

Negotiating Divorce: Withdrawing from Arms Control Treaties and the Future of Arms Control Treaties



Legal Withdrawal Under International Law

- In conformity with the treaty.
- All parties agree to terminate the treaty.
- Withdrawal must be performed in “good faith.”
- A “material breach” of a treaty.
 - (a) a repudiation of the treaty not sanctioned by treaty; or
 - (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

The Origins of Conditioning Withdrawal

- The LTBT's withdrawal clause serves as a blueprint in every arms control treaty (including New START).
- Suspicion of other parties cheating or third parties developing weapons (e.g. China).
- Withdrawal clause seen by Americans as a way to pacify Senate pessimists.
- Fear of binding into an unending treaty without an exit.

Conditional/Unconditional Withdrawal Clauses

Unconditional (no third party required for presentment)

- Each Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests. It shall give notice of its decision to the other Party. Such notice shall contain a statement of the extraordinary events the notifying Party regards as having jeopardized its supreme interests. This Treaty shall terminate three months from the date of receipt by the other Party of the aforementioned notice, unless the notice specifies a later date.
 - New START, (similar wording in START, ABM (terminates 6 months later)

Conditional (requirement to present withdrawal statement to Security Counsel)

- 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.
 - Article X of the Non-Proliferation Treaty (Similar wording in CTBT)

Unconditional Withdrawal in Action: ABM Treaty

- Underwent most legal stress of any arms control treaty.
- Withdrawal clause a carbon copy of the LTBT.
- Nixon administration threatened to withdraw if new arms control negotiations were not initiated during its signing.
- SDI program went against the core of ABM treaty.



Continued Intransience and Withdrawal

- American officials accused Soviets of being in “material breach” of ABM for constructing a radar station in the southern Siberian city of Krasnoyarsk.
- President Clinton threatened to withdraw from ABM treaty to counter rogue states.
- President George W. Bush encouraged a “mutual withdrawal” from the ABM treaty after 9/11.
- The United States officially announced withdrawal from ABM in December 2001. Provided a statement:
 - The US’s relationship with Russia had fundamentally changed since the signing of the ABM.
 - Necessary to counter rogue states after 9/11.

Conditional Withdrawal: North Korea and NPT Not Once but Twice

- North Korea gave its three month notice to withdraw from the NPT treaty on March 12th, 1993. National supreme interests were in danger:
 - 1) Military exercises between South Korea and the US.
 - 2) IAEA demand for special inspection of two sites.
- Withdrawal notice referred to Security Council.
- China refused to allow SC resolution to condemn and punish North Korea.
- North Korea waited 89 days to agree to suspend its withdrawal notice.
- January 2003, North Korea offered an “effectuation” of its suspension. Offering the Security Council 1 day to respond. It did nothing.



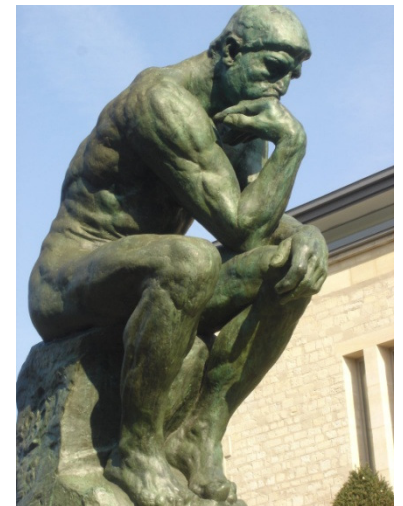
Doing the Math

Unconditional Withdrawal (no central arbiter)

- + Flexibility encourages parties outside the NPT to join a legally binding treaty (e.g. Pakistan, India, Israel).
- + Treaty regime is not as rigid.
- Signatories may not feel secure adequate measures are taken against traditionally intransigent players.

Conditional Withdrawal (statement to Security Council)

- + Provides clear framework for parties.
- + Withdrawing parties will have to calculate potential consequences (i.e. economic sanctions & military reprisal).
- +/- Shifts burden to Security Council to act.
- Failure to prevent withdrawal undermines the treaty regime's legitimacy.
- Irritant to apprehensive parties currently outside the NPT regime from joining a new multilateral treaty.



The Case for Unconditional Withdrawal Clauses

- 1) Free Security Council from the burden shift.
- 2) Encourage parties outside the NPT to join a new treaty regime.
- 3) The Security Council is still free to punish and condemn parties for breaches of international peace without having a withdrawal statement thrown before them.
- 4) Rigorous conditional withdrawal clause with teeth will require major reforms of the Security Council's voting methods.

Conclusions

- Treaties matter.
- The United States and North Korea took the wording of the withdrawal clause seriously.
- Simply copying and pasting withdrawal clauses from old arms control treaties will not inspire nonaligned countries from joining the fold.
- Whether a conditional or unconditional route is chosen. New drafting language may inspire a healthy debate for the stakes in the next arms control treaty.