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“Russian Rule of Law Violations Across the Three Dimensions of the OSCE”
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Chairman Smith, Co-Chairman Wicker, other members of the Commission, I thank you for inviting me to testify at your hearing this afternoon on Russian adherence to the rule of law across the three dimensions of the OSCE.

I understand that my co-panelists will speak to the economic and human rights dimensions, and you would like me to focus on the security dimension. I have been asked in particular to address Russia’s adherence to its obligations under various arms control and confidence-building arrangements, including the Budapest Memorandum of 1994, the Conventional Armed Forces in Europe (CFE) Treaty of 1990, the Intermediate-Range Nuclear Forces (INF) Treaty of 1987, the Open Skies Treaty of 1992, and the Vienna Document on Confidence- and Security-Building Measures, originally adopted in 1990 and updated most recently in 2011.

I will briefly review the obligations arising under each of these agreements and discuss the degree to which Russia is currently living up to its obligations. I will then draw some overall conclusions about Russia’s approach to these agreements, and the implications for U.S. policy.

Budapest Memorandum

The Budapest Memorandum was the agreement reached in 1994 between the United States, United Kingdom, Russia, and Ukraine, which persuaded Ukraine to (1) give up the nuclear weapons it inherited from the Soviet Union (which at that point gave Ukraine the third largest nuclear arsenal in the world) and (2) adhere to the Nuclear Nonproliferation Treaty as a non-nuclear weapon state. The memorandum did this by, among other things, providing security assurances to Ukraine. The memorandum specifically stated that Russia and the other signatories “reaffirm their obligation to refrain from the threat our use of force against the territorial integrity or political independence of Ukraine”.

This guarantee was blatantly violated by Russia when it occupied and declared it was annexing the Crimea in March of 2014. That violation was compounded when Russian-backed separatists seized control of the Donetsk and Luhansk regions of Eastern Ukraine beginning in August 2014—a creeping occupation of Ukrainian territory that continues to play out today.

The Obama Administration has rightly characterized Russia’s actions in the Crimea and in Eastern Ukraine as aggression and a violation of the most basic principles of international law

set forth in the Charter of the United Nations. The Obama Administration has also made clear that Russia's actions violate the security assurances provided by Russia to Ukraine under the Budapest Memorandum. Many experts have pointed out that beyond the legal issues raised by Russia's violation of these assurances, it is likely that in the future, countries in the position of Ukraine in 1994 will be less willing to make nonproliferation commitments in exchange for security assurances.

CFE Treaty

The CFE Treaty was concluded in 1990, and included as states parties all members of NATO and the Warsaw Pact. For all of these states parties, it imposed strict limits on the amounts of specified military hardware (called "Treaty-Limited Equipment" or "TLE") that they could deploy in specified areas in the treaty's area of application, which stretches from the Atlantic Ocean to the Urals Mountains. Following the treaty's entry into force, over 52,000 pieces of TLE were destroyed or converted by the United States, Russia, and other parties to the treaty.

Underlying the treaty was the belief that the imbalance in conventional armed forces in Europe (which favored the Soviet Union and the Warsaw Pact during the Cold War) had created instability and fear on the Continent, and led NATO to rely increasingly on its nuclear deterrent. The concept of the treaty was that if this conventional imbalance could be eliminated, stability could be restored, and reliance on nuclear weapons diminished.

In July 2007, however, President Putin ordered a "suspension" of Russian implementation of the treaty. The other states parties have not recognized this suspension as a legally permissible step, and therefore all of the other parties have continued to observe the treaty as between them. In 2011, however, the United States and its NATO allies (plus Georgia and Moldova) bowed to reality and accepted that Russia was not going to permit verification inspections under the treaty to take place on Russian territory. Accordingly, they ceased requesting inspections on Russian territory, and declared that they would cease implementation of their obligations to Russia.

Russia's intervention in Ukraine has compounded its non-compliance with the CFE Treaty. It is today stationing military forces on the territory of another CFE state party (Ukraine) without that state party's consent, in violation of Article IV, paragraph 5 of the treaty.

The United States has tried hard since 2007 to persuade Russia to return to compliance with the treaty, but to no avail. The basic problem is that Russia concluded more than a decade ago that the CFE Treaty was no longer serving its interest. Among other things, Moscow chafed at the treaty's so-called Flank Limits, which they believed constrained their ability to carry out military operations on Russia's periphery, for example, in Chechnya. Moscow was also unhappy that Georgia and Moldova were using the treaty to pressure Russia to withdraw unwelcome Russian forces from their territory. Following Russia's intervention in Ukraine, it has become

even more unlikely that Moscow will reconsider its view that the CFE treaty is contrary to its interest.

INF Treaty

The INF Treaty was concluded in 1987, and committed the United States and the Soviet Union to neither possess, produce, nor flight-test ground-launched missiles with maximum ranges between 500 and 5500 kilometers. Pursuant to the treaty, by May of 1991, the United States eliminated approximately 800 INF-range missiles and the Soviet Union eliminated approximately 1800 such missiles.

Negotiated at the height of the Cold War, the INF Treaty contributed to security in the European theater, and was profoundly reassuring to the populations of some of our key NATO allies. It was in many ways a vindication of President Reagan's policy of promoting "peace through strength".

The Obama Administration announced in July of 2014 that it had "determined that the Russian Federation is 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." The Obama Administration reaffirmed in its annual arms control compliance report in May of this year that "the Russian Federation continued to be in violation of its obligations under the INF Treaty."

The Obama Administration has not clearly explained the nature of the Russian violation. However, press reporting indicates that it involves the flight-testing of a ground-launched missile to ranges that are prohibited under the treaty. Further, while the Administration only formally determined last year that Russia was violating the treaty, it appears that the Administration first came to suspect that Russia was violating the treaty in 2011, and the first test of this missile may have taken place several years earlier.

As with the CFE Treaty, Russia has long been unhappy living under the restrictions of the INF Treaty. The basic Russian complaint is that the treaty applies only to the United States and four successor states to the Soviet Union (including Russia), and therefore leaves every other country in the world free to produce and deploy INF-range missiles. Increasingly other countries are doing precisely that, including many countries located within striking distance of Russia, such as China, Iran, North Korea and Pakistan.

It is a sad irony, of course, that missile technology proliferation from Russia contributed significantly to the missile programs of Iran and North Korea, and that North Korea in turn contributed to Pakistan's missile program. So in fact, Russia's complaint is in significant part of its own making.

As early as 2005, Russian Defense Minister Sergei Ivanov raised with Secretary of Defense Donald Rumsfeld the possibility of Russian withdrawal from the treaty. President Putin has since complained publicly about the unfairness of the treaty to Russia, and I know from my own conversations with Russian officials during my time in government that they would like to get out from under it.

Certainly this underlying unhappiness with the treaty helps explain why Russia has been willing to violate it. But in discussing how to respond to this violation, we need to recognize that Moscow would welcome an outcome similar to the one they have come to on the CFE Treaty, and in fact it would simplify matters for them if we would terminate the treaty this time rather than obliging them to do so.

Open Skies Treaty

The Open Skies Treaty was signed in 1992, and created a regime for the conduct of observation flights over the territory of other states parties. These flights use photography and other sensors to collect information about activities on the ground in the countries being overflown. The collection of this information is intended as a confidence-building measure among the parties. There are today 34 states parties to the treaty, including the United States and Russia.

Russia has continued to implement the Open Skies Treaty, but there are a number of concerns about Russia's compliance with the treaty. For example, contrary to the treaty's requirement that states parties make their entire national territory available for observation, Russia has declared several portions of its territory to be off-limits to overflights, including areas over Chechnya, Moscow, and adjacent to Russia's borders with Abkhazia and South Ossetia. In addition, Russia last year imposed practical restrictions that prevent full observation of the Kaliningrad enclave. Further, since Malaysian Airlines flight 17 was shot down over Ukraine last July, Russia has said that it cannot guarantee the safety of observation aircraft flying near Russia's border with Eastern Ukraine—ostensibly, according to Russia, due to the threat from Ukrainian air defenses. As a consequence, it has been impossible to conduct observation flights near Russia's border with Eastern Ukraine since that time.

Despite these problems, it should be noted that observation flights have continued over Russia, including the first-ever “Extraordinary Observation Flight”, requested by Ukraine pursuant to the treaty shortly after Russia's intervention in the Crimea, and carried out using a U.S. aircraft.

Overall, therefore, it has to be acknowledged that Russia continues to observe the Open Skies Treaty, though not always in the full spirit of transparency that the treaty was intended to promote.

Vienna Document

The Vienna Document on Confidence- and Security-Building Measures was first adopted under the auspices of the OSCE in 1990, and updated in 1992, 1994, 1999, and most recently in 2011. It is not a treaty, but rather an agreed set of transparency measures that all members of the OSCE have agreed to implement in order to increase confidence within the OSCE region. Among these measures are data exchanges, inspections, and notifications of certain military activities.

In this year's annual arms control compliance report, the Obama Administration drew the following conclusion about Russia's compliance with the Vienna Document:

The United States assesses Russia's selective implementation of some provisions of the Vienna Document and the resultant loss of transparency about Russian military activities has limited the effectiveness of the CSBM regime.

The report goes on to explain that Russia has not reported on its military deployments near Russia's border with Ukraine, which appear to exceed the personnel and/or equipment levels that require notification under the Vienna Document. Russia has asserted that a number of its military activities did not have to be notified because they were multiple activities under separate command, when to all appearances they were large-scale activities under unitary command. This has given rise to suspicions that, at best, Russia was structuring its activities to evade Vienna Document reporting requirements, or, at worst, misrepresenting those activities in order to justify not reporting them.

Further, Russia has defied efforts by other parties to the Vienna Document to invoke the agreement's mechanism for consultations in the event of unusual military activities. When this mechanism has been invoked with respect to Russia's activities involving Ukraine, Russia has either failed to provide responsive replies to requests for an explanation of the activities, or, in some cases, boycotted meetings called to discuss the activities.

Russia has also failed to report information on its military forces deployed in the Abkhazia and South Ossetia regions of Georgia.

To be sure, Russia continues to permit other Vienna Document inspections and evaluations to take place on its territory, and continues to participate in data exchanges. But its selective implementation of the Vienna Document is contrary to the spirit of the agreement, and has diminished rather enhanced confidence among members of the OSCE.

Concluding Observations

A clear pattern emerges when one looks at Russia's implementation of its arms control obligations overall. Moscow will comply with such agreements so long as it judges them to be in Russia's interest. But should Moscow conclude such agreements have ceased to serve its

interest, it will ignore them (Budapest Memorandum), effectively terminate them (CFE Treaty), violate them while continuing to pay them lip service (INF Treaty), or selectively implement them (Open Skies Treaty and Vienna Document).

Such actions are, of course, destructive to the sense of confidence and security that CSBMs are intended to promote. But Russia believes that this is how great powers are entitled to act, and today Moscow insists on acting and being respected as a great power.

I do not see a simple solution to this problem. It is tempting to point out to the Russians that their actions are reviving enthusiasm for the NATO alliance in Central and Western Europe, and underscoring to Russia's immediate neighbors who are not already NATO members the advantages of joining the alliance. In other words, Russia's actions are provoking precisely the response that they say they most want to avoid.

I do not think, however, that this is a problem that can be resolved through dialogue and reason. In my experience, there is nothing that infuriates Russian officials more than to be lectured about what is in their national interest. They find such conversations condescending, and are firmly of the view that they are the best judges of Russia's true interests.

Another option is to try to pressure Russia to behave better. That is what we are doing today with our policy of applying economic sanctions in response to Russia's military intervention in Ukraine. One could describe that as a policy of pressuring Russia to begin respecting its obligations under the Budapest Memorandum. So far, however, that policy has not succeeded in persuading Russia to change course in Ukraine, and given our experience to this point, it is hard to imagine some combination of additional economic sanctions that could achieve a different outcome.

In 1961, Fred Ikle wrote what has become the definitive article about how to deal with arms control violations. He observed that in responding to such violations, "Political sanctions are likely to be less effective than an increased defense effort." I think this is true with respect to the cases outlined above, though I also suspect that Russia does not believe we and our allies are prepared to substantially increase our defense spending in the current environment.

In the long term, I am confident that Russia will discover that its true national interest lie in cooperating with the other members of the OSCE rather than seeking to intimidate them. Until that time comes, however, we must be clear-eyed about the challenges we face. We have to deal with Russia as it is, rather than how we wish it to be.

I thank you for holding this hearing, and I look forward to responding to your questions.