

Good faith and withdrawal from the Non-Proliferation Treaty

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1. *Good faith and nuclear arms control*

The Vienna Convention on the Law of Treaties (VCLT) provides that '[every] treaty in force is binding upon the parties to it and must be performed by them in good faith'.¹ In other words, the principle of good faith 'forms an integral part of the rule *pacta sunt servanda*'.² It is considered a fundamental principle of the law of treaties and a rule of customary law. Christina Binder links the good faith principle to competing requirements of flexibility and legal certainty. Both are important factors in treaty-making. She points out that while international agreements have an inherent characteristic to 'freeze' law at the moment of their adoption, there must always be some room to allow for evolving obligations when circumstances change.³ In this context, she argues, derogations from a treaty must always be balanced against the requirement of treaty stability and the *pacta sunt servanda* rule.⁴ In other words, the obligations to perform treaty obligations in good faith is, under general international law, a safeguard of legal certainty that limits the flexibility of states to implement such obligations. As Binder concludes, however, the fragmentation of international law and the rise of specialized regimes have led to a more differentiated implementation of certain

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¹ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 26.

² Commentary of the Draft Articles on the Law of Treaties, (1966) II YBILC 211.

³ C Binder, 'Stability and Change in Times of Fragmentation: The Limits of *Pacta Sunt Servanda* Revisited' (2012) 25 Leiden J Intl L 909-910.

⁴ *ibid*, 911.



rules of general international law that are linked to the legal principle of good faith.⁵ This means that the tension between flexibility and legal certainty is also increasingly dealt with within the confines of such regimes.⁶ This article focuses on the NPT, the main instrument of nuclear arms control. Arms control law regimes in general often consist of a set of rules on a limited problem together with the rules for the creation, interpretation, application, modification, or termination – in a word, administration – of those rules.⁷ This is certainly true in the case of nuclear arms control, which has its own specialized secondary rules of law on the supervision of its obligations, as well as on the suspension, termination of, or withdrawal from, treaties.⁸

The balance between flexibility and legal certainty is a crucial factor in arms control law. The fundamental norm under international law is that every state is free to possess armaments, without limitations pertaining to either number or types, unless that state is under a binding obligation to the contrary.⁹ Since states need to arm themselves in order to use force either for self-defense or to contribute to UNSC-sanctioned military operations, rules that limit this freedom touch upon the core of the national sovereignty of states. National security and arms possession are inextricably linked. This connection is even stronger in the context

⁵ On fragmentation in general, see for example Report of the Study Group of the International Law Commission on 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' (hereafter: 'ILC Report on Fragmentation'), UN Doc A/CN.4/L.682 (2006); M Koskeniemi and P Leino, 'Fragmentation of International Law? Postmodern Anxieties' (2002) 15 *Leiden J Intl L* 553-579; A Lindroos and M Mehling, 'Dispelling the Chimera of "Self-Contained Regimes": International Law and the WTO' (2006) 16 *Eur J Intl L* 857-877.

⁶ Binder (n 3) pp.910-911.

⁷ ILC Report on Fragmentation (n 5) 81. In fact, this is the ILC definition of 'self-contained regimes', but it later notes the 'inappropriateness' of that term and suggests it be replaced by 'special regime'. There is an ongoing discussion on whether rules on creation, interpretation, application, etc should also be considered as secondary rules of a regime: see D H Joyner and M Roscini (eds), *Non-Proliferation Law as a Special Regime* (CUP 2012); B Simma and D Pulkowski, 'Of Planets and the Universe: Self-contained Regimes in International Law' (2006) 17 *Eur J Intl L* 483-529.

⁸ See, for example, G Den Dekker and T Coppen, 'Termination and Suspension of, and Withdrawal from, WMD Arms Control Agreements in Light of the General Law of Treaties' (2012) 17 *J of Conflict and Security L* 1-23.

⁹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 135, para 269; *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 238, para 21.



of nuclear weapons because of their impact on international relations. Thus, when states agree to limit their armament levels, they require sufficient assurances that their doing so will not turn out to harm their interests. These assurances are provided, amongst others, by the predictability and stability of the treaty regime. In other words: arms control treaties must provide a sufficient level of legal certainty. Within this certainty, however, some flexibility must be preserved. As states cannot foresee all possible political, military or technological developments that may occur over the lifetime of a treaty regime, especially one that is predicted to be in place for multiple decades or even an indefinite period, they will require that regime to grant them a certain flexibility to develop and implement the rules, or even to reject them, if circumstances do so demand.

How does the principle of good faith interact with this tension under the NPT?¹⁰ The NPT designates five states as lawful nuclear-weapon possessor states (NWS),¹¹ which commit themselves not to transfer to any recipient nuclear weapons directly, or indirectly, or to assist non-nuclear-weapon states (NNWS) in manufacturing or acquiring such weapons in any way; NNWS, in turn, must refrain from acquiring, in any way, such weapons.¹² The rights of all states to use nuclear energy for peaceful purposes are safeguarded under the NPT; moreover, developed states are under a positive obligation to contribute to the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy.¹³ Article VI of the NPT requires all states to pursue negotiations in good faith on effective measures leading to nuclear disarmament, as well as on a treaty on general and complete disarmament. The implementation of the NPT is reviewed through its review cycle, consisting of five-yearly Review Conferences which are preceded by three Preparatory Committees.¹⁴ It is mainly in this context that the principle of good faith plays a

¹⁰ Treaty on the Non-Proliferation of Nuclear Weapons (adopted 1 July 1968, entered into force 5 March 1970) 729 UNTS 1681.

¹¹ States that exploded a nuclear device prior to 1st January 1967: see art IX NPT. The formal NWS states are China, France, Russia, the UK and the US.

¹² Arts I and II NPT.

¹³ Art IV NPT.

¹⁴ Art VIII(3) NPT. The review cycle was more formally agreed upon in 1995: see NPT/CONF.1995/32 (part I), Decision 1.



role. The provisions of the NPT are extremely short and open to interpretation; this is a way in which the treaty provides the necessary flexibility within the stability of the regime as a whole. It is no secret, however, that member states belonging to different political blocs are in a constant argument about the implementation of the NPT.¹⁵

The principle of good faith plays an important underlying role in such discussions. This is most obvious in the discussions on the implementation of Article VI, which explicitly mentions good faith in its text. The main issue dividing NPT states is whether or not the NWS are implementing their obligation to disarm in good faith, or whether the alleged lack of process on disarmament constitutes a possible infringement of Article VI.¹⁶ Article VI is not the only NPT provision that is hotly debated at Review Conferences: states argue over the required standard of safeguards under Article III; the limits to the right to use nuclear energy for peaceful purpose under Article IV.1, and the extent and level of nuclear cooperation that should be extended to developing states under Article IV.2. As there is, legally speaking, very little in the treaty that decisively points to any one interpretation of these obligations, the implementation of the treaty in good faith, in light of its object and purpose, is an important element in such debates.¹⁷ Thus, it is a concept that states use to 'fill in' legislative gaps in the treaty. The underlying role of good faith in the context of the NPT is also reflected in some of the principles, formulated by the UNGA in 1966, on which the treaty is based, especially the fact that the NPT should be void of any loop-holes permitting direct or indirect proliferation, that it should be a step towards disarmament, and that the treaty's provisions should ensure its effective implementation.¹⁸ True enough, NPT states have reached agreement on the implementation of some NPT provisions based on these principles. The clearest examples of this are Articles I

¹⁵ See, for example, 'NPT Review Process: 1970-1995', available at <www.reachingcriticalwill.org>, accessed 14 April 2014; R Johnson, 'Politics and Protection: Why the 2005 NPT Review Conference Failed', *Acronym Institute*, 2005, available at <www.acronym.org.uk/dd/dd80/80npt.htm>, accessed 30 January 2012.

¹⁶ See also *Legality of the Threat or Use of Nuclear Weapons* (n 9), 267, para 105 judgment F.

¹⁷ See, for example, T Coppen, 'The Role and Rationale of the Nuclear Non-Proliferation Treaty in the Twenty-First Century' [2012] *Romanian J of Society and Policy*, available at <<http://rjsp.eu>>, accessed 14 April 2014.

¹⁸ UNGA Res 2028 (XX) (19 November 1965).



and II. Although the text of these provision does not actually address proliferation via non-state actors; nor does it prohibit giving assistance to a nuclear weapons effort by a NWS to another NWS, or to a non-NPT state; or by an NNWS to any other state. Over the decades, however, NPT states consistently agreed on an interpretation of Articles I and II NPT under which such activities were not allowed.¹⁹ Thus, the principle of good faith can in fact lead to the establishment of authoritative interpretations of NPT provisions. Moreover, states can unilaterally decide another state is not implementing the NPT in good faith, which has led to the adoption of unilateral sanctions against NPT states.²⁰ In this way, the hard ‘outer limits’ of the treaty regime are formed by its written provisions, providing the necessary degree of legal certainty, whereas the principle of good faith plays an important role in conducting or settling (political) debates regarding the implementation of its more opaque norms. Thus, it has no general direct legal effect, but when a certain interpretation is consistently shared by sufficient NPT states, combined with adherence to it in practice, it may become an authoritative interpretation of the norm in question.²¹ If such an interpretation is established over time, state behavior that contravenes it may be regarded as being in bad faith towards the other member states.

2. *The role of withdrawal clauses: arms control law and the NPT*

The main purpose of withdrawal clauses in arms control treaties, more specifically WMD control treaties, is to warrant the flexibility of states to terminate their treaty obligations when they feel that their supreme national interests are in jeopardy. This is reflected by Article X

¹⁹ Coppen, ‘The Role and Rationale’ (n 17).

²⁰ This happened, for example, in the case of Iran, when both the US and the EU adopted unilateral sanctions. See, for example, P Dupont, ‘Countermeasures and Collective Security: The case of the EU sanctions against Iran’, (2012) 17 *J of Conflict and Security L* 301-336.

²¹ Subsequent agreement and practice are, according to art 31 VCLT, primary methods to interpret the meaning of treaty provisions in light of its object and purpose. See also Draft Articles on the Law of Treaties (n 2) 221, para 14; I Brownlie, *Principles of Public International Law* (6th edn, OUP 2003) 6; *Military and Paramilitary Activities* (n 9), para 36; WTO, *Japan: Taxes on Alcoholic Beverages— Report of the Appellate Body* (4 October 1996) WT/DS8/AB/R, 13.



NPT, 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 interests of its country [...]'. The existence of specialized provisions for withdrawal largely precludes the application of the general rules of the VCLT on treaty suspension, termination and withdrawal on the basis of the *lex specialis derogat legi generalis* principle.²²

The question as to what exactly constitutes the supreme interests of a state cannot be answered in general, but it can be assumed that in the context of WMD control law such interests refer to the security interests of the State in question. The withdrawal provision of the NPT was based on that of the Partial Test-Ban Treaty (PTBT), which was created in such a way that it would leave room for a flexible interpretation. During the early stages of negotiation on the NPT in the Eighteen Nation Committee on Disarmament (ENDC), there was support for a limitation of the right to withdraw to exceptional cases: a non-fulfillment of obligations by another member State, nuclear or non-nuclear; or an 'act of dissemination committed by a third party'.²³ Defining the grounds for withdrawal this narrowly, however, received little to no support from other States. The US, for example, declared the provision for withdrawal was central to the NPT, but offered no more elaboration on what it envisioned to be acceptable grounds for withdrawal other than a general statement that 'States will adhere to the treaty if they believe it is consistent with their security interests'.²⁴ It was also pointed out that some flexibility in key areas of the NPT might convince hesitant States to join the Treaty.²⁵ No definite interpretation concerning what constitutes legitimate grounds for withdrawal was agreed upon either at the negotiation stage of the NPT or in the subsequent decades of its implementation. In the only case of withdrawal from a WMD control treaty, the DPRK in 1993 submitted a notice in which it argued that an extraordinary situation prevailed, constituted by the joint military exercis-

²² Den Dekker and Coppen (n 8) 12-14.

²³ See Final verbatim record of the Conference of the Eighteen-Nation Committee on Disarmament [Meeting 294], ENDC/PV.294, 7, available at <<http://quod.lib.umich.edu/e/encd/>>, accessed 14 April 2014.

²⁴ See ENDC/PV.325, 10.

²⁵ See ENDC/PV.295, 10.



es by the US and South Korea and the IAEA resolution of February 1993 that required the DPRK to open up to inspection ‘non-nuclear military sites’.²⁶ While the DPRK has since been penalized with UNSC-mandated sanctions, no State has attempted to challenge the legality of the grounds invoked by the DPRK to withdraw from the NPT.²⁷ Any attempt to do so would be complicated by the words ‘if [the State] decides’ in the withdrawal clause, which indicate that the only authoritative interpretation of the ‘extraordinary events’ in the clause is the interpretation by the withdrawing State itself. Again, this is in line with the ‘flexibility within legal certainty’ approach found in WMD-related arms control agreements: if the State considers that its supreme interests are jeopardized by remaining a member of a treaty, it will meet very few *legal* obstacles when it decides to end its membership.

WMD treaty withdrawal provisions also have a more general compliance-related function. As reciprocity is of special importance in arms control, states will want to retain the option of leaving a treaty when they feel that other member states are not implementing their obligations. This is especially clear when taking a look at the *travaux préparatoires* of the NPT. Negotiations on the NPT were initially limited in scope: in exchange for a pledge not to manufacture nuclear weapons by NNWS, nuclear powers would undertake not to transfer the control of nuclear weapons to NNWS.²⁸ Disagreement between the US and the Soviet-Union prolonged the negotiations, up to the point when the discourse of the discussions was changed by non-aligned states.²⁹ Instead of NNWS barring themselves from acquiring nuclear weapons in the interest of their own security, it was presumed that for signing away the right to develop an atomic deterrence against NWS threats, NNWS ought to receive something in return. In the end, these returns materialized in the NPT as Articles VI and IV. This meant that the undertaking

²⁶ Letter from the Minister for Foreign Affairs of the Democratic People’s Republic of Korea to the UNSC, UN Doc S/25405 (1993).

²⁷ The relevant UNSC resolutions avoid passing judgment on the withdrawal of the DPRK on itself; instead they focus on its nuclear testing as a basis for the measures under Chapter VII.

²⁸ UNGA Res 1380(XIV) (20 November 1959).

²⁹ See, in general M Shaker, *The Nuclear Non-proliferation Treaty: Origin and Implementation 1959-1979*, vol 1 (Oceana Publications 1980); see also UNYB, 1958-1966, available at <<http://unyearbook.un.org/>>.



by NNWS not to acquire nuclear weapons was to be reviewed vis-à-vis the progress made by NWS on nuclear and general disarmament. The link between future review of the Treaty and the withdrawal clause in Article X NPT must also be seen in this light: the two were linked from 1965 onwards.³⁰ The idea that the review procedure of the NPT, its duration, and the possibility to withdraw from the Treaty are all part of a mechanism of checks and balances on the NWS took root firmly at the ENCD. The obligation to negotiate measures on disarmament was linked to the system of ‘amendments, review and withdrawal’; the latter was seen as an assurance that States parties’ supreme interests would not be injured.³¹ It was considered that an adequate clause on withdrawal would be an ‘effective instrument’ to ‘exert pressure on the nuclear Powers so that they will comply with their obligation to go ahead with the disarmament process’.³² Even the US, as one of the two negotiating nuclear-armed superpowers, had to concede that the draft NPT took into account the concerns of NNWS that ‘a treaty of this importance should be open to termination in due course if its wider purposes, including the need for further disarmament measures, are not being achieved’.³³ In brief, the NNWS certainly would not take responsibility for tying their own hands indefinitely if the NWS were to fail to arrive at positive results in terms of limiting and reducing their nuclear arsenals. The historical background of Article X thus reveals a broad, compliance-related function of the special withdrawal clauses, which clearly goes beyond a treaty-based ‘exit-mechanism’ to be invoked in extraordinary circumstances.

The withdrawal provision in the NPT and the principle of good faith are linked together in several ways. Article X, as a rule of *lex specialis*, prevents the application of general rules in the VCLT on termination, suspension and withdrawal from a treaty. The principle of good faith, as it is reflected in these rules, is therefore codified in the withdrawal provision of the NPT itself. As illustrated above, the NPT is non-exhaustive when it comes to grounds for withdrawal. In other words: material breach, supervening impossibility of performance or a

³⁰ Draft resolution: United States, art VII. UN Doc A/C.1/L.337.

³¹ ENDC/PV.335.

³² Attempts to incorporate explicit provisions to this end in the NPT, made by Burma and Nigeria, were rejected. See ENDC/PV.337, 344, 351.

³³ See ENDC/PV.358, 11.



fundamental change of circumstances all constitute valid grounds for withdrawal. In addition, states themselves may determine whether such grounds exist, as there is no international review foreseen at any point during a withdrawal procedure. True enough, the UNSC is likely to be involved under the procedure of Article X, but it cannot prevent a withdrawal, or rule on the validity of the grounds invoked by the withdrawing state. Moreover, as the *travaux préparatoires* of the treaty clarify, Article X may play a role if states feel, more in general, that the treaty no longer serves their best interests, for example due to a perceived lack of progress on the implementation of Article VI. Clearly, the withdrawal clause of the NPT is of a purely subjective nature, intended to provide maximum flexibility to member states to safeguard their national interests. Does this mean, then, that the principle of good faith does not play any role at all when it comes to withdrawal from the NPT? Again, its *legal* significance appears to be limited indeed, but it does play potential role in framing political discussions related to treaty withdrawal, which in turn can have legal consequences. First off, if a state or, more likely, a group of states were ever to exercise their right to withdraw from the treaty because they feel that it no longer serves their security interests, this decision would be based on an assessment by those states of the implementation of treaty obligations by other member states. As I illustrated above, the most important factor in such considerations, especially in relation to Article VI, is that of good faith. On the other hand, whether or not a state will have exercised its right to leave the NPT regime in good faith will be the main factor that determines the reaction of the international community to that state's withdrawal. This reaction can have legal consequences, to the extent that it may lead to unilateral sanctions or binding UNSC resolutions.

3. *Material consequences of withdrawal*

This was illustrated by the UNSC resolutions adopted against the DPRK in 2006 and 2009. It must be pointed out that these resolutions were primarily a reaction to the nuclear tests performed by the DPRK; nevertheless, their existence indicates that the behavior of a state *after*



its withdrawal from the NPT may have legal consequences.³⁴ This, in turn, raises the question if there are any possible circumstances under a withdrawal from the NPT should be considered contrary to the principle of good faith on the grounds of its material consequences. In this context, it is useful to examine the reaction of NPT member states to the withdrawal of the DPRK in 2003.³⁵ In fact, before this point, the NPT's withdrawal clause was not extensively discussed at Review Conferences or Preparatory Committees. After 2003, however, Article X was regarded as a legal 'loophole' in the NPT by, mainly, Western states and NWS. The challenge, for them, has been to prevent the abuse of Article X NPT while preserving the sovereign right of any state to withdraw from the Treaty.³⁶

In this context, states have therefore begun to discuss possible reactions to a withdrawal from the NPT under the treaty. After all, knowing that Article X may be interpreted broadly by states that wish to withdraw from the treaty does not say much about the possible consequences that such an exercise of the right in Article X may entail for the state in question. Iran, in 2009, criticized proposals to discourage the exercise of the right to withdraw from the NPT on the grounds that this would be a reinterpretation of the Treaty for which the formal amendment procedure of the treaty should be followed instead.³⁷ This point of view, however, is not correct. Article X covers only the grounds and procedure for withdrawal from the NPT; what the material consequences of such a withdrawal are is not covered by its text. Thus, in absence of any agreement between NPT states that could constitute an authoritative interpretation of the treaty, there is no *lex specialis* on this issue, which means that the rules of the VCLT apply. At the 2010 Re-

³⁴ See UNSC Res 1718 (14 October 2006) UN Doc S/RES/1718; UNSC Res 1874 (12 June 2009) UN Doc S/RES/1874.

³⁵ After bilateral negotiations between the DPRK and the US in 1993, the DPRK suspended its notice of withdrawal. Ten years later, however, in response to growing international pressure to implement its obligations under the 1994 Agreed Framework, it completed its withdrawal. There exist some legal uncertainties regarding the status of its membership, but in practice the DPRK is considered as a non-member state to the NPT.

³⁶ 'Major Proposals to Strengthen the Nuclear Nonproliferation Treaty. A Resource Guide for the 2010 Review Conference', *Arms Control Association*, March 2010.

³⁷ Art VIII NPT. See Iran Working Paper, NPT/CONF.2010/PC.III/WP.4 (13 April 2009), para 5.



view Conference, members agreed that states remain responsible for violations of the NPT prior to withdrawal, a principle of general international treaty law contained in Article 70 of the VCLT, which also stipulates that the general rule applies in the absence of a specific provision in that treaty and any agreement between the contracting parties. Thus, we can conclude it applies to the NPT.

Article 70 VCLT releases a withdrawing state from its non-proliferation obligations from the moment its withdrawal from the NPT takes effect. Since under international law states are free to possess arms unless they are committed to binding agreements restraining this freedom this means that a state would face no legal obstructions to the acquisition of a nuclear weapon absent any other binding non-proliferation obligations that state may be under.³⁸ A problem remains, however, with the assistance they have received as an NPT member state: the exporting state, after all, transferred any such items under the assumption that the recipient, as a member of the NPT, would refrain from the construction of a nuclear weapon. Many states have argued that such assistance should either be returned or neutralized; at the very least, it is claimed, any benefits should remain dedicated to peaceful applications of nuclear energy only.³⁹ When a NNWS receives nuclear material as a member state of the NPT, the adherence to the Treaty in good faith dictates that Articles II and III apply to this particular nuclear trade agreement. This means an implicit obligation not to use the received items for military purposes, as well as an obligation to subject them to IAEA safeguards; in fact, the agreement, in case both parties are NPT states, must be understood to be conditional upon the observance of such implicit non-proliferation obligations. Just like any explicit bilateral non-proliferation provisions, these implicit obligations exist separately and in addition to the obligations directly flowing from the NPT. They predate the moment of withdrawal from the Treaty and do not lapse upon withdrawal, since they exist in relation to the nuclear trade agreement, which is in accordance with Article 70(1)(b) VCLT

³⁸ These may consist, for example, of safeguards agreements, the IAEA Statute, UNSC Res 1540, bilateral agreements, or nuclear-weapon-free-zone treaties.

³⁹ See Working Papers by Germany, NPT/CONF.2005/PC.III/WP.15 (29 April 2004); Russia and Ukraine, NPT/CONF.2010/WP.2 (17 March 2010); Japan, NPT/CONF.2010/PC.II/WP.11 (28 April 2008); and the EU, NPT/CONF.2010/PC.I/WP.25 (10 May 2007); or the US, NPT/CONF.2010/PC.I/WP.22 (3 May 2007).



unaffected by the withdrawal. Thus, a state that has exercised its right to withdraw from the NPT remains obliged to commit any materials, items or equipment received as a an NPT member state to peaceful goals only.

Thus, the legal principle of good faith would dictate that not only do states remain responsible for violations under the NPT prior to their withdrawal, but it also implies that even after withdrawing from the NPT, some secondary legal obligations remain in force. The practical consequence of the latter conclusion can be, for example, that a state that has left the NPT treaty is obliged to return any items or technology it received while being a member of the treaty; alternatively, it could mean that there is a continuing obligations to keep such items or locations under strict supervision of the IAEA even though the safeguards obligation of Article III NPT is no longer in force.

4. *Conclusion*

The main question of this article, whether unilateral withdrawal from a multilateral treaty with the objective of avoiding supervisory or jurisdictional mechanisms can be reconciled with the principle of good faith, should, in the context of nuclear arms control, be answered pointing out that this primarily depends on what happens *after* the withdrawal. In this particular legal field, national security interests have a pervasive influence on the relation between flexibility and legal certainty and, with that, on the application of the good faith principle. This article demonstrated that the nature, function and subject of nuclear arms control necessarily limit the application of the good faith principle to a more political context. Generally, in the context of the NPT, the good faith principle is primarily used by states to interpret the broadly formulated treaty provisions. When focusing on withdrawal from the NPT in particular, we can conclude that Article X limits the applicability of the good faith principle when it comes to grounds and procedural requirements for withdrawal by precluding the application of general rules of international law; in comparison with these rules, Article X leaves only a marginal legal role for the good faith principle. The reason that despite all this a withdrawal from the NPT can nevertheless be contrary to the principle of good faith principle lies is related to the material conse-



quences of withdrawal. States remain responsible for any violations prior to withdrawal; and any nuclear items or technology received whilst being an NPT member must remain dedicated to peaceful uses. Should a state not comply with the latter requirement, then it is not acting in good faith. Thus, the good faith principle applies to NPT withdrawal, but its *legal* impact would be limited to only one aspect of treaty withdrawal.

In general, however, the good faith principle would have more of a political than a legal impact in relation to a withdrawal from the NPT. The history of the NPT and the UNSC reaction to the DPRK indicate that the international community respects the balance between flexibility and legal certainty that is struck by Article X NPT. In this sense, it is of importance to note that the NPT is an arms control treaty, directly affecting matters that are at the heart of states' national security. Withdrawal clauses have the function of guaranteeing states the necessary flexibility to withdraw if they desire, providing only marginal legal procedural requirements. This, as for example the Arms Trade Treaty and the Treaty on the Conventional Forces in Europe illustrate, is true for conventional arms control law as much as for WMD arms control law. The fact that safeguards lapse at the moment states withdraw from the NPT is codified in safeguards agreements: in this sense, the fact that states withdraw from the treaty in order to avoid the IAEA's supervision of their nuclear activities in itself cannot be argued to be in bad faith. Rather, the overall significance of that state as a potential proliferation threat will be decisive in determining the reaction of the international community to the withdrawal. The UNSC has determined that nuclear proliferation constitutes a threat to peace and security; it is here that the real legal consequences of a withdrawal from the NPT can lie. In this context, it is of course extremely relevant that the NPT, or arms control law in general, has as its object to increase international security and stability through the regulation of types or levels of armaments. The reaction of the international community to a case of withdrawal from a multilateral arms control treaty, however, will in the end be based on political considerations. The question whether that state has been acting in good faith is only one of these.