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

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**Deterring and responding to withdrawal from the
Treaty on the Non-Proliferation of Nuclear Weapons
by Treaty violators**

**Working paper presented by the Republic of Korea and the
United States of America**

Because the continued integrity and efficacy of the Treaty on the Non-Proliferation of Nuclear Weapons is very important to international peace and security, all States Parties to the Treaty share an interest in ensuring that countries in violation of its provisions cannot shield themselves from the consequences of their non-compliance by withdrawing from it. States Parties should make clear that they will work together to develop and implement more effective measures to dissuade such withdrawal and to respond vigorously to it, should it occur.

The issue of withdrawal by States that are in violation of the Treaty has emerged as an important subject of debate, being a focus of discussion in Main Committee III at the 2005 NPT Review Conference, an explicit agenda item for the Preparatory Committee meetings for the 2010 Review Conference and the subject of numerous working papers by various States Parties, including the members of the European Union, Australia, New Zealand and the United States of America. Developing a common position regarding withdrawal from the Treaty under these circumstances will help ensure a prompt and appropriate international response in any future cases.

The right to withdraw

The right to withdraw from the Treaty is enshrined in its article X.1, which provides that:

“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 interest 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.”

All Parties possess such a right to withdraw, and this right cannot be eliminated without the amendment of the Treaty pursuant to article VIII.1. It has been correctly observed that the existence of a right of withdrawal is not an issue open to interpretation, and that it would not be appropriate to penalize withdrawal per se since clearly the drafters of the Treaty envisioned that circumstances could arise in which a State Party would feel the need to withdraw when confronted by a threat to its supreme interest.

Nevertheless, withdrawal from a treaty does not absolve a State of any violation of the treaty that was committed while it was still a Party to it. Should a party withdraw from a treaty before it remedies its violations, it should remain accountable for those violations.

Making withdrawal unattractive to violators

Effective international action to ensure that violators will not benefit from their non-compliance and withdrawal would further strengthen the Treaty and international peace and security, and would also reinforce norms that facilitate international nuclear cooperation, because it would make both violation and Treaty withdrawal during or after violation less attractive.

Should a Party announce its intention to withdraw, article X.1 provides an opportunity for the international community to address the situation. It is clear that the Treaty envisions that Parties will consider withdrawal only in the most serious of circumstances: those extraordinary events that jeopardize its “supreme interests”. The requirement that notice of withdrawal be given to other Parties and the United Nations Security Council three months in advance also allows time for the international community 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, and the requirement that such events be related to the subject matter of the Treaty, affords the international community an opportunity to consider the motivations and reasons of the withdrawing party, and to consider any responses that might be appropriate.

Although a decision to withdraw is a matter of national sovereignty, the international community should seek avenues of redress in the case of withdrawal by a violator of the Treaty, especially where the violator wishes to continue the course of action that created the violation.

When a notice of withdrawal has been given by a Party in violation of the Treaty, the Security Council should immediately review the matter and consult the Parties to the Treaty as appropriate, in order to explore ways and means to address the issues raised by the notification of intent to withdraw. When given notice of withdrawal by a party in violation of the treaty, the United Nations Security Council should consider the potential consequences of the intended withdrawal for international peace and security; it should meet promptly to consider the “extraordinary events, related to the subject matter of the Treaty” cited as reasons for withdrawal, as well as whether there are alternative measures to address and resolve the circumstances cited by the party giving notice. A violator’s intention to

withdraw will likely be coupled with the intention to acquire nuclear weapons. Accordingly, the Council should consider options consistent with the Charter of the United Nations that may be warranted, for example, with regard to holding the withdrawing party responsible for its past non-compliance or addressing any threat to peace and security that its actions may present, or both.

The International Atomic Energy Agency (IAEA) and its Board of Governors could take steps to: ensure the continuation of safeguards should a Party in violation of the Treaty complete the withdrawal procedures under article X; ensure that the Security Council is fully informed of all relevant information in the possession of IAEA; and prevent (for example, through suspending supply agreements, a cessation of technical assistance or the withdrawal of nuclear material and equipment) a State in violation of its obligations under the Treaty or to IAEA from profiting by association with the Agency. Because a State's withdrawal from the Treaty risks leaving nuclear materials and technology unsafeguarded, in cases where a violator has given notice of its intent to withdraw, the United Nations Security Council should meet promptly and seek to ensure that steps are taken to continue implementation of safeguards until such time as past violations have been remedied fully. Such withdrawing States also should be urged to conclude IAEA safeguards agreements that operate independently of Treaty adherence (for example, pursuant to the IAEA safeguards system, see INFCIRC 66/Rev.2).

States and their entities should not continue any nuclear supply or cooperation with a country that was in violation of the Treaty at the time of its withdrawal, unless such a step is endorsed by the United Nations Security Council. Nor should such a withdrawing Party be allowed to benefit from the use of nuclear materials and equipment that it imported while it was a Party to the Treaty. To that end, nuclear supplier States Parties to the Treaty 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 supplier States Parties to the Treaty should reserve such rights in their bilateral nuclear supply arrangements and exercise them wherever appropriate. They should also reserve the right to terminate supply agreements with a Party to the Treaty that violates its commitments and then withdraws from the Treaty.

Parties to the Treaty should undertake effective actions to seek to dissuade a State from withdrawing while in violation of the Treaty. They should express opposition to such a step before, during and after the article X notice period. Parties might, for instance, consider holding an extraordinary meeting to consider such a case of withdrawal.