ukrainian Delegations met to discuss questions relating to compliance with the obligations assumed under the Treaty."<sup>9</sup>

Shortly after President Donald Trump's inauguration, press reports indicated that Russia had completed production and deployed the contested missile system.<sup>10</sup> The State Department spokesperson declined to "comment on intelligence matters," and said: "We have made very clear our concerns about Russia's violation, the risks it poses to European

<sup>2</sup> U.S. DEP'T OF STATE, ADHERENCE TO AND COMPLIANCE WITH ARMS CONTROL, NONPROLIFERATION, AND DISARMAMENT AGREEMENTS AND COMMITMENTS 1 (July 2014), available at <http://www.state.gov/documents/organization/230108.pdf>; Kristina Daugirdas & Julian Davis Mortenson, Contemporary Practice of the United States, 108 AJIL 837 (2014).

<sup>3</sup> Daugirdas & Mortenson, *supra* note 2, at 840–42.

<sup>4</sup> 2015 Report on Adherence to and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments, at <https://www.state.gov/t/avc/rls/rpt/2015/243224.htm#INF2>; 2016 Report on Adherence to and Compliance With Arms Control, Nonproliferation, and Disarmament Agreements and Commitments, at <https://www.state.gov/t/avc/rls/rpt/2016/255651.htm#INF%20TREATY> (both reports noting that "[t]he United States has determined that [the previous year], the Russian Federation (Russia) continued to be 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").

<sup>5</sup> Letter from William M. Thornberry, Chairman, Committee on Armed Services and Devin Nunes, Chairman, Permanent Select Committee on Intelligence, to President Barack Obama, October 17, 2016, available at [https://intelligence.house.gov/uploadedfiles/20161017\\_wmt\\_nunes\\_to\\_potus\\_re\\_inf.pdf](https://intelligence.house.gov/uploadedfiles/20161017_wmt_nunes_to_potus_re_inf.pdf).

<sup>6</sup> Michael R. Gordon, *Russia is Moving Ahead with Missile Program that Violates Treaty*, U.S. OFFICIALS SAY, N.Y. TIMES (Oct. 19, 2016), at <https://www.nytimes.com/2016/10/20/world/europe/russia-missiles-inf-treaty.html>.

<sup>7</sup> *Id.*

<sup>8</sup> INF Treaty, *supra* note 1, Art. XIII (establishing the Special Verification Commission as a forum to "resolve questions relating to compliance with the obligations assumed" and to "agree upon such measures as may be necessary to improve the viability and effectiveness of this Treaty").

<sup>9</sup> Thirteenth Session of the Special Verification Commission Under 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 (INF Treaty), Nov. 16, 2016, available at <https://2009-2017.state.gov/r/pa/prs/ps/2016/11/264375.htm>.

<sup>10</sup> Michael R. Gordon, *Russia Deploys Missile, Violating Treaty and Challenging Trump*, N.Y. TIMES (Feb. 14, 2017), at <https://www.nytimes.com/2017/02/14/world/europe/russia-cruise-missile-arms-control-treaty.html>.

and Asian security, and our strong interest in returning Russia to compliance with the treaty.”<sup>11</sup> On February 24, in an interview with Reuters, President Trump stated that he would take up the matter with Vladimir Putin “if and when we meet.”<sup>12</sup>

On March 8, General Paul Selva, Vice Chairman of the Joint Chiefs of Staff, testified before the House Armed Services Committee. In his prepared testimony, he stated,

Russia, for example, is not only modernizing its strategic nuclear triad and developing new non-strategic nuclear weapons, but remains in violation of its Intermediate Range Nuclear Forces Treaty obligations and has threatened nuclear use against U.S. forces and allies in Europe.<sup>13</sup>

His oral testimony, however, avoided this reference to a “violation of . . . Treaty obligations,” instead describing the Russian deployment as “violat[ing] the spirit and intent” of the treaty:

We believe that the Russians have deployed a land-based cruise missile that violates the spirit and intent of the Intermediate Nuclear Forces Treaty. The system itself presents a risk to most of our facilities in Europe. And we believe that the Russians have deliberately deployed it in order to pose a threat to NATO and to facilities within the NATO area of responsibility . . . . I don’t have enough information on their intent to conclude, other than that they do not intend to return to compliance.<sup>14</sup>

Selva added that the United States was considering various options to respond to Russia’s actions, but declined to provide specifics.<sup>15</sup>

Responding to the press stories and to Selva’s testimony, Russia denied any violation. On February 15, Kremlin spokesperson Dmitry Peskov, through a state-run media outlet, had stated that “[n]obody officially accused Russia of violating the INF Treaty. . . . Of course Russia was and remains committed to its international obligations, including in the framework of the agreement.”<sup>16</sup> The Russian Ministry of Foreign Affairs also posted a copy stamped “FAKE” of the New York Times story describing the U.S. allegations<sup>17</sup> and issued another statement calling the accusations “groundless.”<sup>18</sup> After Selva’s testimony, Peskov further stated:

I want to remind you of [Russian President Vladimir] Putin’s words about the fact that Russia sticks to the international obligations, even if in situations where sometimes it doesn’t correspond to Russia’s interests. Russia still remains committed to its obligations, so we disagree and reject any accusations on this point.<sup>19</sup>

The Russian Foreign Ministry published an extended response to General Selva’s testimony:

<sup>11</sup> *Id.*

<sup>12</sup> Steve Holland, *Trump Wants to Make Sure U.S. Nuclear Arsenal at ‘Top of the Pack,’* REUTERS (Feb. 23, 2017), at <http://www.reuters.com/article/us-usa-trump-exclusive-idUSKBN1622IF>.

<sup>13</sup> Nuclear Deterrence Assessment, House Armed Services Committee Hearing (Mar. 8, 2017), available at <http://congressional.proquest.com/congressional/docview/t39.d40.03087703.d98?accountid=14667>.

<sup>14</sup> *Id.* at 57; see also Michael R. Gordon, *Russia Has Deployed Missile Barred by Treaty, US General Tells Congress*, N.Y. TIMES (Mar. 8, 2017), at <https://www.nytimes.com/2017/03/08/us/politics/russia-inf-missile-treaty.html>.

<sup>15</sup> Nuclear Deterrence Assessment, *supra* note 13, at 57.

<sup>16</sup> *Kremlin: Russia Not Officially Accused of Violating INF Treaty*, SPUTNIK (Feb. 15, 2017), at <https://sputniknews.com/world/201702151050698427-kremlin-peskov-russia-inf>.

<sup>17</sup> Neil MacFarquhar, *With Big Red Stamp, Russia Singles Out What It Calls ‘Fake’ News*, N.Y. TIMES (Feb. 22, 2017), at <https://www.nytimes.com/2017/02/22/world/europe/russia-fake-news-media-foreign-ministry-.html>.

<sup>18</sup> *Id.*

<sup>19</sup> Frederik Pleitgen, Alla Eshchenko & Laura Smith-Spark, *Russia Denies Deploying Cruise Missiles in Treaty Breach*, CNN (Mar. 9, 2017), at <http://edition.cnn.com/2017/03/09/europe/russia-us-cruise-missile-treaty>.

We have noted statements made by Vice Chairman of the US Joint Chiefs of Staff Gen. Paul J. Selva, in which he told the US Congress that Russia had allegedly deployed a land-based cruise missile that violates the “spirit and intent” of the Intermediate-Range Nuclear Forces (INF) Treaty.

Such statements are certainly disappointing. As you know, this is not a new story. An informed person representing the military leadership of a major country should have known better. In particular, he could have finally explained what exactly they consider our “violations” to be and how they came to this conclusion.

However, this is not the first time that public accusations of Russia’s non-compliance with the INF Treaty are not backed up by any evidence. They seem to be following what has already become a familiar pattern—making claims and immediately evading any specificity.

We have repeatedly affirmed our commitment to the INF. We explained to the US side that all missile tests in Russia are in compliance with the Treaty. During all negotiations, consultations and meetings we asked them to list Russia’s specific actions that are causing concern in Washington. Invariably, we got little in response except vague proposals to guess what they meant. This hardly seems like a serious approach.

Indicatively, though, the Americans are threatening to retaliate for Russia’s mythical violations with certain steps of a military nature. The very fact that US representatives are persistently using such rhetoric, without bothering to bring any evidence or specific examples whatsoever, raises questions about the purpose of these false media narratives.

At the same time, the Americans stubbornly refuse to discuss our well-founded claims concerning their own compliance with the INF Treaty. I am referring to the Mk-41 vertical launching units in the Aegis Ashore ground-based anti-missile systems, which the United States has deployed in Romania and plans to deploy in Poland, and which can reasonably be considered cruise missile launchers. The large-scale programme of building ballistic missile targets for missile defence-related applications, with similar characteristics to intermediate-range and shorter-range missiles, is also causing a lot of questions. In addition, the United States produces and uses unmanned combat air vehicles, which fit the definition of ground-based cruise missiles contained in the INF Treaty.

Once again, we suggest abandoning this unsubstantiated rhetoric and public accusations without specific examples in favour of a substantive dialogue aimed at addressing existing concerns and clarifying potential points of disagreement. All the mechanisms are there. We are open to such a dialogue through the appropriate channels.<sup>20</sup>

For its part, the April 2017 State Department Report, echoing the 2015 and 2016 reports, continued to describe Russia as violating the INF Treaty:

The United States has determined that in 2016, the Russian Federation (Russia) continued to be 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 kilometers to 5,500 kilometers, or to possess or produce launchers of such missiles.<sup>21</sup>

In response, the Russian Foreign Ministry issued a lengthy statement on April 29 detailing what it viewed as U.S. violations of various international obligations:

<sup>20</sup> Ministry of Foreign Affairs of the Russ. Fed’n Press Release, Briefing by Foreign Ministry Spokesperson Maria Zakharov (Mar. 10, 2017), at [http://www.mid.ru/en/web/guest/foreign\\_policy/news/-/asset\\_publisher/ckNonkJE02Bw/content/id/2673614](http://www.mid.ru/en/web/guest/foreign_policy/news/-/asset_publisher/ckNonkJE02Bw/content/id/2673614).

<sup>21</sup> 2017 Report on Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments (Apr. 14, 2017), at <https://www.state.gov/t/avc/rls/rpt/2017/270330.htm>.

The U.S. formally advocates for unconditional implementation of the norms of international law, which also refers to abiding, to the fullest extent, by international agreements aimed at strengthening international security and maintaining global stability, key among which are arms control, nonproliferation, and disarmament treaties and conventions.

While proclaiming this approach and setting its own criteria, “ideal” from Washington’s point of view, in terms of implementation of a particular treaty, the U.S. aspires to a monopoly in assessing other nations’ compliance with their treaty obligations. Moreover, Washington does so categorically, ignoring the established practice of resolving issues through designated multilateral mechanisms.

The annual report, released by the U.S. Department of State on April 25, 2017, is subject to the same deficiencies as all the previous ones. While making absolutely unsubstantiated accusations against specific countries, its authors have once again attempted to portray the U.S. as being all but the only state with an impeccable track record in terms of compliance with arms control, nonproliferation, and disarmament agreements and commitments. Such unacceptable manner of presenting and compiling facts has already become a traditional U.S. way of validating its claims to the “exceptional right” to judge the “guilty” and demand punishment for them.

While sharing the commitment to full and unconditional compliance with its obligations under international treaties, the Russian Federation strongly opposes the methods and means used by Washington in order to supposedly “expose” those countries which, in its opinion, are treaty obligations violators.

For the past years, there has been a growing number of reasons suggesting that such U.S. line of conduct is not at all due to the fact that it is plainly unwilling to burden itself with a complicated and time-consuming expert dialogue; it could be something even more serious than that, such as Washington’s fear of itself being exposed for making unsubstantiated accusations against other countries, as well as for its own violations of arms control, nonproliferation, and disarmament agreements and commitments.

Russia’s Foreign Ministry is once again compelled to draw attention to such unacceptable activities by the U.S. and to the irrefutable facts aimed at contributing to an unbiased assessment of U.S. and Russia’s actual compliance with their treaty obligations under arms control, nonproliferation, and disarmament agreements and commitments.<sup>22</sup>

<sup>22</sup> Ministry of Foreign Affairs of the Russ. Fed’n Press Release, Comment by the MFA of Russia on the U.S. Department of State’s Annual Report on Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments (Apr. 29, 2017), at [http://www.mid.ru/en/web/guest/kommentarii\\_predstavatelya/-/asset\\_publisher/MCZ7HQUMdqBY/content/id/2740264](http://www.mid.ru/en/web/guest/kommentarii_predstavatelya/-/asset_publisher/MCZ7HQUMdqBY/content/id/2740264).