



# OFFICIAL TEXT

"THE EXTENSION OF THE NPT"

STATEMENT BY

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Thank you for inviting me to address this distinguished group on a topic that during my career at ACDA, and most especially this last year, I have come to know extremely well: the Nuclear Nonproliferation Treaty, or NPT. In 1995, less than one year from today, NPT parties are to meet in New York to decide on the future of this essential nonproliferation instrument. Last year, I was designated by ACDA Director John Holum to head the U.S. effort to prepare for the 1995 NPT Conference and to achieve the extension of the NPT at that Conference. I took on this responsibility with great pleasure, but with a keen awareness of the challenges involved in working to ensure a successful extension outcome in 1995.

The United States strongly supports the NPT and is committed to make every effort to secure the Treaty's indefinite extension in 1995. This decision will be the most important event in the life of the Treaty and, understandably, is the subject of much discussion within the NPT community. On the face of it, it appears that the decision in 1995 should be a fairly straightforward exercise. The reality, however, is that differing interpretations have emerged as to what action the parties must take in 1995, and what extension outcome would conform with the terms of Article X. For example, some have suggested extension proposals that, in fact, could not be achieved without amending the Treaty. Others have suggested that it would be permissible to condition the extension in 1995 on the achievement of other arms control objectives. Today, I would like to discuss the nature of the extension decision and to clarify what could be considered a legally supportable outcome in 1995, as well as to share my thoughts on the importance of indefinite extension and the prospects for achieving this outcome in 1995.

#### **NATURE OF THE EXTENSION DECISION:**

It is important that 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. As Ambassador Mohammad Shaker, an Egyptian diplomat, well known expert on the NPT and author of a three volume treatise on the NPT's negotiation, states:

"The jurisdictional scope of the contemplated conference appears to be limited to the following three alternatives: the extension of the NPT's duration indefinitely; or for an additional fixed period; or for additional fixed periods. . . While the

conference is apparently not juridically entitled to terminate the NPT, it has the right to extend the duration of the Treaty for an additional fixed period, at the end of which there may not be further extensions."

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 in 1995, 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 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. In 1995, 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.

Before turning to a brief review of some extension proposals, I want to mention a critical aspect of the extension decision: its singular nature. 1995 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, whether or not they support the decision, and that will not require ratification by national parliaments. A new extension decision taken sometime 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 nineteen years for the original ninety-eight signatories of the NPT to ratify their decision. It is likely that any effort to amend the NPT today, even for such a necessary purpose as extending its life, would fall victim to the processes by which such amendments would need to be agreed to by national parliaments.

#### **REVIEW OF VARIOUS EXTENSION PROPOSALS:**

One extension proposal that has been mentioned within the NPT community would have the parties in 1995 decide to extend the NPT under the same conditions as those governing the 1995 NPT Conference, that is, for another 25 years followed by another extension conference at which the parties would consider the three options available in 1995. This amounts to extension for a single fixed period to be followed by an extension conference. However, the 1995 conference is not authorized to choose this extension option, as the Treaty makes no reference to the convening of another conference like that which must be convened in 1995. Just as the negotiators did not authorize the Conference to condition the extension decision on some other development such as the conclusion of a Comprehensive Nuclear Test Ban Treaty

thoughts on the importance of the NPT and on the effect that achieving its indefinite extension will have on efforts to strengthen and enhance the international nuclear nonproliferation regime.

### **IMPORTANCE OF THE NPT:**

The NPT, first and foremost, is the cornerstone of the international nuclear nonproliferation regime. It has stood for nearly twenty-five years as the primary legal and political barrier to the further proliferation of nuclear weapons. The NPT is the only nuclear nonproliferation instrument that is global in scope, and as such it reflects an international norm of nonproliferation that has helped to isolate states outside the regime which have persisted in their efforts to acquire nuclear weapons. Its entry into force in 1970 transformed the acquisition of nuclear weapons from an act of national pride to one contrary to international law. The Treaty codifies a standard of acceptable international behavior against which the actions of those states outside the regime are measured, and it provides a basis upon which the international community can act when faced with direct challenges to the NPT and to the nonproliferation norm.

The NPT has helped create a framework in which to address regional proliferation problems and promote regional security and stability, thereby irrefutably enhancing the national security of its respective states parties. In addition, the NPT provides a solid foundation on which regional nonproliferation arrangements can be negotiated, as in the case of Africa, or further strengthened, as in Latin America.

The NPT is also essential to support the worldwide regime for the development of peaceful uses of nuclear energy under effective international safeguards. The NPT requires all non-nuclear-weapon state parties to conclude a full-scope safeguards agreement with the IAEA. Moreover, by law, the U.S. may not engage in nuclear cooperation with any country that does not have in place a full-scope safeguards agreement with the IAEA. This policy has been adopted by all major nuclear supplier states. Were the NPT to end, the basis for such safeguards agreements would also end, and a fundamental basis for peaceful nuclear cooperation would be severely undermined, if not destroyed.

One of the most important benefits of the NPT is that it serves as a foundation upon which other vitally needed measures of nuclear disarmament can be built. This is also one of the most compelling reasons to extend the Treaty indefinitely. The progress ongoing in the arms control arena is unprecedented and is due, in no small part, to the stable international environment which has been facilitated by the NPT. The NPT's call for an end to the nuclear arms race has been met. The United States and Russia are now pursuing arms reductions as rapidly as is technically possible. The U.S. is destroying nearly 2,000 nuclear weapons a year and Russia is pursuing a similar policy. In addition to the INF agreement, START I and II, and unilateral reductions of tactical

nuclear weapons, the U.S. is now actively involved in negotiating a Comprehensive Nuclear Test Ban Treaty (CTBT) at the Conference on Disarmament (CD) in Geneva. A CTBT will be an important part of our efforts to prevent the further spread of nuclear weapons and will place a major restraint on the nuclear weapon states. President Clinton also informed the U.S. Congress in February that he was extending the moratorium on nuclear testing by the United States through September 1995. The President's decision was based on fundamental U.S. national security interests, including an assessment that the CTBT negotiations had made encouraging progress since their commencement on January 25 and that further U.S. nuclear tests would have an adverse impact on our broader nonproliferation objectives, including our interest in securing the indefinite extension of the NPT next year.

In his September 1993 address to the UN General Assembly, President Clinton proposed a multilateral treaty to ban the production of fissile material for nuclear explosives or outside of international safeguards. A non-discriminatory, global, and effectively verifiable fissile material production ban would strengthen substantially the nonproliferation regime by restraining the unsafeguarded nuclear programs of certain non-NPT states for the first time. It also would halt the production of separated plutonium and highly-enriched uranium for nuclear explosives in the five declared nuclear-weapon states.

The United States also recognizes the importance attached by many NPT parties to the issue of security assurances. We have had a consistent policy for more than fifteen years that was recently reaffirmed by the Director of ACDA at the Conference on Disarmament in Geneva. Under its negative security assurance policy, the U.S. is committed not to use nuclear weapons against any non-nuclear weapon state party to the NPT or any comparable internationally binding commitment not to acquire nuclear explosive devices, such as the Tlatelolco Treaty, unless the U.S. is attacked by a non-nuclear weapon state in alliance with a nuclear weapon state. In addition, the positive security assurances given at the time of signature of the NPT could be updated.

Continued progress on these important arms control measures is dependent on a number of factors not the least of which is a strong, durable and dependable NPT. That is why it is so important that the parties decide to extend the NPT indefinitely in 1995. We and many other states believe that this is the best way to ensure that the many benefits of the NPT continue to flow to its parties. In addition to ensuring that the NPT's contributions to global and regional security continue, a strong and permanent NPT would be an important source of leverage over those states outside the nonproliferation regime to join the NPT or adopt other measures to conform with established nonproliferation norms. The nearly universal support that now exists for the NPT is also a formidable political force against parties that have not complied with their NPT obligations.

## CONCLUSION:

The extension of the NPT in 1995 is a decision with important consequences for national and international security. It is essential that in the coming months NPT parties make a serious and careful effort to understand the nature of the extension decision, the need to take a decision that conforms with the Treaty's provisions, and, most importantly, the need to ensure that the decision in 1995 results in a strong, dependable, and permanent NPT regime.

The 1995 NPT Conference will determine not only the future of the NPT, but the future of the entire international nonproliferation regime. A limited extension of the NPT beyond 1995 would force states to prepare for the possible collapse of the only global political and legal barrier to nuclear weapons proliferation that exists. The threat of nuclear proliferation is too real to risk this outcome. I strongly hope that all NPT parties will recognize the opportunity in 1995 to ensure a stable and secure future for all nations and that they will decide to make the NPT a permanent part of the international security system.