

Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Consequences of the exercise of the right of withdrawal contained in article X

Working paper submitted by the members of the Non-Proliferation and Disarmament Initiative (Australia, Canada, Chile, Germany, Japan, Mexico, the Netherlands, Nigeria, the Philippines, Poland, Türkiye and the United Arab Emirates)

Objectives

1. One of the central objectives of the Non-Proliferation and Disarmament Initiative is to promote the universality and full implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, building upon previous initiatives promoted and discussions held by the States parties to the Treaty. The Initiative underlines that the Treaty is widely recognized as a cornerstone of international security. The integrity of the Treaty must be maintained and its universality promoted.
2. While withdrawal from the Non-Proliferation Treaty would be undesirable under any circumstances, the Non-Proliferation and Disarmament Initiative does not seek to revise or alter the right to withdraw from the Treaty. However, the Initiative believes that maintaining the integrity of the Treaty means that the right to withdraw from the Treaty should not (either during or after its completion) open loopholes that would negatively affect the remaining States parties or allow a State to disregard safeguards applicable to any nuclear materials, equipment and technology that it had acquired prior to its withdrawal from the Treaty.
3. A withdrawing State is no longer bound by the provisions of the Treaty once the procedural requirements for withdrawal, contained in article X, have been met fully. That said, States parties exercising their rights under article X of the Treaty are responsible under international law for any violations of the Treaty committed prior to withdrawal. Moreover, any withdrawal from the Treaty should be regarded as a serious political action.
4. The legal and political consequences of withdrawal under article X cannot be considered in isolation from the other provisions of the Treaty or from other obligations or commitments undertaken by States to implement the Treaty. These provisions are aimed at contributing to the maintenance of international peace and security and thus satisfying the security interests of all of the States parties to the Treaty while facilitating the use of nuclear energy for peaceful purposes.



5. The Non-Proliferation and Disarmament Initiative recognizes an imperative to minimize the negative impact of a withdrawal from the Treaty on the remaining States parties. The present working paper makes a number of proposals regarding the legal and political consequences of withdrawal from the Treaty, which the tenth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons could include in its list of recommendations to States parties to the Treaty.

Legal context

6. The Non-Proliferation and Disarmament Initiative reaffirms that both the rules specific to withdrawal from the Treaty (in article X of the Treaty) and the general rules of international law on the withdrawal from multilateral treaties (found in the relevant provisions of the Vienna Convention on the Law of Treaties) apply.

7. The Non-Proliferation and Disarmament Initiative underlines that the process to exercise the right of withdrawal is described in the Treaty. Article X establishes the right of any State party to withdraw from the Treaty if that State decides that extraordinary events, related to the subject matter of the Treaty, have jeopardized its supreme interests. Article X provides that the withdrawing State “shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance” and that the notice must “include a statement of the extraordinary events it regards as having jeopardized its supreme interests.” The Initiative reiterates that all of the requirements of article X must be followed fully, with concrete and explicit explanation of the extraordinary events, before a State party can affect its withdrawal from the Treaty.

8. The Non-Proliferation and Disarmament Initiative further underlines the role given to the Security Council under the Treaty itself: article X requires the withdrawing State to give notice to the Council because such withdrawal may constitute an extraordinary event relevant to international security. Pursuant to Article 24 of the Charter of the United Nations, in order to ensure prompt and effective action by the United Nations, its Members confer on the Council primary responsibility for the maintenance of international peace and security.

9. The Non-Proliferation and Disarmament Initiative recalls that the consequences of withdrawal from treaties are addressed in article 70 of the Vienna Convention on the Law of Treaties of 1969. Article 70 provides, *inter alia*, 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. Applied to the Non-Proliferation Treaty, a withdrawing State will remain responsible under international law for any violations of the Treaty that it had committed prior to withdrawal. Furthermore, such withdrawal does not change any other existing legal obligations between the withdrawing State and any other party, such as compliance with other international agreements, including treaties establishing nuclear-weapon-free zones.

Recommendations

10. The following recommendations made by the Non-Proliferation and Disarmament Initiative are aimed at preserving the integrity of the non-proliferation regime, the effectiveness of safeguards and the rights of the States parties to the Non-Proliferation Treaty following the withdrawal of a State from the Treaty. The remaining States may have engaged – bilaterally or through membership in international organizations such as the International Atomic Energy Agency (IAEA) – in cooperation under articles III and IV of the Treaty and may also, in good faith, have

transferred materials, equipment and scientific and technological information to a State that subsequently withdraws from the Treaty. It is vital that such items and information are not diverted to weapons programmes.

11. On the basis of the above considerations, the Non-Proliferation and Disarmament Initiative proposes that the 2020 Review Conference recommend that the States Parties to the Non-Proliferation Treaty:

(a) Reaffirm that the procedures in article X must be fully and strictly followed by any State party that makes the decision to withdraw from the Treaty. The Treaty provides for the requirements to exercise the right of withdrawal, which means that any notice of withdrawal without completing these requirements is not valid;

(b) Note that, under article 70 of the Vienna Convention on the Law of the Treaties, States parties exercising their rights under article X of the Treaty will remain responsible under international law for violations of the Treaty committed prior to withdrawal;

(c) Emphasize that withdrawal does not change any other existing legal obligations or political commitments between the withdrawing State and any other party, including the obligations that apply to nuclear materials, equipment and scientific and technological information acquired by a State prior to withdrawal, which should remain under safeguards following withdrawal from the Treaty;

(d) Encourage States parties to require as a condition of nuclear exports that the recipient State agree that, in the event that it should terminate, withdraw from, or be found by the IAEA Board of Governors to be in non-compliance with its IAEA safeguards agreement, the supplier State would have a right to require the return of nuclear material and equipment provided prior to such termination, non-compliance or withdrawal, as well as any special nuclear material produced through the use of such material or equipment;

(e) Recommend that depositories and States parties should undertake consultations and conduct every diplomatic effort to persuade the withdrawing State to reconsider its decision to withdraw. Diplomatic initiatives at the regional and multilateral levels should be encouraged and supported. In undertaking these consultations and other initiatives, the legitimate security needs of all parties directly involved should be addressed;

(f) Underline that the Security Council will be primarily responsible for determining whether withdrawal from the Treaty constitutes a threat to international peace and security under the Charter and, as provided for in Council resolution 1887 (2009), undertakes to address all cases of withdrawal from the Treaty without delay.