

The United States and the Prospects For NPT Extension

Ambassador Thomas Graham, Jr.

Ambassador Thomas Graham, Jr., is special representative of the president for arms control, non-proliferation and disarmament, including U.S. participation in the crucial 1995 review and extension conference of the nuclear Non-Proliferation Treaty (NPT). On January 18, just prior to his departure to New York to take part in the last Preparatory Committee (PrepCom) meeting for the NPT, he addressed the annual luncheon meeting of the Arms Control Association. During his long career in government, chiefly with the Arms Control and Disarmament Agency (ACDA), Ambassador Graham has served as the agency's acting director (1993) and was its general counsel from 1983 to 1994. He has also served as legal adviser to the U.S. SALT II delegation (1974-79), senior ACDA representative to the U.S. Intermediate-Range Nuclear Forces delegation (1985-88), senior agency representative and legal adviser to the U.S. delegation to the Conventional Armed Forces in Europe negotiations and as legal adviser to the U.S. START I (1991) and START II (1992) delegations.

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view and extension conference convenes in April. Our goal is to convince states parties to the NPT that a prompt decision for its indefinite extension is the best way to protect their security. Our case is overwhelmingly strong, but it is not without challenge. The "hard questions" that we have encountered so many times must be answered definitively now, if our answers are going to mean anything. I would like to address some of these hard questions today.

Six "Hard Questions"

The Non-Aligned Movement (NAM) will be very important to the extension decision, not only because it includes a large number of countries, in fact the majority of NPT states parties, but also because it represents the interests of the developing, non-nuclear-weapon states. These states have consistently had concerns about the NPT that are becoming more clear as the time for decision nears. Acting on behalf of the NAM, Indonesia submitted a document to the third PrepCom that identified six areas in which "substantive progress" by the nuclear-weapon states would "contribute to the successful outcome of the review and

extension conference of the NPT." Briefly, these six demands of the non-aligned states are:

- 1) agreement on a time-bound framework for the total elimination of all nuclear weapons;
- 2) adherence by the nuclear-weapon states to nuclear-weapon-free zone agreements, especially in the Middle East and Africa;
- 3) completion of a comprehensive test ban (CTB) treaty;
- 4) conclusion of a treaty providing legally binding positive and negative security assurances to non-nuclear-weapon states parties to the NPT;
- 5) conclusion of a treaty banning the production and stockpiling of fissile material for nuclear weapons that is non-discriminatory, effectively verifiable and universally applicable; and
- 6) guaranteeing free and unimpeded access to nuclear technology for developing non-nuclear-weapon states.

While it is unrealistic to expect these demands to be wholly fulfilled before the extension conference begins, we have "hard answers" to each of these challenges; the "substantive progress" the NAM asks for is taking place in five of these areas, and the sixth we believe is a non-issue.

Ending the Arms Race

The first of the NAM demands addresses the core obligations undertaken by the nuclear-weapon states parties to the NPT in Article VI to end the arms race and seek general nuclear disarmament; and it is perhaps here that our record is most demonstrably strong. In recent years we and the former Soviet Union have eliminated

I would like to thank the Arms Control Association, not only for inviting me to address you today, but also for its ongoing efforts to promote sound arms control, non-proliferation and disarmament policy. This organization's contribution to the policy debate over the years has been invaluable, and is perhaps more so now than it has been at any time in the past, with the NPT review and extension conference, scheduled to begin in less than three months. The decision taken at that conference on the extension of the NPT will have a determinant impact on the future of arms control.

Tomorrow I will lead my delegation to New York to participate in the fourth and final PrepCom meeting before the NPT re-

over 2,500 intermediate-range missiles and taken an entire class of weapons system out of commission, decided unilaterally to withdraw and dismantle thousands more tactical arms, and in START I and START II, agreed to take more than 17,000 nuclear weapons off missiles and bombers.

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More recent events attest that this trend continues. The Clinton administration's Nuclear Posture Review has recently confirmed that nuclear weapons play a smaller role now in U.S. security strategy than at any time since their inception. During last fall's summit in Washington, Presidents Bill Clinton and Boris Yeltsin instructed their experts to intensify their dialogue on developing concrete steps to adapt nuclear forces and practices on both sides to the changed international security situation, including the possibility, after START II ratification, of further reductions of nuclear forces. They also agreed to step up the pace of START I implementation, and once START II is ratified, to deactivate all strategic nuclear delivery systems to be reduced under the START regime.

The United States and Russia are deeply engaged in a host of other meaningful steps. These include cooperation to prevent nuclear smuggling and strengthen controls over nuclear materials, to build a storage facility in Russia for fissile materials from dismantled nuclear weapons and to improve—by March of this year—the safety, transparency and irreversibility of nuclear weapons reductions.

Since 1988, the United States has reduced its total active stockpile by 59 percent; its strategic warheads by 47 percent; and its non-strategic nuclear force warheads by a remarkable 90 percent. The United States is dismantling around 2,000 nuclear weapons a year, the highest rate that technical limitations will permit. Of course, the international community's enormous strides toward disarmament also include our efforts to control missile technology and conventional arms and our encouraging progress toward the complete elimination of biological and chemical weapons. As President Clinton affirmed recently in his joint communique with Indian Prime Minister Narasimha Rao, we envision, ultimately, a world free of nuclear arms.

This all adds up to a serious commitment to the fulfillment of our Article VI treaty obligations. The NPT is the foundation of all international arms control agree-

ments. It is not a weakness that the recent major strides on the road to nuclear disarmament have not occurred in a time-bound framework. What time-bound framework, formed even just a few years ago, could have contained so much progress? Shackling arms control and disarmament to a time-bound framework is not the answer. Making the NPT—and with it the conditions that obligate arms control and disarmament—permanent is a giant step in the direction of general nuclear disarmament.

Nuclear-Weapon-Free Zones

The second issue the NAM identifies, the establishment of nuclear-weapon-free zones, is another area of unexpected progress. South Africa's unprecedented dismantlement of its nuclear weapon program has cleared the way for an imminent African nuclear-weapon-free-zone treaty. The United States has been on record since 1964 in support of the denuclearization of Africa and supports the concept of this being achieved through a nuclear-weapon-free-zone treaty. The text of this treaty is not yet final, but we hope to be in a position to become a protocol party to the final treaty soon, as we are with the Latin American nuclear-weapon-free-zone treaty—the Treaty of Tlatelolco. The United States supports the establishment of regional nuclear-weapon-free zones that meet our longstanding criteria for such zones and we encourage progress toward this goal in the Middle East and Africa.

A Comprehensive Test Ban Treaty

Achieving a CTB is an imperative for the United States. ACDA Director John Holum brought personal messages from President Clinton to the test ban negotiators in Geneva twice last year stressing the administration's commitment to the conclusion of a CTB treaty at the "earliest possible time." We are doing everything in our power to make sure the first half-century of nuclear explosions is the last. The United States government is prepared for the conclusion that we have already conducted our last nuclear weapons test.

Positive and Negative Assurances

We are keenly aware of the importance attached by many parties to the fourth issue raised by the NAM, of positive and negative security assurances. The five perma-

nent members of the UN Security Council—the Perm-5—have been engaged in serious and constructive discussions on this issue. We noted the proposal on it by President Yeltsin in his address to the UN General Assembly. The United States hopes that the nuclear-weapon states parties to the NPT will have agreed upon harmonized and updated positive and negative security assurances for the non-nuclear-weapon states parties to the NPT in time for the April extension conference, which will further enhance their security.

Fissile Material Cutoff Treaty

The United States is exercising global leadership in the fifth area of concern identified by the NAM, the conclusion of a treaty banning the production of fissile material for nuclear weapon purposes. The United States no longer produces fissile material for nuclear weapons purposes and has offered to help Russia obtain alternative power sources for its three remaining military production reactors. Last year, we placed a substantial quantity of nuclear material under International Atomic Energy Agency (IAEA) safeguards, including 10 tons of highly enriched uranium from the Department of Energy's Y-12 facility in Oak Ridge, Tennessee, and this effort is expanding. President Clinton proposed a fissile material cutoff treaty at the United Nations in September 1993 that would cap the amount of material available for nuclear explosives. It could bring the unsafe guarded nuclear programs of certain non-NPT states under some measure of international restraint for the first time. Perhaps most importantly to the NAM, it would prevent any further production of separated plutonium and highly enriched uranium for weapons in the five declared nuclear-weapon states. The United States is leading the world effort to achieve a cessation of the production of nuclear weapon material.

Iran and Nuclear Technology

The final NAM demand, that NP non-nuclear-weapon states be guaranteed free and unimpeded access to nuclear technology, is a non-issue. Iran is the only affected state party, and prudence will continue to dictate the policy of the nuclear suppliers of the world in this one, isolate case. Using this unique case as an example of ill will on the part of the nuclear-weapon states parties in the observance of their A

Article IV obligations to promote and share peaceful nuclear technology is disingenuous. As is the case with our disarmament record, our record in promoting the peaceful uses of nuclear energy speaks strongly of the functioning of the NPT and our commitment to it. The United States welcomes the interest of all NPT states parties in our history of compliance with Article IV as well as in ways in which they can benefit from our future compliance.

Equality vs. Effectiveness

The areas of chief concern to the NAM, those identified by Indonesia at the September PrepCom in Geneva, are areas of concern to the United States as well. We invite honest scrutiny of our efforts in all of these areas. Improvement is always possible, but investigation of these areas invariably uncovers both significant progress and United States leadership.

The issues raised in the NAM document from the third PrepCom are some of the most contentious we face in promoting indefinite extension, but there are others.

Some complain that the NPT is "discriminatory," because it establishes five nuclear powers and freezes out all others. But the treaty did not create nuclear weapon "haves" and "have-nots." It only reflected that inherited reality—and helped stop a deadly trend in its tracks—while at the same time committing all parties, including the nuclear-weapon states, to pursue nuclear disarmament with the ultimate goal of the complete elimination of nuclear weapons. But the effectiveness of arms control, non-proliferation and disarmament agreements is not measured by their egalitarianism, but by their contributions to international security. The fact is, if the world were to insist today on a reflexive nuclear equality, the likely result would be a levelling up, not a levelling down; not a world freed of nuclear weapons, but a world filled with nuclear-weapon states.

The Indefinite Extension Issue

Another argument one hears is that indefinite extension would legitimate nuclear weapons for all time. In fact, the opposite is true. The NPT makes the arms

control and disarmament triumphs possible by giving the United States, as well as other countries, a clear view of a secure world in which these arms can safely be laid down. If the NPT's future is jeopardized, the prospects for further arms control will diminish; if the NPT's future is secured, the steep trend in reductions can continue, with the ultimate aim of banishing nuclear weapons forever. Indefinite extension of the NPT will bring that goal closer; anything less will push it further away. Simply put, further progress in arms control depends on a permanent NPT.

Sometimes this identification of the strength of the NPT in promoting disarmament leads to the question: Why not hold up the NPT—or just extend it for a short



Ambassador Thomas Graham, Jr., stressed the great value of the NPT at the annual Arms Control Association luncheon January 18.

time—as a way to force the nuclear-weapon states to make even greater progress? Some, for example, suggest that we should hold NPT extension hostage to conclusion of a CTB, then make it permanent. But those who think the NPT is a bargaining chip ignore a cardinal rule: Do not gamble with something you cannot afford to lose.

For reasons that include geography, the states most immediately put at risk by nuclear proliferators are their immediate and regional neighbors—not the United States. We support the NPT in our own interests, to be sure. But the treaty is even

more strongly in the interests of those states located in regions of tension. The NPT gives all member countries the security of knowing that their neighbors and regional rivals will not be able effectively to pursue nuclear weapons ambitions—not only because they have agreed not to, but also because there is a global system to verify that they have not. It also provides the fiscal savings and physical safety that come from avoiding of regional nuclear arms races.

A Shield, Not a Lever

For all those whose votes will decide its fate, the NPT is a source not of leverage, but of security. It has the same true value

for every country: not as a lever for moving the nuclear states, but as a shield to ward off regional arms races and nuclear threats. Many states have testified to this truth with their deeds. In Latin America, the South Pacific, Southeast Asia and Africa, states have adopted or are moving toward nuclear-weapon-free zones that do not contain analogues to the NPT's Article VI and which are permanent in duration. This confirms that it is not principally Article VI that draws states to a commitment against acquiring nuclear weapons. Rather, it is recognition of the fact that their own security is enhanced when they codify the norm of nuclear non-proliferation in their own back yards.

Another frequent and thorny criticism of the NPT is that certain states have not joined. Let there be no doubt that the United States strongly supports universal adherence. But enlarging the prospect that the NPT may lapse at some point makes it less likely—not more likely—that states like Israel, India and Pakistan ultimately will join. The best chance for their ultimate adherence lies in a strong treaty that is a permanent part of the international security system.

The same principle holds in every region: It is the NPT that provides the essential worldwide framework for addressing diverse proliferation problems and promoting stability. It is important to consider the alternative: What would be the vehicle for discouraging these states' reliance on nuclear weapons for security if there were no NPT? Removing the NPT only makes the problem more difficult and intractable as the global norm against nuclear non-

liferation loses form and the chief tool for bringing pressure to bear on those who flout the norm is removed.

Three Extension Options

The nature of the extension decision is also an issue worth examining, at least briefly. This aspect of the 1995 NPT review and extension conference has been the subject of much debate within the NPT community and has become the subject of even more intense discussion now, on the eve of the fourth and final PrepCom.

an important new legal obligation is imposed on the parties pursuant to a treaty provision, but without further ratification by national parliaments, that provision must be narrowly construed. This is a fundamental rule of legal construction. At the 1995 conference, NPT parties must choose one of the three options pursuant to Article X(2) in order to extend the treaty. The conference is not authorized to take some other extension option.

The singular nature of the extension decision must also be given due consideration. What Article X(2) does not explicitly state, but what is so critical to the decision

practice, where consensus decision-making has been the norm.

The fact that Article X permits the taking of the extension decision by majority vote, however, is no accident. This aspect of Article X was crafted in recognition that the extension decision at the end of 25 years was fundamentally too important to risk it being held hostage to a consensus decision requirement. If consensus were the rule in 1995, one state could block a successful extension outcome; the wishes of the vast majority could go unrealized because one state—or a handful of states—was unwilling to accept a particular extension decision. This would be clearly unacceptable.

I am personally skeptical that consensus on any extension decision will be possible this spring. More important, however, is the fact that the provisions of the treaty anticipate that a vote on the extension may be necessary and explicitly provide for such an outcome. This important aspect of Article X must not be ignored. The United States shares the view that an extension outcome reflecting consensus support would be the ideal, but it is clear that such an outcome will not be needed to meet the requirements of Article X and to achieve success this spring. The United States will work with all NPT parties to achieve a successful outcome at the review and extension conference; but in doing so we intend to make full use of the flexibility built into Article X, including the taking of the extension decision by majority vote if necessary. The consequences of the upcoming extension decision for the future of the entire international non-proliferation regime are too important to do otherwise.

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It is important to remember that the NPT parties understand the constraints built into the treaty and the parameters within which the extension decision in 1995 must be taken. Article X(2) of the treaty explicitly provides that parties in 1995 will meet to “decide whether the NPT shall continue in force indefinitely or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty.”

The decision taken by a majority of the parties in 1995 is immediately legally binding on all parties no matter how they voted and without reference to national parliaments. This is possible because the decision mechanism is built into the treaty. When states joined the NPT, they accepted the 1995 provision and are bound by it, but are bound by nothing more. A review of the treaty’s negotiating history suggests that the treaty negotiators deliberately formulated the language of Article X(2) to restrict the extension to three options. Despite the treaty’s precise language, some have suggested that the decision in 1995 is a political one and that the parties should thus be allowed to take whatever decision they like at the conference in New York this April and May, regardless of whether it conforms to the options set forth in the NPT. While political views will certainly play a role in 1995, it is irresponsible—even dangerous—to suggest that treaty parties could ignore the very real legal aspects of the NPT. When

in 1995, is that the April conference offers, as a practical matter, the one and only chance for NPT parties to take a decision on extension which will be legally binding on all NPT parties—regardless of whether they support the decision—and that will not require ratification by national parliaments. A new extension decision taken some time after the 1995 conference could only be accomplished through treaty amendment, which in turn would require approval of a majority of all states to the treaty (that is, by their national parliaments), including by all five nuclear-weapon states and all other parties which are then members of the IAEA Board of Governors.

Eventually, all states parties would have to submit the amendment to ratification procedures for it to take effect for them. It is worth noting that it took 19 years for the original 98 signatories of the NPT to ratify their decision. It is likely that any effort to amend the NPT for such a purpose as extending its life would fall victim to the legislative debate processes in which such amendments must be approved by national parliaments and, ultimately, would not prove to be possible.

A final aspect of the extension decision that should be given due consideration is that Article X of the treaty expressly permits the decision in 1995 to be taken by a majority vote. This marks a significant departure from all previous NPT review conference

A Better World or Not?

The real question before the world at the review and extension conference is not whether the NPT is self-executing or can solve every problem itself, but whether the world is better off with it than without it. The weaknesses identified in the NPT are based in reality, but in this case the stakes are simply too high for us to allow the perfect to be the enemy of the good. The NPT is very good for all of us, nuclear-weapon states and non-nuclear-weapon states, developed and developing world alike. We gain nothing by jeopardizing it and we risk losing much. I am personally optimistic about our chances of securing indefinite extension, but only if we ensure that the “hard questions” are always met with “hard answers” between now and April.

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