

**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: WITHDRAWAL

Working Paper submitted by the Republic of Korea

Introduction

1. Since its entry into force in 1970, the Treaty on Non-Proliferation of Nuclear Weapons (NPT) has been a cornerstone of the international non-proliferation regime. However, the NPT regime is faced with growing new challenges, not only from external threats, such as proliferation concerns and the danger of nuclear terrorism, but also from institutional deficits inherent in the Treaty.

2. The withdrawal declaration from the Treaty in 2003 of the Democratic People's Republic of Korea (DPRK) and its ensuing nuclear test in 2006, together with a lack of effective means of responding to such situations within the Treaty regime itself, posed a serious question as to the validity and viability of the Treaty. It is now a high time for the States Parties to review and to consider an effective and collective response mechanism to the withdrawal from the Treaty.

Interpretation of Article X and response mechanism

A. The Nature of the right to withdraw from the Treaty

3. The right to withdraw from the Treaty stipulated in Article X.1 is a genuine right of States Parties that should be respected. However, withdrawal does not exonerate the withdrawing State Party from its obligation it should have implemented as member state.

4. The intention and purpose of States Parties that withdraw from the Treaty is most likely to pursue the possession of nuclear weapons based on the technology and material acquired while being a State Party to the Treaty. In this vein, it is imperative that the right to withdraw from the Treaty should be interpreted strictly, with preventive and deterrence measures in place to further dissuade any State Party from considering withdrawal from the Treaty. Withdrawal of States Parties can have devastating effects on the credibility of the Treaty, as it would enormously undermine the collective security of all States Parties and, if not properly addressed, might result in the collapse of the Treaty itself.

B. Procedural requirements of withdrawal

5. The procedural requirements of withdrawal provided in Article X.1 of the Treaty are three-fold. If a State Party decides that extraordinary events related to the subject matter of the Treaty have jeopardized the supreme interest of the State Party, **it shall give notice of such withdrawal(i) to all other parties to the Treaty, and ii) to the United Nations Security Council three months in advance. (iii) Such notice should include a statement of the extraordinary events.** The withdrawal clause which was taken from that of Partial Test-Ban Treaty made two important additions. In addition to giving notice of the decision to withdraw to the other parties, the NPT requires the withdrawing state to give notice to the UN Security Council and to include a statement of the extraordinary-events.

6. It is of particular importance to note that the Article X.1 of the Treaty contains a requirement that obliges the withdrawing party to notify the UNSC. The negotiating history of the NPT shows that the drafters of the Treaty intended to engage the UNSC because a

withdrawal from the Treaty may constitute a serious threat to the maintenance of international peace and security under Article 39 of the UN charter. The requirement to notify all other parties to the Treaty of withdrawal by any party also clearly implies that the issue of withdrawal is a matter that should be discussed and addressed by all States Parties. Three months advance notice was included to give the UNSC and the States Parties sufficient time to respond to the extraordinary event of a withdrawal. The requirement to include a statement of the extraordinary events was introduced as an additional element of restraint. This notice should be in written form and, if done in the form of a unilateral declaration or public statement, it should not be considered valid.

C. Substantive requirements of withdrawal

7. As Article 70 of the Vienna Convention stipulates, “termination of adherence to a treaty... does not affect any right, obligation or legal situation of a party created through the execution of the treaty prior to its termination”. In other words, the withdrawal does not exempt any party from its obligations it should have implemented under the Treaty.

8. It follows from this that, for withdrawal from the Treaty to take effect, the withdrawing State Party should ensure i) that any obligation under the NPT has been fully implemented before the withdrawal; and ii) that it should immediately return to the suppliers the nuclear equipments and materials obtained under Article IV of the NPT.

D. Response mechanism

9. The States Parties to the NPT should consider the establishment of a collective and systematic response mechanism for the withdrawal. Such a mechanism can include the following measures:

- (a) Convening an emergency meeting of the States Parties to address the situation upon the request by Depository Governments or one third of the States Parties within 30 days of receipt of such notice, given that the withdrawal is a tremendous challenge to the NPT States Parties.

The Meeting thus convened may;

- (i) Call upon the State Party in question to be present at the meeting to clarify and elaborate the reason for the withdrawal,
- (ii) Consider ways to ensure that nuclear equipment and materials are immediately returned to the supplying States, and
- (iii) Consider measures to ensure the nuclear facilities, equipment and materials of the State Party remain under IAEA safeguards pending their return to the supplying states;

(b) Prompt consideration of the UN Security Council on the situation.

Conclusion

10. Taking into account that any withdrawal from the NPT may pose a direct threat to international peace and security and severely undermine the validity and durability of the NPT, the State Parties are encouraged to have constructive and active deliberations on a collective response mechanism to a possible case of withdrawal from the treaty throughout the entire 2010 NPT review cycle with a view to adopting a decision or a guideline on article X at the Review Conference in 2010.

11. Together with the establishment of such a collective response mechanism, other joint efforts should be made to maintain and strengthen the global nuclear non-proliferation regime. Universal adherence to the NPT is a core element of any strategy to prevent the spread of nuclear weapons. Further, a positive change in nuclear-weapon states' policies to more faithfully implement their obligations under Article VI should also be encouraged.
