

# Symposium on International Safeguards: Reflecting on the Past and Anticipating the Future

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## Deterring further NPT withdrawals

Pierre Goldschmidt<sup>1</sup>

Ladies and Gentlemen,

I am most grateful to the IAEA for giving me this opportunity to briefly share with you a set of proposals aimed at deterring other states from some day following the example of North Korea and withdrawing from the NPT.

### What is at stake and why should we be concerned?

Over its 50 years of operation since it came into force in 1970 the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) has worked remarkably well to avoid nuclear weapons horizontal proliferation. The only major exception is North Korea.

But this apparent success should not hide the current reality. If the non-proliferation regime survived the North Korean withdrawal, a further withdrawal, for example from a country like Iran, would risk undermining it significantly.

Article X.1 of the NPT gives the right to any Party to legally withdraw from the Treaty within 3 months

"if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country".

Although this right of withdrawal is indisputable, it now appears necessary to put in place automatic and legally binding preventive measures with sufficiently severe consequences to have a chance of dissuading any State from considering such withdrawal.

It is urgent to address this risk because an increasing number of NNWSs will acquire the necessary scientific, technical, and industrial capability to manufacture nuclear weapons and their means of delivery, thereby becoming "nuclear threshold states."<sup>2</sup>

Indeed, as already reported by the IAEA in 2008:

“Much of the sensitive information coming from the [A. Q. Khan] network existed **in electronic form**, enabling easier use and dissemination. This includes information that relates to uranium centrifuge enrichment and, more disturbing, information that relates to nuclear weapon design.”<sup>3</sup>

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<sup>1</sup> Former Deputy Director General of the IAEA and Head of the Department of Safeguards.

<sup>2</sup> A "nuclear threshold state" is defined here as a state capable of manufacturing more than one nuclear device in a few months' time and possessing the necessary delivery means.

<sup>3</sup> IAEA Board of Governors, "Implementation of the NPT Safeguards Agreement in the Socialist People's Libyan Arab Jamahiriya," [GOV/2008/39](#), September 12, 2008, para. 38.

and:

"a substantial amount of sensitive information related to the fabrication of a nuclear weapon was available to members of the network."<sup>4</sup>

It is therefore all the more important to dissuade any state from withdrawing from the NPT. The measures I will now describe would serve as an effective deterrent to withdrawal and should be adopted without delay.

**The first measure is for the UNSC to adopt a legally binding *generic* resolution for promptly responding to cases of non-compliance.**

It is unlikely that a state would withdraw from the NPT if it has no intention to manufacture nuclear weapons. Also, it is likely that before withdrawing from the NPT such a state will try to develop an undeclared nuclear program. And hopefully it is also likely that the IAEA will detect indications that such a program exists and that the state in question will be found to be in non-compliance with its safeguards agreements.

**Learning from the Past**

We know from experience that in such a case time is of the essence.

Any State found to be in non-compliance with its safeguards agreements should know for sure that it will be referred within a short period of time first to the IAEA Board of Governors (BoG) and then to the UN Security Council (UNSC). If the State proactively cooperates with the Agency to correct the situation, it should be referred to the Security Council for "information purposes only" as was the case with Libya.

If, by contrast, the State in non-compliance adopts a "*policy of concealment, with cooperation being limited and reactive, and information being slow in coming, changing and contradictory*"<sup>5</sup> as was the case in Iran, the issue should be reported without delay to the UNSC for action.

In the case of Iran, in its very first resolution adopted by consensus on 12 September 2003<sup>6</sup>, the IAEA Board of Governors called on Iran to grant

"unrestricted access, including environmental sampling, for the Agency to whatever locations the Agency deems necessary for the purposes of verification of the correctness and completeness of Iran's declarations."

The problem with a resolution such as this is that it is not legally binding.

**Anticipating the Future**

If a state is found by the Agency to be in non-compliance with its safeguards agreements and does not cooperate fully in resolving the issue, the IAEA will need extended verification rights.

To give the IAEA the verification tools it needs in such a case, the UNSC should adopt a generic resolution (under Chapter VII of the Charter), deciding independently of any specific

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<sup>4</sup> Ibid, Annex 1, para. 26.

<sup>5</sup> Implementation of the NPT Safeguards Agreement in Iran, GOV/2003/75, §50, 10 November 2003.

<sup>6</sup> GOV/2003/69 <https://www.iaea.org/sites/default/files/gov2003-69.pdf>

case, that if a state is found by the IAEA to be in non-compliance with its safeguards agreements, *at the request of the Agency*, the UNSC would automatically adopt a *State-specific* and legally binding resolution, granting the Agency clearly defined extended access rights, in what could be called a "Temporary Complementary Protocol" (TCP)<sup>7</sup>.

These extended access rights would be *terminated* as soon as the IAEA has drawn the broader conclusion that there are no undeclared nuclear material and activities in the state and that its declarations to the Agency are correct and complete.

**The second and most important measure is for the UNSC to adopt a legally binding generic resolution for promptly responding to cases of NPT withdrawal.**

Learning from the Past

One has to realize that for a period of 13 years after North Korea was first reported by the IAEA for non-compliance to the UN Security Council (1993) the latter failed to adopt a single resolution condemning North Korea, even during the 3 1/2 years that followed its withdrawal from the NPT in 2003.

It is only after North Korea tested a nuclear weapon in October 2006, that the Security Council adopted for the first time the legally binding Chapter VII Resolution 1718 imposing an embargo on arms and "luxury goods", assets freeze and travel ban for persons designated as involved in North Korea's nuclear program. Further, it imposed a ban on a range of imports and exports, and prohibited Pyongyang from conducting nuclear tests or launching ballistic missiles.

These sanctions were much too mild and came much too late to dissuade North Korea from continuing with its nuclear weapons program.

Since then, North Korea has tested nuclear weapons in 2009, 2013, twice in 2016, and in September 2017, and has launched numerous and increasingly more capable ballistic missiles.

The main factor leading to this dramatic situation is that, for all those years, China consistently opposed effective Security Council sanctions against Pyongyang.<sup>8</sup>

As exemplified by the cases of Iran and North Korea, one of the greatest difficulties in deterring states from violating their non-proliferation undertakings and from ignoring legally binding Security Council resolutions is their hope that, for geopolitical or economic reasons, at least one of the five veto-wielding members of the Security Council will oppose the adoption of effective sanctions.

Anticipating the Future

As a step toward strengthening the non-proliferation regime, the Security Council should adopt a generic and legally binding resolution *deciding* that if a state notifies its withdrawal from the NPT (an undisputed right under Article X.1), such notification constitutes a threat to

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<sup>7</sup> A draft of the TCP and of the UNSC resolution can be found in the Annex of the paper "Concrete Steps to Improve the Nonproliferation Regime", Carnegie Endowment for International Peace, April 2009.

[https://carnegieendowment.org/files/improve\\_nonpro\\_regime.pdf](https://carnegieendowment.org/files/improve_nonpro_regime.pdf)

<sup>8</sup> China's was apparently concerned that harsh sanctions could precipitate the collapse of the regime, potentially increasing the likelihood of Korean reunification under the leadership of the democratic South.

international peace and security as defined under Article 39 of the UN Charter.<sup>9</sup> This generic resolution should make sure that, under these circumstances, the Security Council would meet immediately with a view to decide, under Article 41 of the UN Charter, which measures would apply as soon as the withdrawal becomes effective.

This generic resolution should, quite logically, include a provision requiring all states to suspend any military cooperation with the withdrawing State. It would indeed be inconsistent to decide that the withdrawing state represents a threat to international peace and security while at the same time providing military support to that state.

The resolution should also include a Statement by the Security Council's five permanent members that they consider the withdrawal to be such a major threat to international peace and security that, in such a case, they do not intend to exercise their veto right against state-specific sanctions resolutions if they are the only permanent member to do so<sup>10</sup>.

Because this declaration of intention would not be legally binding, that generic resolution would not deprive those members of their veto right on any state-specific resolution. It would however ensure that the Security Council will consider the matter without delay and it would also increase the perceived risk of immediate sanctions for the withdrawing state.

**My third major recommendation is that it should become a norm that *all sensitive nuclear fuel cycle facilities* be covered by irreversible safeguards agreements.**

### Learning from the Past

One of the main outstanding safeguards loopholes that deserves prompt attention is the absence of a requirement for IAEA safeguards to irreversibly remain in force should a state leave the NPT. If one day Iran or any other NPT non-nuclear-weapon state decides to withdraw from the treaty, its Comprehensive Safeguards Agreement (CSA) with the IAEA would automatically lapse under the terms of that agreement.

As a result, a state may withdraw from the NPT and, as North Korea did after 2003, use previously safeguarded nuclear material and facilities to produce nuclear weapons without violating any international treaty.

NPT members should therefore strengthen the safeguards regime by creating a legal requirement to maintain safeguards even if a state exercises its right to withdraw from the Treaty.

One has to remember that, before being reported to the UNSC for non-compliance, Iraq, North Korea, Iran and Libya had undeclared enrichment and/or reprocessing related activities, and all were found to have nuclear-weapon objectives<sup>11</sup>.

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<sup>9</sup> In Resolution 1540 of April 2004, the Security Council is "*Affirming* that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security". It has reaffirmed that statement many times thereafter, but has never "*decided*" that this is the case under an operative paragraph of a legally binding Chapter VII resolution.

<sup>10</sup> A draft of the UN Security Council generic resolution dealing with NPT Withdrawal, and a draft of the P5 statement can be found in Appendix 3 of the paper "Dealing Preventively with NPT Withdrawal", by Pierre Goldschmidt, January 23, 2020.

[http://npolicy.org/event\\_file/Pierre\\_Goldschmidt\\_Dealing\\_Preventively\\_with\\_NPT-Withdrawal\\_140220\\_1509.pdf](http://npolicy.org/event_file/Pierre_Goldschmidt_Dealing_Preventively_with_NPT-Withdrawal_140220_1509.pdf)

<sup>11</sup> Although Iran still seems to deny it.

## Anticipating the Future

It is our responsibility to make sure that it will not require another major nuclear proliferation crisis before nuclear-weapon and non-nuclear-weapon states work together toward a lasting solution to close this major NPT loophole.

Fortunately, there is a simple solution to achieve this objective.

Indeed, in contrast to CSAs, facility-specific safeguards agreements – known as INFCIRC/66-type agreements – do not lapse if the State withdraws from the NPT.<sup>12</sup>

The IAEA Board of Governors should therefore adopt a (non-legally binding) resolution stating that it should become a norm that *all sensitive nuclear fuel cycle facilities* be covered by irreversible safeguards agreements.

Under normal circumstances, and as is the case already today for non-nuclear-weapon states, INFCIRC/66 safeguards agreements concluded with the IAEA are and will continue to be subsumed under their existing Comprehensive Safeguards Agreements. They would become operational only if the latter were terminated.

This approach does not create a new safeguards standard, as the Model Additional Protocol did in 1997. Instead, it involves the simple adoption of an older type of safeguards. Therefore, it should face fewer political obstacles, would impose a negligible legal and financial burden on the State or the IAEA, and would require only a little extra paperwork at the outset.

Non-nuclear-weapon states members of the Nuclear Supplier Group (NSG) should lead by example and place all their enrichment and reprocessing facilities under facility-specific safeguards agreements with the IAEA.

By virtue of the current roster of NSG members, taking this step would bring all non-nuclear-weapon states – with the exception of Iran – that are parties to the NPT and currently operate enrichment and reprocessing facilities within this new mechanism. Nuclear-weapon states should also lead by example when it comes to their own civilian facilities.

Leading by example remains an elusive objective, but it would be wrong to underestimate its usefulness. A lack of leadership in this area not only prevents advancement beyond the non-proliferation status quo, but also threatens to undermine the status quo. A continuing failure to lead by example will mean that the legitimacy and effectiveness of the NPT regime will erode slowly but surely.

Without waiting for that to happen, the UNSC should include in the generic resolution dealing with cases of non-compliance<sup>13</sup>, the requirement that a State reported to the UNSC for non-compliance would have to conclude, within a short period of time, INFCIRC/66-type safeguards agreements for all enrichment and reprocessing related facilities under construction or operating on its territory.

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<sup>12</sup> Facility-specific agreements can be terminated only if the recipient state returns or transfers to a third state all supplied nuclear material, equipment, and facilities previously subject to safeguards or if those items and materials are “no longer usable for any nuclear activity relevant from the point of view of safeguards or had become practicably irrecoverable.” IAEA, “The Agency’s Safeguards System,” INFCIRC/66/Rev.2, September 16, 1968

<sup>13</sup> see my paper on “Improving Safeguards in case of non-compliance” presented at this Symposium.

## Conclusion

The fundamental objective of the nuclear non-proliferation regime is to deter states not only from manufacturing nuclear weapons, but also from developing a nuclear weapons capability. Over the past two decades, we have learned from experience the many weaknesses and shortcomings of the current regime.

To improve the situation, the adoption by the UN Security Council of the two generic resolutions suggested in this paper would make a real difference<sup>14</sup>. These generic resolutions address cases of severe non-compliance with IAEA safeguards agreements and NPT withdrawal notifications. They are purely preventive and non-discriminatory in nature.

For the adoption of these UNSC resolutions to be possible, the five permanent members of the Security Council will have to act in concert, acknowledging the urgency of adopting these measures to mitigate the consequences of the next potential proliferation crisis.

Getting there will not be easy, but fortunately, at a time when there is so much tension among some of the permanent members of the UNSC, there is one thing on which they all agree: none of them wants to see another country have the bomb.

I hope that - at least here at the IAEA - I am not preaching in the desert, and that younger and more influential people than me will take up my proposals to make the nuclear non-proliferation regime more effective.

The time to act is now.

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<sup>14</sup> Drafts of UN Security Council Generic Resolutions on Non-compliance and on NPT withdrawal can be found respectively in Annex 2 and Annex 3 of the paper on "Dealing Preventively with NPT Withdrawal" of January 23, 2020. [http://npolicy.org/event\\_file/Pierre\\_Goldschmidt\\_Dealing\\_Preventively\\_with\\_NPT\\_Withdrawal\\_140220\\_1509.pdf](http://npolicy.org/event_file/Pierre_Goldschmidt_Dealing_Preventively_with_NPT_Withdrawal_140220_1509.pdf)