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Withdrawing from the NPT: legal and strategic considerations

Twenty years ago, on January 10, 2023, North Korea announced its unilateral withdrawal from the Non-Proliferation Treaty (NPT). This decision came in the wake of a threat made a decade earlier, in 1993. This threat was frozen by diplomatic efforts to convince Pyongyang to remain a party to the NPT, which ultimately proved unsuccessful. Since 2003, the question of the right of states to withdraw from the treaty has mobilized the international community, from both a political and legal perspectives. Indeed, France, in particular, has deemed this decision to be illegal, and has denounced Pyongyang's unfounded use of Article X of the NPT. Paris insisted that it was unacceptable for the country to continue to use, after its withdrawal, nuclear capabilities acquired while it was a party to the regime. It highlighted that North Korea bears full responsibility for past violations even after the withdrawal. At a time when the NPT regime seems to be weakened and some states parties refer more or less explicitly to a potential withdrawal, it is useful to consider what the treaty provides in this regard and to what extent a state party to the NPT, in particular a non-nuclear-weapon state (NNWS), can legitimately renounce its commitments.

Article X of the NPT

Article X.I of the NPT 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. 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.”*¹

¹ The second paragraph of article X deals with the duration of the Treaty, which was initially set at 25 years.

There is therefore a formal condition, concerning prior notification to the other states parties and to the United Nations Security Council (UNSC), and substantive elements, related to the infringement of supreme interests.

In terms of form, the notification procedure is modelled on other instruments of international law, but it refers to the UNSC because of the strong negative impact of a withdrawal for the international system. In addition, it requires a statement of reasons justifying the withdrawal and a three-month deadline, which may give the UNSC time not only to assess the legitimacy of the withdrawal but also to take appropriate action under Chapter VII of the UN Charter².

The more substantive condition has to do with changed circumstances, and is fairly standard in this type of treaty. It was, for example, included in the ABM (anti-ballistic missile) treaty and the Intermediate-range Nuclear Forces (INF) treaty, and was invoked by Washington when it withdrew from these two treaties in 2002³ and 2019⁴ respectively. Similar language was adopted during the negotiation of the Treaty Prohibiting Nuclear Weapons (TPNW) adopted in 2017, although in the case of the TPNW, withdrawal can only take effect twelve months after notification.

The North Korean precedent

In the case of North Korea, the first condition has not been technically met. Pyongyang declared an immediate withdrawal in 2003, noting that it had already signaled its intention to withdraw from the Treaty in 1993. The ten-year moratorium cannot be formally equated with the three-month notice required under Article X. The second condition was deemed inoperative by many states, which considered that no extraordinary event had occurred between 1985 (when Pyongyang ratified the Treaty) and 2003 (when it withdrew) that affected North Korea's supreme interests. Pyongyang has cited U.S.-South Korean hostility, but no actual aggression had occurred, and self-defense was not recognized by the UNSC. North Korea also pointed to the biased nature of the IAEA inspections on its territory as a justification, which cannot be considered as challenging its supreme security interests. Two NPT negotiators presented a very detailed analysis demonstrating the lack of legal basis for the decision⁵.

It should be noted that the UNSC has not, however, succeeded in formally condemning the form and the justifications given by Pyongyang for its withdrawal⁶. In fact, the highly sensitive nature of the issue did not allow for a unanimous decision by the members of the Council, neither in 1993, nor *a fortiori* in 2003, in a period of tension over proliferation issues (Iraqi crisis)⁷.

² Christopher Evans, "Going, Going, Gone? Assessing Iran's Possible Grounds for Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons", [Journal of Conflict and Security Law](#), vol. 26, n° 2, Summer 2021.

³ Rein Müllerson, "The ABM Treaty: Changed Circumstances, Extraordinary Events, Supreme Interest and International Law", [International and Comparative Law Quarterly](#), vol. 50, n° 3, July 2001.

⁴ Mike Pompeo, "U.S. Withdrawal from the INF Treaty", [State Department](#), 2 August 2019.

⁵ George Bunn, Roland Timerbaev, "The right to withdraw from the nuclear nonproliferation treaty (NPT): the views of two negotiators", [Yaderny Kontrol](#), vol. 10, n° 1-2, Fall 2005.

⁶ Christopher Evans, *op. cit.*

⁷ Jean du Preez, William Potter, "North Korea's Withdrawal From the NPT: A Reality Check", [James Martin Center for Nonproliferation](#), 8 April 2003.

What is an “extraordinary event” that compromises the “supreme interests of the country”?

In fact, the text of the NPT indicates that withdrawal can be considered only if events have already compromised or altered the security of a nation, not if these events are likely to do so or threaten to do so⁸. But the qualification of the event itself is left to the withdrawing state⁹, and there is no procedure within the NPT to verify its validity. The subjective nature of this assessment was quickly described as a weakness of the regime, since interpretations can naturally vary as to the exceptional nature of an event¹⁰. According to international custom, the only element that can hinder the subjective nature of the state’s assessment is the obligation to show good faith in the implementation of the treaties, a fragile bulwark¹¹.

Moreover, based on the history of the NPT negotiations, the negotiators did not give specific instructions on their interpretation of the article. It appears that the wording of Article X largely mirrors the text agreed in the 1963 Partial Test Ban Treaty. In the context of that treaty, factors that could trigger withdrawal were considered, in particular a violation of the treaty by another state party or nuclear explosions by a non-state party¹² that could threaten the security of a state party. These may also have been seen as the main circumstances that could justify withdrawal by the drafters of the NPT. However, in the context of the NPT, a form of flexibility seemed preferable to the negotiators, especially in order to convince states such as the Federal Republic of Germany and Italy to sign the treaty, both of which wished to be able to revise their NNWS status in the event of a geostrategic upheaval, for example the disintegration of NATO. Treaty negotiators also wanted to ensure that withdrawal was possible for other situations, for example for the case when a non-party state acquired nuclear weapons. Records show that the US delegation also considered that the outbreak of a major conflict could be seen as a valid reason for withdrawal.

On the side of the NNWS, divergent positions have been noted, with some seeking to restrict the right of withdrawal, others to leave it broad (Brazil, Nigeria), and still others raising the possibility of making it conditional on the proper implementation of Article VI on disarmament (United Arab Republic, Burma)¹³. Analysts have also recently taken up this interpretation, which amounts to a very broad reading of the term “extraordinary event”¹⁴.

The wording of the NPT thus allows for some “creativity” in the type of event that may trigger withdrawal, even if it insists on the “extraordinary” character of the withdrawal. Moreover, it indicates that the circumstances must be related to the purpose of the treaty, namely nuclear proliferation. Nevertheless, given the importance of the issues at stake for the security of states, related subjects linked to arms control or to international security in a broad sense could be considered relevant¹⁵.

⁸ Grégory Bouterin, “Le Traité sur la Non-Prolifération à l’épreuve du droit de retrait”, *Politique étrangère*, IFRI, 2008/4, Winter 2008.

⁹ Nicholas Sims, “Withdrawal Clauses in Disarmament Treaties: A Questionable Logic?”, *Disarmament Diplomacy*, n° 42, Winter 1999.

¹⁰ Mohamed Shaker, *The Treaty on the Non-Proliferation of Nuclear Weapons: A Study Based on the Five Principles of UN General Assembly Resolution 2028 (XX)*, thesis n° 281 of the Graduate Institute of International Studies (HEI-IHEID) of Geneva, 1976.

¹¹ Christopher Evans, *op. cit.*

¹² Mohamed Shaker, *The Nuclear Non-Proliferation Treaty: Origin and Implementation 1959-1979*, Volume II, London: Oceana Publications, 1980.

¹³ *Ibid.*

¹⁴ Tom Coppen, “Good Faith and Withdrawal from the Non-Proliferation Treaty”, *Questions of International Law*, 11 May 2014.

¹⁵ Christopher Evans, *op. cit.*

Reforming the implementation of Article X

North Korea's withdrawal has led to dissatisfaction among certain states parties to the NPT and a desire to restrict the conditions for the implementation of Article X. Thus, several states or groups of states have regularly made proposals in multilateral forums to limit the risks that this right may be abused.

France, in particular, has on several occasions clearly expressed its position on the subject. It is particularly sensitive to three points. First, the assessment of events that could justify withdrawal cannot be exercised in a preventive manner. Secondly, a state that has exercised its right to withdraw remains fully responsible for potential violations of the Treaty committed before the withdrawal. Finally, France, like a large number of states, considers that it is unacceptable for a state to use the nuclear capabilities and technologies acquired in the context of the implementation of Article IV on cooperation in the peaceful uses of nuclear energy in a military program launched after withdrawal¹⁶. This last point is the one that has given rise to most propositions and debates, since it is not explicitly regulated to date. Thus, a reflection was launched in 2004, in particular under the initiative of France and then the European Union, to frame the right of withdrawal and avoid this type of diversion, with several documents submitted to the meetings of the NPT states parties¹⁷. The United States, Russia, Germany, Canada, Australia and New Zealand, among others, have also submitted proposals to create a framework to avoid the misuse of the right to withdraw¹⁸.

Logically, diplomatic efforts to date have not sought to remove the right of withdrawal – a politically unrealistic maneuver – but to regulate the implementation of Article X to limit the risks of misuse. In the run-up to the 2015 Review Conference, the United States made it clear that the aim was not to challenge or modify the text of the article, but to adopt measures to respond to deliberate abuse of the treaty¹⁹. For example, the goal of creating a “deterrent” system to discourage a state from using Article X was recently mentioned by a former US official²⁰, while the head of the US delegation to the 2022 NPT Review Conference has made it clear that the goal is to discourage “abuses” of the withdrawal right²¹.

This would include, for example, obliging the state to demonstrate its good compliance with the treaty up to the decision to withdraw, to submit its request to the UNSC or to an exceptional conference, which would be responsible for judging the circumstances invoked, or to ensure that the materials and facilities procured in the framework of international cooperation could no longer be used for a military program. Two solutions have been mentioned: the pure and simple return of the technologies concerned following withdrawal, or the continuation of the IAEA

¹⁶ Geneva - NPT - Withdrawal - Statement by Mr. Jean-Hugues Simon-Michel, [Permanent Representation of France to the Conference on Disarmament in Geneva](#), 1 May 2013.

¹⁷ See, for example, “Denunciation of the Treaty on the Non-Proliferation of Nuclear Weapons: A Common Approach by the European Union”, Working paper submitted by the European Union, [NPT/CONF.2010/PC.I/WP.25](#), Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 10 May 2007.

¹⁸ See, for example, “Article X of the Nuclear Nonproliferation Treaty: Deterring and Responding to Withdrawal by Treaty Violators”, [Department of State](#), 2 February 2007.

¹⁹ Daniel Horner, “U.S. Pursues Penalty for Renouncing NPT”, [Arms Control Today](#), July 2013.

²⁰ Christopher Ford, “What Like-Minded States Can Do to Deter Withdrawal from the NPT”, [New Paradigms Forum](#), 29 June 2021.

²¹ AAmb. Adam Scheinman, “Special Online Briefing with Ambassador Adam M. Scheinman, U.S. Special Representative of the President for Nuclear Nonproliferation”, [Special Briefing](#), U.S. Department of State, 26 July 2022.

safeguards system on sites built in the framework of the implementation of article IV of the NPT²² even after the state has left the NPT.

Such proposals, or more modest ones, continue to be made regularly at NPT review conferences, with states or groups of states issuing working papers on the subject. This is notably the case with the “Vienna Group of 10”, which includes this issue among its working topics and has advocated that technologies acquired for peaceful uses during a state’s participation in the NPT remain under IAEA safeguards following withdrawal at the 2017, 2018 and 2019 Preparatory Committees²³ and the 2022 Review Conference²⁴. This group includes Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway, and Sweden, states that occasionally mention the topic at NPT meetings. In 2022, the NPDI (*Non-proliferation and Disarmament Initiative*) group also raised the issue at the review conference²⁵. The topic was not a central part of the discussions at this conference, which was largely marked by the impact of the war in Ukraine on the global nuclear order. The final document, which was finally rejected because of Russian opposition, included a reminder of Article X, stated that it did not seek to “*limit, restrict or undermine this right*”, while recalling that withdrawal does not modify the prior obligations of certain states parties and that states parties may consider incorporating clauses for the dismantling or return of cooperatively developed equipment in the event of the withdrawal of the state with which they are cooperating²⁶. This language echoed elements of previous Review Conference final reports, including the 2015 report (not adopted), but is more conservative, particularly in comparison to the 2010 report where the goal of some states to consider regulating the implementation of Article X was noted²⁷.

The debate is therefore in a stalemate at the multilateral level because of the lack of pressure from certain nuclear-weapon states (Russia and China), the strong reservations of some groups (non-aligned states) and the clear opposition of a couple of states (in particular Iran)²⁸. Thus, Iran recently indicated that it “*would never agree to any proposal that would challenge, constrain or condition the sovereign right of states parties to withdraw from the Treaty*”. The Iranian delegation further recalled that “*Article X is completely clear and void of any ambiguity*” and that it is an “*integral part of the compromise that led to the conclusion of the NPT*”. It noted that under the terms of the article, the “*determination of the existence of extraordinary events*

²² Grégory Boutherein, *op. cit.*

²³ Addressing “Vienna issues”: the Comprehensive Nuclear Test-Ban Treaty; compliance and verification; export controls; cooperation in the peaceful uses of nuclear energy; nuclear safety; nuclear security; and discouraging withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons, [NPT/CONF.2020/PC.I/WP.2](#), 15 March 2017, [NPT/CONF.2020/PC.II/WP.5](#), 7 March 2018, [NPT/CONF.2020/PC.III/WP.5](#), 15 March 2019.

²⁴ Addressing “Vienna issues”: the Comprehensive Nuclear-Test-Ban Treaty; compliance and verification; export controls; cooperation in the peaceful uses of nuclear energy; nuclear safety; nuclear security; and discouraging withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons, [NPT/CONF.2020/WP.3/Rev.1](#), 20 June 2022.

²⁵ “Consequences of the exercise of the right of withdrawal contained in article X”, Working paper submitted by the members of the Non-Proliferation and Disarmament Initiative (Australia, Canada, Chile, Germany, Japan, Mexico, the Netherlands, Nigeria, the Philippines, Poland, Türkiye and the United Arab Emirates), [NPT/CONF.2020/WP.58](#), 3 June 2022.

²⁶ Draft Final Document Review of the operation of the Treaty, as provided for in its Article VIII (3), taking into account the decisions and the resolutions adopted by the 1995 Review and Extension Conference, the Final Document of the 2000 Review Conference and the conclusions and recommendations for follow-on actions adopted by the 2010 Review Conference, [NPT/CONF.2020/CRP.1](#), 22 August 2022.

²⁷ 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons Final Document Volume I Part I Review of the operation of the Treaty, as provided for in its Article VIII (3), taking into account the decisions and the resolution adopted by the 1995 Review and Extension Conference and the Final Document of the 2000 Review Conference, [NPT/CONF.2010/50 \(Vol. I\)](#), New York, 2010.

²⁸ Christopher Ford, *op. cit.*

is left completely to the discretion of the withdrawing state” and then listed circumstances that could justify withdrawal, in particular “noncompliance with nuclear disarmament obligations, violation of obligation to facilitate exchange in nuclear technology and civil nuclear cooperation, military attack against safeguarded nuclear facilities of a non-nuclear-weapon state and application of unilateral sanctions against a non-nuclear-weapon state in a manner which impedes the exercise of the right of that party to develop nuclear technology for peaceful purposes”²⁹.

Since 2003, outside of NPT-related fora, the issue has occasionally been mentioned in the UNSC. In 2009, UNSC Resolution 1887 modestly formalized some provisions underlining the role of the Council in the case of a withdrawal notification, without putting forward concrete recommendations to avoid abusive withdrawals³⁰. Discussions are also taking place in the Conference on Disarmament.

In addition, proposals have been made in the academic sphere, in particular the preventive adoption of UNSC resolutions that would automatically apply in the event of the withdrawal of a state, aimed at interrupting the prior nuclear cooperation of the state in question³¹.

The right of withdrawal today

In practice, the debate on the right of withdrawal is complicated by two elements. First, general principles of public international law include the fact that a sovereign state can always decide to terminate an international commitment, especially if circumstances have changed or in response to violations by other states parties. These principles are recognized in particular by the Vienna Convention on the Law of Treaties (Article 62 on change of circumstances and Article 60 on breach)³². For this reason, the Soviet Union argued during the NPT negotiations that it was unnecessary to mention a specific right of withdrawal in the text of the Treaty³³. On the other hand, several legal scholars have taken the view that failure to comply with the requirements set out in Article X does not invalidate a state’s decision to withdraw, which remains a sovereign right. The conditions listed in Article X would therefore be a form of a desirable procedure or recommendation and not a *sine qua non* for recognition of withdrawal³⁴.

²⁹ [Statement](#) by the Delegation of the Islamic Republic of Iran On Other Provisions of the Treaty At the Third Session of the Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons New York, 7 May 2019.

³⁰ Resolution 1887, [S/RES/1887](#) (2009, United Nations Security Council, 24 September 2009: “Undertakes to address without delay any State’s notice of withdrawal from the NPT, including the events described in the statement provided by the State pursuant to Article X of the Treaty, while noting ongoing discussions in the course of the NPT review on identifying modalities under which NPT States Parties could collectively respond to notification of withdrawal, and affirms that a State remains responsible under international law for violations of the NPT committed prior to its withdrawal”).

³¹ Pierre Goldschmidt, “Dealing Preventively with NPT Withdrawal”, [Nonproliferation Policy Education Center](#), 23 January 2020.

³² Article 60: “A material breach of a treaty, for the purposes of this article, consists in: a repudiation of the treaty not sanctioned by the present Convention; or the violation of a provision essential to the accomplishment of the object or purpose of the treaty”.

Article 62: “A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty”.

³³ Jenny Nielsen, John Simpson, “The NPT Withdrawal Clause and its Negotiating History”, [MCIS NPT Issue Review](#), July 2004.

³⁴ Masahiko Asada, “Arms Control Law in Crisis – A Study of the North Korean Nuclear Issue”, Vol. 9, n° 3, *Journal of Conflict and Security Law*, Winter 2004; Frederic Kirgis, “North Korea’s Withdrawal from the Nuclear Nonproliferation Treaty”, [American Society of International Law: Insights](#), 24 January 2003.

Second, realistically speaking, even if a state withdraws without complying with the terms of Article X, it is very difficult not to recognize its *de facto* non-party status. Thus, today, although Western diplomats are careful to mention North Korea as a state party in breach of its obligations³⁵, UNSC Resolution 1874 called on Pyongyang to “return” to the NPT, conveying the idea of a *de facto* break³⁶.

Today, the fear related to NPT withdrawal is particularly strong regarding Iran³⁷. Diplomatic efforts to revive the JCPOA, the agreement reached in 2015 to control Iran’s nuclear capabilities, seem doomed to fail³⁸. In fact, Tehran has for several years dangled the threat of withdrawal from the NPT³⁹. This possibility was again mentioned as an option in January 2023⁴⁰. In contrast to the situation at the beginning of the Iranian nuclear crisis, it has been noted that it may now be defensible for Iran to formally withdraw from the NPT, with the possibility of using several factors of changes in its strategic environment to justify the withdrawal⁴¹. In particular, the US withdrawal from the JCPOA in 2018 and the unilateral imposition of sanctions while Iran was complying with the terms of the agreement at the time could be used as justifying factors, as could the high tensions between Tehran and Washington since 2019, marked by indirect confrontations, assassinations, or attacks on naval bases or equipment⁴². Of course, some states, and in particular the United States, would likely find these circumstances insufficient to justify the implementation of Article X⁴³.

But Iran is no longer the only source of concern regarding the NPT. As the South Korean President recently mentioned that Seoul might acquire nuclear weapons if North Korean threats “become more serious”⁴⁴, a formulation that was qualified a few days later⁴⁵, the question of how South Korea might exercise its right to withdraw from the NPT has become particularly acute. Indeed, some analysts have argued that while Pyongyang’s withdrawal from the NPT was illegal, Seoul’s would be “legal and justified”, as Article X of the NPT “was specifically written for the circumstances South Korea now faces”⁴⁶. Other observers, however, have pointed to the political difficulties of such a move, especially for countries such as South Korea and Japan, noting in particular the window of vulnerability created by the three-month notice period⁴⁷.

³⁵ “DPRK/North Korea: Statement by the High Representative on behalf of the EU on the launch of an intercontinental ballistic missile”, Council of the EU, [Press Release](#), 19 November 2022.

³⁶ Resolution 1874, [S/RES/1874 \(2009\)](#), United Nations Security Council, 12 June 2009.

³⁷ Mahsa Rouhi, “Will Iran Follow North Korea’s Path and Ditch the NPT?”, [Foreign Policy](#), 16 March 2020.

³⁸ Kelsey Davenport, “Explainer: Can the Iran Deal Be Resuscitated?”, [The Iran Primer](#), United States Institute of Peace, 11 January 2023.

³⁹ George Bunn, John B. Rhineland, “NPT Withdrawal: Time for the Security Council to Step In”, [Arms Control Today](#), May 2005.

⁴⁰ Mehran Shamsuddin, “NPT withdrawal; Iran’s new option”, [Tehran Times](#), 22 January 2023.

⁴¹ Christopher Evans, *op. cit.*

⁴² *Ibid.*

⁴³ Adam Scheinman, “What if Iran leaves the NPT?”, [Bulletin of the Atomic Scientists](#), 8 June 2018.

⁴⁴ Jeongmin Kim, “Yoon says Seoul could rapidly acquire nukes if North Korean threats increase”, [NK News](#), 12 January 2023.

⁴⁵ Rajeswari Pillai Rajagopalan, “Is South Korea Considering Nuclear Weapons?”, [The Diplomat](#), 23 January 2023.

⁴⁶ Jennifer Lind, Daryl Press, “Should South Korea build its own nuclear bomb?”, [The Washington Post](#), 7 October 2021.

⁴⁷ Lauren Sukin, “How International Law Could Help Preserve Nonproliferation in East Asia”, [Just Security](#), 1 December 2021.

Conclusion

In this context, the announcement of a withdrawal from the NPT by one of its states parties, be it Iran or South Korea, should lead to several analyses. Legally speaking, one can imagine that the two countries could justify the “extraordinary events” leading them to review their participation, and could follow the procedure developed in Article X. The acceptance of this justification by the international community would then be above all a political question, both at the level of the UNSC and of the main NPT states parties. At the strategic level, the UNSC would have three months to react before the withdrawal becomes effective, but it is easy to imagine a lack of consensus on the course of action to be followed in this forum, as in 2003 concerning North Korea. At the technical level, the future of civilian capabilities previously under IAEA safeguards would be questionable, but to date there is no multilateral mechanism to ensure that these capabilities could not be used by the states concerned for military purposes. In this context, efforts to dissuade states from resorting to Article X, by making clear the consequences of such a withdrawal, and especially the potential backlash from former allies and partners, remain perhaps the most effective tool to ensure that NNWS choose to remain part of the NPT. These efforts to “dissuade” withdrawal seem particularly essential to avoid the collapse of the very principle of the fight against the proliferation of nuclear weapons, which would crumble if all the states, noting a strong deterioration of their strategic environment, renounced their NNWS status⁴⁸.

⁴⁸ Stephen Herzog, Lauren Sukin, “The Dueling Nuclear Nightmares Behind the South Korean President’s Alarming Comments”, [Commentary](#), Carnegie Endowment for International Peace, 25 January 2023; Siegfried Hecker, “The Disastrous Downsides of South Korea Building Nuclear Weapons”, [38th North](#), 20 January 2023.

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