
**Preparatory Committee for the 2010 Review
Conference of the Parties to the Treaty on the
Non-Proliferation of Nuclear Weapons**

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**Article X of the Treaty on the Non-Proliferation of Nuclear
Weapons: deterring and responding to withdrawal by
Treaty violators**

Working paper submitted by the United States of America

1. All States parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) have a powerful interest in ensuring that all members adhere to and comply with the Treaty. Each country has a critical national and international security interest in preventing additional countries from acquiring nuclear weapons and guarding against the potentially catastrophic collapse of the non-proliferation regime and the creation of new nuclear arms races. Each also has a vital economic and social interest in securing and expanding the international nuclear cooperative relationships that depend upon the assurances provided by NPT compliance. The continued integrity and efficacy of the Treaty is very important to international peace and security.
2. The great benefits that the NPT brings to the international community, however, would be dangerously eroded if countries violating the Treaty felt free to withdraw from it, develop nuclear weapons and enjoy the fruits of their violation with impunity. If violation entailed no cost, and withdrawal were perceived as ending international efforts to require corrective action, the Treaty's system of interrelated security and developmental benefits could collapse, undermining the Treaty's basic non-proliferation rules and making universal adherence pointless.
3. The specter of such a future has now been raised. After years of demonstrating contempt for its safeguards obligations and developing nuclear weapons, North Korea announced in January 2003 its intent to withdraw from the Treaty. Its statements and actions before and since that date, not least in conducting a nuclear detonation in October 2006, demonstrate that North Korea's withdrawal is precisely the sort of conduct that the international community cannot permit if the NPT is to continue to serve its purposes. Meanwhile, as the Iranian regime has itself been caught in multiple and ongoing violations of its NPT obligations, its leaders have hinted that they too are considering withdrawal. The international community's so far rather ambivalent response needs to be remedied, because how we respond to



these provocations will help determine whether the Treaty survives to bring its benefits to future generations.

4. For these reasons, NPT States parties should consider article X with great care. The question of how best to deter and, if necessary, to respond to NPT withdrawal by Treaty violators is both important and urgent. Prompt and effective international action is imperative. States parties should place this issue high upon their agenda for the current NPT review cycle, build upon the excellent preparatory work done on article X issues for the 2005 NPT Review Conference and work closely together in order to implement appropriate measures as quickly as possible.

Treaty benefits and Treaty good faith

5. All States parties to the NPT enjoy enormous security benefits from the Treaty, most of all in the assurances it helps provide that a non-nuclear-weapon State neighbour or rival will not develop nuclear weapons — and in the consequent assurances the NPT also helps provide to all humanity against the emergence of dangerous new nuclear arms races. This is the basic purpose of the Treaty. This purpose, however, is undermined if States parties do not comply with the NPT and if such States feel free to withdraw from it without consequence.

6. Parties to the NPT enjoy certain benefits not available to those States that have chosen not to adhere to the Treaty. Among those benefits is participation in deliberations at Review Conferences and Preparatory Committee meetings, at which important aspects of the operation of the Treaty are discussed. The Treaty's benefits also include an assurance of access to nuclear cooperation and a broad range of technical support in the use of nuclear technology for peaceful purposes. A State party that enjoys these benefits while clandestinely violating its NPT obligations, however, demonstrates its contempt for the Treaty and perpetrates a sort of fraud against all other States parties. A State party that withdraws from the NPT after violating the Treaty should not be permitted to avoid corrective action by the international community depriving it of such benefits while in violation of the Treaty. Withdrawal does not absolve a State of any violation of the Treaty that was committed while still a party to the Treaty. Should a party withdraw from the Treaty before it remedies its violations, it should remain accountable for those violations. Pursuant to article X, countries have a right to withdraw from the Treaty, but they do not have a right to profit from their violations, and other States parties should ensure that they do not.

Deterrence and effective response

7. Effective international action to ensure that violators will not benefit from their deceit would not merely have the effect of achieving a less dangerous and more just outcome in their particular cases. It would also strengthen the NPT, better preserve international peace and security and reinforce norms that facilitate international nuclear cooperation, because it would make both violation and Treaty withdrawal during or *after* violation less attractive options for others in the future. The elements of response and deterrence are interlinked: strengthened deterrence will lessen the chance of circumstances developing in which it will be necessary to respond to a violator's withdrawal. At the same time, each instance of effective response will help deter others from following such a path in the future.

Existing framework

8. Should a party announce its intention to withdraw, the NPT and the nuclear non-proliferation regime already provide an opportunity (three-months' advance notice) for the international community to address the situation. It is clear, moreover, that the Treaty envisions that parties will consider withdrawal only in the most serious of circumstances: those which jeopardize its supreme interests. Pursuant to the text of article X.1,

Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

9. By requiring three months' notice before withdrawal is complete, article X allows parties and the United Nations Security Council, and thereby implicitly nearly any interested party with influence to bring to bear, time to seek to influence the withdrawing party or to prepare to deal with the consequences of a completed withdrawal. The requirement that the withdrawing party include a statement in its notice of withdrawal explaining the circumstances it believes jeopardize its supreme interests affords the international community an opportunity to review and evaluate the motivations and reasons of the withdrawing party. Although a decision to withdraw is solely a matter of national sovereignty, the international community should seek to exercise any avenues of redress that may be available to it if it is clear that such reasons are offered in bad faith, especially with the intent of continuing pre-existing NPT violations.

10. The NPT conveys no power to *stop* withdrawal from taking effect if the reasons given are in the judgment of the international community frivolous or improper, but neither would the Treaty prevent the international community from taking appropriate steps against a withdrawing party, especially a party that had demonstrated that its actions posed a threat to international peace and security. Given the destructive capabilities presented by nuclear weapons, the possession of which is regulated by the Treaty, NPT withdrawal would ordinarily raise issues within the competence of the Security Council. Withdrawal by a country that had already violated its NPT obligations should be of very great concern indeed.

Responding to withdrawal

11. NPT parties should undertake a wide range of actions to seek to dissuade a State from withdrawing while in violation of the Treaty and to express opposition to such a step — before, during, and after the article X notice period. Such measures, depending on the circumstances, could include:

A. United Nations Security Council

12. Because an NPT violator's intention to withdraw from the NPT will likely be coupled with the intention to acquire nuclear weapons, the Security Council must carefully consider the potential consequences of the intended withdrawal for international peace and security. Upon its receipt of a notification of withdrawal, the

Security Council, therefore, should meet promptly to consider the “extraordinary events” cited by the party as jeopardizing its supreme interests and thereby giving rise to its intention to withdraw, as well as the likely consequences for peace and security of the withdrawal and the possibility that alternative measures short of withdrawal might address and resolve the circumstances cited by the party.

13. The Security Council has made clear that proliferation of nuclear weapons constitutes a threat to international peace and security. Accordingly, in a case of withdrawal from the NPT by a violator, the Council should consider the full range of options provided by the Charter, including under Chapter VII, as may be warranted by the circumstances of the case. Withdrawal by a party in breach of NPT commitments raises particular concerns because other Parties may have based their security calculations and decisions regarding nuclear cooperation on the withdrawing party’s compliance with those commitments.

14. The Security Council could ask the International Atomic Energy Agency (IAEA) for all relevant information it may have about the country in question, including the status of safeguards compliance by the withdrawing State. IAEA may be able to provide other information such as the State’s capabilities in reprocessing and enrichment and any holdings of enriched uranium and plutonium, as well as its inspectors’ assessments of activities known to be under way there.

15. The Security Council also may wish to undertake consultations with the withdrawing party and make clear the possible future steps the Council might take. Should the requirements of article X.1 of the NPT be fulfilled and withdrawal completed, the Council should carefully consider whether the situation resulting from the withdrawal constitutes a threat to international peace and security. Upon making such a determination, the Council should consider all appropriate measures, including invoking its authority under Chapter VII of the Charter of the United Nations to impose specific conditions of transparency and accountability upon nuclear-related activity in the country in question, and/or regulate the scope of permissible nuclear-related dealings with that country.

B. International Atomic Energy Agency Board of Governors

16. The International Atomic Energy Agency has no specific role in matters of Treaty withdrawal per se. It has specific statutory authorities and responsibilities in the event of a Party’s non-compliance with nuclear safeguards, however, which might become important in instances in which a Party violates safeguards obligations prior to attempting Treaty withdrawal. The Agency also has some ability to shape safeguards obligations in such a way as to lessen the danger that withdrawal would immediately result in nuclear materials and technology being subject to no safeguards at all. Accordingly, the IAEA and its Board of Governors could consider the following:

- (a) Measures for continued safeguarding of nuclear equipment and material in a withdrawing State, should that Party complete the requirements of article X;
- (b) Prompt reporting to the United Nations Security Council of any safeguards or other compliance concerns;
- (c) Suspension of supply agreements between IAEA and a State in non-compliance with its safeguards obligations;

(d) Suspension of IAEA technical assistance to such a party, whether on grounds provided in the IAEA statute, as a matter of policy, or as directed by the United Nations Security Council;

(e) Withdrawal of material or equipment provided under IAEA auspices to a State in non-compliance with its safeguards obligations, pursuant to articles XII.A.7 and/or article XII.C of the IAEA statute.

C. Nuclear supply

17. There should be no further nuclear supply to a country in violation of the NPT that has withdrawn or made a notification of withdrawal. Nor should such a withdrawing party be allowed to benefit from the use of nuclear materials and equipment that it imported while it was party to the Treaty. NPT parties engage in nuclear cooperation based on a good-faith assumption of Treaty compliance and, in the case of a non-nuclear-weapon State, on its acceptance of comprehensive IAEA safeguards required in connection with the NPT. A withdrawing State that has violated the NPT should not continue to enjoy the benefits acquired while it was a party to the Treaty.

18. To this end, NPT nuclear supplier States should seek through appropriate means to halt the use of nuclear material and equipment previously supplied to the withdrawing State and to secure the elimination of such items or their return to the original supplier. Nuclear suppliers should reserve these rights in their bilateral nuclear supply arrangements and exercise them wherever appropriate. The Nuclear Suppliers Group, which is already considering a requirement that IAEA safeguards apply for the lifetime of supplied items, could incorporate an “obligation of return” upon NPT violation or withdrawal as a condition of supply in its export guidelines.

19. Return of such items could also be directed by the Security Council in a resolution under Chapter VII of the Charter, if such an action were deemed necessary to respond to a threat to international peace and security. Finally, even in cases where there has been no supply, nuclear supply arrangements might be terminated, where possible, as an expression of disapproval.

20. We note in this connection that, as indicated above, article XII.A.7 of the IAEA statute gives IAEA the right to “withdraw any material or equipment made available by the Agency or a member” in furtherance of an Agency project if a recipient State does not comply with the relevant safeguards requirements and fails to take corrective action in a reasonable time. Article XII.C has a similar provision. The concept of removing materials and equipment from a State based on its failure to meet non-proliferation norms is not a new or novel concept, and thus it is reasonable to adapt the concept in cases of NPT withdrawal by a country that has failed to meet non-proliferation norms by violating the NPT.

21. Finally, States may have their own resources to bring to bear against the efforts of withdrawing parties to develop further nuclear capabilities, including with regard to information-gathering and various means of interdiction. In the event of a withdrawal by an NPT violator, States with such resources could focus their assets on the withdrawing State as a country of proliferation concern in an attempt to stop any clandestine transfers directed at the acquisition of a nuclear weapons capability or of the proliferation of such technology to others.

Conclusion

22. The right to withdraw from the NPT remains a sovereign right enshrined in the Treaty itself. But nothing in the NPT gives countries the right to benefit from their violation of the Treaty's provisions, or to shield themselves from the consequences of such acts. And parties to the NPT, indeed all countries, have a sovereign right to consider the ramifications of such a withdrawal for their individual and collective security. States parties should make clear that they will ensure that all appropriate consequences will flow in the event of withdrawal from the Treaty by a violator. By doing this, they will also help deter such actions and further the goal of universal adherence.

23. It is of critical importance to the nuclear non-proliferation regime that NPT States parties work together to develop and implement prompt and effective measures to deter withdrawal by Treaty violators and to respond vigorously should it occur. Prompted by North Korea's announcement of withdrawal in 2003, much valuable work was done on this subject in connection with the 2005 Review Conference. This issue should be a top priority for the current NPT review cycle as well, and States parties should work diligently to ensure agreement upon effective steps. The review cycle has a valuable role to play in helping develop and encourage such measures, and in reaffirming the norms of the NPT and the broader non-proliferation regime they reinforce.
