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

13 April 2009

Original: English

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## Third session

New York, 4-15 May 2009

### Other provisions of the Treaty, including article X

#### Working paper submitted by the Islamic Republic of Iran

1. The Islamic Republic of Iran believes that the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons and its Preparatory Committee are faced with more important priorities and challenges, which have emanated from the non-implementation of the disarmament obligations under the Treaty, as well as from the development of new nuclear weapons and the irrational doctrines of possible use of such inhumane weapons.

2. Indeed, the major challenges of the Treaty today concern the implementation of its two main pillars, namely nuclear disarmament and the peaceful use of nuclear energy. Under these circumstances and given these shortcomings, there is no urgency or necessity to deal with issues that are not a priority, such as amending article X of the Treaty.

3. In these circumstances, trying to focus on issues like article X would only divert the attention of the States parties from their real tasks.

4. When this issue was raised for the first time by the United Nations High-level Panel on Threats, Challenges and Change, and the Panel made a recommendation in this regard, the first reaction of the Non-Aligned Movement was the following:

Non-Aligned Movement States parties to the Nuclear Non-Proliferation Treaty consider that this recommendation goes beyond the provisions of the Nuclear Non-Proliferation Treaty. Non-Aligned Movement Member Countries believe that the right of "withdrawal" of member States from treaties or conventions should be governed by international treaty law.<sup>1</sup>

5. The question of withdrawal is a sensitive and delicate issue, and serious care should be taken, as such proposals to reinterpret article X of the Nuclear Non-Proliferation Treaty are equal to the legal amendment of the Treaty. Such suggestions regarding legal amendment of the Treaty would actually undermine the Nuclear Non-Proliferation Treaty regime and create uncertainties and loopholes.

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<sup>1</sup> Comments of the Non-Aligned Movement on the observations and recommendations contained in the report of the High-level Panel on Threats, Challenges and Change (see A/59/565 and Corr.1).



However, if any State party has any proposal for the amendment of the Treaty it must follow the procedures stipulated in article VIII of the Treaty. It should be noted that, unless all States parties clearly demonstrated an intention to be legally bound by these new amendments, which would normally be done through a process of ratification, such proposals on the amendment of Article X within the Review Conference would have no basis in international law. It is a recognized fact that any proposals to amend a treaty will have to be discussed and adopted in the relevant multilateral forum.

6. The negotiating history of the Nuclear Non-Proliferation Treaty also shows that although the United States and the former Union of Soviet Socialist Republics were the Co-Chairmen of the Eighteen-Nation Disarmament Committee throughout the Treaty negotiations and their interests were reflected in the final text, they were also obliged to take into account the views of those other countries that wanted to avoid a treaty with an unlimited duration without undertakings by “the haves” to disarm, since they had concern that the world might forever be divided into “haves” and “have-nots”. Thus, the draft of the Treaty contained both a withdrawal clause and a provision for a conference to review the operation of the Treaty. The wording of the Treaty has also left judgements on the existence of extraordinary events completely to the discretion of the withdrawing State, therefore leaving no room for reinterpretation.

7. Furthermore, it should be taken into account that the 1969 Vienna Convention on the Law of Treaties governs all international treaties. Caution should be taken not to agree to new prerequisites not already provided for in the Treaty, as this could also have implications for other treaties, thereby creating a precedent to act outside the Vienna Convention. Furthermore, it should be taken into account that all international treaties are governed by the customary rules of the law of treaties, many of which have been reproduced in the Vienna Convention.

8. It should therefore be recalled that article 54 of the Vienna Convention, which is also a customary international rule, provides that “the withdrawal of a party may take place in conformity with the provisions of the treaty”. Generally speaking, there are two categories of treaties and conventions in terms of “the withdrawal clause”. Some conventions, such as the United Nations Convention on the Law of the Sea, do not have such clauses. In legal terms, parties to such treaties can arguably contest that what is not specifically prohibited by the treaty is therefore allowed. Similarly, the opposite interpretation may be equally credible — that unless expressly included, an act is not allowed. Conventions or treaties, like the Nuclear Non-Proliferation Treaty, that belong to the second category are very explicit in terms of withdrawal. Therefore, the treaty recognizes the existence of the unconditional right of a State to withdraw in exercising its national sovereignty.

9. In conclusion, it should be stressed that the main problems of the Treaty are the continued existence of thousands of nuclear warheads and the development of new ones by certain nuclear-weapon States as well as irrational doctrines for their possible use. The nuclear-weapon States must work sincerely and seriously towards the total elimination of nuclear weapons. Their failure to do so is the root cause of the Treaty’s problems. Until then, paying attention to other, less important issues would not have desirable results.

10. It is a matter of serious concern that other main priorities, like the universality of the Treaty, have been neglected or undermined in favour of issues like article X. The recent decision of the Nuclear Suppliers Group, in clear violation of the commitments under the 1995 decision on principles and objectives for nuclear non-proliferation and disarmament, as well as the final document of the 2000 Review Conference on the issue of the universality of the Treaty, has seriously jeopardized the universality as well as the credibility and integrity of the Treaty. In such a situation, the insistence of a few States parties that try to highlight non-issues like article X and overlook such very important obligations is questionable.

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