
2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Addressing withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons*

Working paper submitted by Armenia, Australia, Austria, Belarus, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland and United States of America

Introduction

At the 2010 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Parties discussed the issue of withdrawal from the Treaty, in particular, how to respond in the event a State violates its Treaty obligations and then announces it intends to withdraw from the NPT pursuant to Article X.1. Some progress was made on this issue, but no conclusion was reached.

This working paper builds upon the working paper submitted by the Russian Federation and Ukraine at the 2010 NPT Review Conference, as well as other working papers, national statements, and related efforts of NPT Parties to address the withdrawal issue in past and current NPT review cycles. Common to these efforts is recognition of the disarmament, non-proliferation, and peaceful uses benefits of NPT adherence and the need to preserve the integrity of this essential instrument. NPT Parties should carry forward these efforts and seek consensus regarding recommendations on this topic at the 2015 Review Conference.

Article X.1

Article X, paragraph 1, of the NPT provides, “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

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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.”

Background

While each Party has the sovereign right to withdraw from the Treaty, such a withdrawal must be done in accordance with Article X.1.

The aim of this working paper is to set forth recommendations for the Parties to consider regarding procedures related to the implementation of Article X.1 and modalities under which Parties could collectively respond to notification of withdrawal from the Treaty. This effort does not seek to amend the Treaty, specifically its Article X.1.

The consequences of withdrawal from treaties are addressed in Article 70 of the 1969 Vienna Convention on the Law of Treaties, which provides that, unless the treaty otherwise provides or the parties otherwise agree, withdrawal from the treaty (a) releases the party from any obligation further to perform the treaty and (b) does not affect any right, obligation or legal situation of the party created through the execution of the treaty prior to the effective date of the party’s withdrawal. In other words, the withdrawing State will remain responsible under international law for violations of the Treaty committed prior to withdrawal. Further, such withdrawal does not change any other existing legal obligations or political commitments between the withdrawing State and any other Party, including peaceful use undertakings made in connection with nuclear supply arrangements.

The NPT does not have explicit provisions specifying the potential consequences of withdrawal from the Treaty. Article X.1, which covers “the right to withdraw” from the Treaty, establishes only the conditions for withdrawal and content requirements for appropriate notification. NPT Parties could consider how best to make use of the intervening three-month notice period prior to the effective date of withdrawal.

Recommendations

We propose that the 2015 Review Conference considers endorsing the following recommendations:

1. A “notice of withdrawal” should be given in writing, the usual form being a note verbale, which should be provided to all other Parties to the Treaty and to the United Nations Security Council. This note verbale should be given three months in advance of the effect of withdrawal and include a statement of the extraordinary events the withdrawing Party regards as having jeopardized its supreme interests. The statement should be as detailed and specific as possible. The three-month period starts from the date of transmission of the note verbale to the Parties to the Treaty and the United Nations Security Council. No declarations, public statements, or letters of intention are in any way valid in shortening this period.

2. In the event of a notice of withdrawal from the Treaty, the Parties, to include the depositaries, should hold consultations in order to assess the consequences of such withdrawal. The United Nations Security Council should also hold consultations.

3. The Parties should request that the IAEA Board of Governors be convened in the shortest possible time in order to assess the IAEA Secretariat's verification of the withdrawing Party's compliance with its obligations under its safeguards agreement, as well as the IAEA Secretariat's final inventory of items under IAEA safeguards in the withdrawing Party. Furthermore, the Parties should likewise request that the IAEA Board of Governors consider appropriate actions in accordance with the IAEA Statute.

4. All nuclear materials, equipment, technologies, and facilities established for peaceful purposes of a Party withdrawing from the Treaty should be restricted to peaceful uses only and remain subject to IAEA safeguards. Therefore, consistent with their international commitments and national law or procedures, NPT Parties could seek specific mechanisms, including government-to-government supply agreements, contracts, or other arrangements, if appropriate, ensuring that any nuclear material or equipment or any material or equipment derived from items they supply remain subject to safeguards in perpetuity in the event the recipient State's safeguards agreement is terminated as a consequence of withdrawal.

5. Supplier States could also develop appropriate and effective mechanisms to require that a Party withdrawing from the Treaty return and/or dismantle nuclear materials, equipment, and technologies received from abroad prior to withdrawal, if so requested by the supplier State. If the supplier State does not make such a request, or if for technical reasons is unable to accept return and/or dismantle, the nuclear equipment and materials, including derived nuclear materials, should remain subject to IAEA lifetime safeguards or other bilateral lifetime safeguards, if any, as well as any other related non-proliferation conditions agreed to by the recipient and supplier State.

6. NPT Parties should consider adopting a policy to refrain from further supply of nuclear facilities, material, or equipment to a withdrawing Party.
