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HEARING OF THE SENATE FOREIGN RELATIONS COMMITTEE [EXCERPT]

TREATY ON STRATEGIC OFFENSIVE REDUCTIONS

CHAired BY: SENATOR JOSEPH BIDEN, JR. (D-DE)

LOCATION: 419 DIRKSEN SENATE OFFICE BUILDING, WASHINGTON, D.C.

WITNESSES: SECRETARY OF STATE COLIN POWELL

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SEN. RUSSELL FEINGOLD (D-WI): Thank you very much, Mr. Chairman, for scheduling this excellent hearing on this important treaty.

And I welcome you, Secretary Powell.

I am very pleased that the presidents of the United States and Russia have taken this important step of signing a binding treaty that affirms the goal of reducing the arsenals of deadly strategic offensive nuclear weapons that are currently deployed by the two countries. While this brief three-page document is a step in the right direction, Mr. Secretary, I'm concerned that it does not address the vital issues of compliance and verification, that it does not include a timetable for these reductions and, as others have pointed out, it does not actually require that any nuclear warheads actually be destroyed. Only by dismantling and destroying these devastating weapons can we truly achieve the goal of meaningful nuclear-arms reduction.

In addition, I am troubled by the language contained in Article IV of the treaty regarding the process by which one of the parties may withdraw from the treaty.

As you may know, Mr. Secretary, I found the president's decision to unilaterally withdraw the United States from the 1972 Anti-Ballistic Missile Treaty troubling on both policy and constitutional grounds.

I think the Senate has a constitutional role to play in terminating treaties. The Constitution requires the advice and consent of the Senate for the United States' entry into a treaty, such as the one that we are beginning to consider here today. And the Constitution gives treaties the same status as laws. The Senate, at a minimum, should be consulted on withdrawing from a treaty, and especially from a treaty of the magnitude of the ABM Treaty, the termination of which could have lasting implications on the arms control and defense policy of this country.

I don't think a law can be declared to be repealed by the president alone. Only an act of Congress can repeal a law. Action by the Senate or the Congress should be required to terminate a treaty.

And this treaty, the Moscow treaty, contains troubling language that would allow either party to withdraw in exercising its national sovereignty with only three months written notice. It does not require that either party cite extraordinary circumstances that jeopardize its supreme national interest. It does not require that any reason for the withdrawal be given at all. This treaty requires only three months notice in writing. Most arms control treaties require at least six months written notice, as did the ABM Treaty.

So, Mr. Secretary, I look forward to exploring ways to protect the Senate's prerogatives on treaty withdrawal as the committee continues its consideration of this treaty. And in that regard, as I suggested, I'm troubled by the way the administration handled the withdrawal from the ABM Treaty. I'm concerned that the administration did not really consult with the Senate prior to the president's announcement of the planned withdrawal in December, and that, of course, the administration did not seek approval from the Congress for this action. So, I guess what I'd like to know from you is what steps will you take to ensure that this administration, at a minimum, consults with the Senate prior to any future abrogation of existing treaties?

SEC. POWELL: With respect to the ABM Treaty, Senator, I think that the president, not only in the campaign for election, but in his first year as president made it clear that the ABM Treaty was an impediment, an impediment to protecting this nation through the pursuit of missile defense. I don't think there was any secret about this. I think we talked to Congress on a regular basis about our concerns. I think in every hearing I had up on the Hill, we discussed this. It was quite clear what we were discussing with the Russians. The Russian view was also well-known. And after considering all of our options and offering to the Russians that we have a bilateral withdrawal from the ABM Treaty, which they did not agree with, the president believed it was in the interests of the nation to move forward and leave the ABM Treaty.

With respect to the law on this, there are differences of opinion, as you well know, Senator Feingold, and we believe that we were operating quite correctly under the Constitution by the president exercising the right of withdrawal for – on the basis contained in the treaty: supreme national interest.

And we did not believe it was necessary to get congressional approval for the exercise of that presidential prerogative, although I know there is a different point of view, which you've just expressed.

SEN. FEINGOLD: Is it the administration's position that with regard to this treaty, that there would be no need for Senate approval of withdrawal?

SEC. POWELL: I believe that when --

SEN. FEINGOLD: I'm speaking of the Moscow treaty now.

SEC. POWELL: Yeah. -- when the president left the ABM Treaty because he believed it was his authority to do so, and the Congress was made aware of the fact that he was going to do it and they were well aware that he was moving in that direction, if it was appropriate for that treaty, and if any other treaty has similar provisions with respect to abrogation and withdrawal, it would be the position of this administration that he would exercise that if the conditions determined that he should. Now, I will not speak for future presidents, but I believe that is the position of this president.

With respect to the article in this treaty that has to do with that, three months and national sovereignty is what the two sides agreed to and believed appropriate to this treaty at this time.

SEN. FEINGOLD: So I take it, Mr. Secretary, the administration's position is that there would be no need for Senate approval of withdrawal from this Moscow treaty.

SEC. POWELL: Yes, sir.

SEN. FEINGOLD: I'm concerned about also the vague language in the treaty regarding the process by which one of the parties may -- parties may withdraw from it. Could you explain how the negotiators arrived at the treaty withdrawal language in Article 4, Section 3? In other words, why three months notice instead of six? And why doesn't this section require a party to cite extraordinary circumstances for withdrawal?

SEC. POWELL: As the treaty was being negotiated and the two sides discussed this issue, they saw a future that was promising in the sense that there was a new relationship between Russia and America, but at the same time, it was still an uncertain future. We saw other nations that were developing nuclear weapons. We were concerned that we might face a different kind of strategic environment. We hope that would not be the case. But as we worked our way through this question of are we betting correctly on this treaty, both sides felt that there was an appropriate need to make sure that the standard that had to be met if either side determined that they were now a strategic risk was a reasonable standard. And national sovereignty, the agreement of both sides seemed to be a reasonable standard. And it's not that easy to define what you mean by that, but nor was "supreme national interest" in earlier treaties.

With respect to six months and three months, this was a compromise position arrived at as both sides tried to make sure that in the event of a strategic situation coming along that was fundamentally different than the situation that existed at the time the treaty was being negotiated, signed and ratified, three months seemed to be an appropriate amount of time to give notice to the other side.

Would six months have been wrong, or two months have been wrong? Any one of those might have been quite acceptable. But after a process of discussion and negotiations, both sides found that three months was reasonable and appropriate.

SEN. FEINGOLD: Mr. Secretary, I'd just like to comment that the combination of these two answers -- the one with regard to the Senate not having a role in withdrawing from a treaty and the very flexible circumstances in which either party could withdraw, and I'm very troubled

about what kind of role the administration thinks the Senate has in this process. And it leaves me or others who may agree with me virtually no choice but to question this up front -- this process -- the administration not taking the Senate's role seriously and where it can't be disputed -- our role in approving treaties. It just -- I really do believe, from an historical point of view and a legal point of view, that this is a trend that really is in the interest of the country, and it isn't -- I don't think there's any real value in the president not making his case to the Senate. I'm quite confident the president would have won overwhelmingly had he sought Senate votes to withdraw from the ABM treaty, and I suspect on this treaty, as well. I think this was a dangerous road, and would just suggest that at some point, certainly, it will lead to an unnecessary kind of conflict with regard to the prerogatives of the Senate.

SEC. POWELL: Senator, I think the president has the greatest respect for the role that is played by the Senate, and that's why I'm here today. And our understanding of the constitutional process is that the president signs a treaty, but then he has to, as we are now doing, defend it before the United States Senate to receive the Senate's advice and consent to the exchange of instruments of ratification of that treaty. And with -- we hope it'll be a clean decision on the part of the Senate, but the Senate has the right and authority to interpret, to put reservations, whatever you so choose incident to the instrument of ratification. But I hope it'll be clean. We're looking for a clean response from the Senate.

But I must say that my understanding of our constitutional history and my understanding of the law, my understanding as to the way treaties have been dealt with for the last 200-odd years is that there is no constitutional requirement and no requirement of law that to abrogate a treaty with these kinds of clauses and articles for abrogation in it requires either consultation or the approval of the Senate or the Congress as a body. Now I'm a great believer in sharing ideas and discussing these issues, and I think the administration did a good job in letting the American people and letting the United States Congress know the direction in which we were heading.

And I've got to say to you, Senator, that I worked very, very hard last fall with my Russian colleagues to see if there was not some way -- we understood the importance of this treaty to the Russians. We knew how this was used by many people in the world. We worked hard to see if there was not some way that we could go forward with our missile defense within the context of the treaty. But the treaty really was designed to keep missile defense from going forward, and we simply couldn't bridge that difference. We tried every way imaginable. And so we said to the Russians, "Look: You need to understand we are committed to missile defense. We are going forward, and if we can't go forward within the treaty, and you don't want to bilaterally abrogate the treaty, your -- that's your choice -- we have to unilaterally abrogate the treaty."

And we believe we did that appropriately. We believe we did that with, if not the kind of consultation you might have wished, Senator Feingold -- but we don't believe there was a requirement for that, but with -- certainly with the knowledge of the Senate. And we believe we followed our law, our traditions, our practice, and we were consistent with the constitutional requirements.

SEN. FEINGOLD: Thank you, Mr. Secretary.

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