

Thomas Graham, Jr.: Preparing for the 1995 NPT Conference

With attention increasingly focused on the critical nuclear Non-Proliferation Treaty (NPT) extension and review conference beginning in April 1995, Thomas Graham, Jr. plays a key role in negotiations to gain indefinite treaty extension during voting at the conference. He has been Arms Control and Disarmament Agency (ACDA) general counsel since 1983, served as acting director from January to November 1992 and since November 23, 1992, has been acting deputy director. Among other assignments, he served as legal adviser to the U.S. SALT II delegation and senior ACDA representative to the U.S. Intermediate-Range Nuclear Forces delegation in 1981-82. He was interviewed May 26 by Jack Mendelsohn and Jon B. Wolfsthal.



Arms Control Today: What is your responsibility over the next few months as we lead up to the nuclear Non-Proliferation Treaty review and extension conference?

Thomas Graham, Jr.: I was asked by ACDA Director John Holum to head the U.S. effort to obtain extension of the NPT at the conference of the parties scheduled, pursuant to the terms of the treaty, for 1995. It is a very strongly held U.S. view that it is essential to achieve the indefinite and unconditional extension of the NPT in 1995 to make this treaty a permanent part of the international security environment, one which all states understand is around to stay and on which they can rely. I will be heading the U.S. delegation to all the Preparatory Committee (PrepCom) meetings. ACDA has the lead in the U.S. government for NPT extension, which is how I came to be selected by Director Holum for this job. I also have been, and will be, conducting bilateral discussions in key capitals around the world, and with representatives of various countries in New York, as we proceed toward the conference of the parties in 1995. I will also be very much involved in managing U.S. efforts at the conference itself.

ACT: What do you see as the current prospects for achieving indefinite treaty extension?

Graham: I think there is a reasonable chance to achieve indefinite extension, but it is far from assured.

ACT: Why does the United States consider it so important to achieve indefinite extension of the NPT?

Graham: The NPT is the cornerstone of the international non-proliferation regime, the basis on which all international arms control agreements are built. But it is the only international arms control agreement of significance that does not have unlimited duration. So it is important to make the NPT, which is the founda-

tion of our efforts to make the world a safer place, a permanent part of the international security structure. Indefinite extension—making the treaty permanent—would be the strongest signal that the world community could send to would-be proliferators that their actions will not be tolerated.

It is important to make this treaty permanent so as to eliminate the tendency for countries to do worst-case planning and, as a result, possibly pursue nuclear weapons programs because they assume that the treaty might someday end. If we truly want to achieve a nuclear-free world, if we truly want to prevent the proliferation of nuclear weapons and other weapons of mass destruction, if we truly believe in arms control, there is only one way and that is to make permanent this treaty on which all our non-proliferation efforts are based. To suggest otherwise is to suggest playing around with the basis of our security. Weakening the NPT could weaken not only the all-important limitations that we now have against the proliferation of nuclear weapons and other weapons of mass destruction, but all other forms of arms control as well.

ACT: Any extension has to be made by a majority of parties to the treaty. If faced with a choice between achieving only the bare majority for indefinite treaty extension or a larger majority for some other fixed period or periods of extension, has the United States decided which it would choose?

Graham: It is important to understand that 1995 represents probably the one and only chance that the world community will have to extend this all-important treaty. The treaty provides that 25 years after entering into force a majority of the parties at a conference will, by majority vote, determine whether the treaty is to be extended indefinitely or for a fixed period or fixed periods. That decision is legally binding on all parties at the time the vote is taken, no matter how they voted, and it does not have to be referred to national legislatures, since it is built into the treaty.

Any extension beyond that agreed to in New York at the 1995 conference could only be accomplished by amending the NPT to provide for another extension decision. This would mean the treaty's amendment procedure would have to be followed and the assent of the legislatures of the five nuclear-weapon states, all parties that are members of the Board of Governors of the International Atomic Energy Agency (IAEA), and a majority of the parties would have to be obtained. Thus, with 163 state parties to the treaty at present (and we think there will be more [member states] in 1995), just for the amendment to take effect for any country would require 82 legislatures to act. Moreover, each country would be bound by the extension only if its legislature acted. Even if the amendment to extend the treaty were adopted, this would be an excellent chance for countries to opt out of the NPT with little political cost by simply not having their legislatures act on the treaty.

A vote for indefinite extension at the 1995 conference can be made without further reference to legislatures. It is built into the treaty that when a country ratifies and becomes a party to the NPT it agrees to this procedure, which gives the 1995 conference the power to make this extension decision for an indefinite or fixed period, or fixed periods. But nothing else is authorized to this conference.

For example, the conference is not legally empowered to extend the treaty for 20 years and then hold another conference. Such a decision would be an amendment to the treaty and that is outside the powers of the conference. It is absolutely clear that its powers are limited to the three options I mentioned.

The problem with a fixed period, or fixed periods—for example, three consecutive periods of 10 years each—is that at the end of that time the NPT would come to an end and the only way it could be extended is by the near-impossible amendment procedure. Therefore, indefinite extension is, in my judgment, the only option that would preserve the NPT. We hope the choices will never come up. We hope and reasonably expect that we can achieve a large majority for indefinite extension in 1995. But if our backs were to the wall and if we had to choose between a narrow majority vote to preserve the treaty by indefinite extension or a large majority vote to terminate the treaty by accepting limited duration, we certainly would opt to preserve the NPT indefinitely.

ACT: Is there a way to design "fixed periods" so that they become the functional equivalent of an indefinite extension?

Graham: There may be a way to have an indefinite number of fixed periods automatically succeeding each other as the functional equivalent of indefinite extension. It is not what the United States wants and not what it believes is right. We think the treaty on which all our hopes are based ought to have the same duration as does, for example, the Limited Test Ban Treaty. I would note that the "supreme interest withdrawal" clause is in the NPT, as it is in every other arms control treaty.

ACT: How many states are currently on record supporting the indefinite extension of the NPT, and how many are undecided?

Graham: A large number are undecided. I do not have precise numbers. Through the organizations themselves, member states of the Conference on Security and Cooperation in Europe, NATO, the Group of Seven (G-7) and the South Pacific Forum have pledged their support for indefinite extension. In addition, there have been other states from around the world—in Latin America, the non-aligned movement and so forth—that have come out individually

for indefinite extension. Again, I have no precise number, but there already is a considerable amount of support for it.

ACT: Is there a sense that we have reached the critical mass for approval?

Graham: That would be 82 states. I do not think we are at that point.

ACT: Which states do you view as critical or especially helpful for convincing a large number of states to support indefinite extension?

Graham: Approximately 100 of the 163 parties to the NPT are from the non-aligned movement, so that group of states will have considerable influence on the outcome of this vote. That makes Indonesia, for example, as chair of the non-aligned movement through the summer of 1995, very important. Mexico, because it chairs the ad hoc committee in Geneva negotiating the comprehensive test ban treaty, is also an important state. Egypt is important because of its long involvement in NPT matters. Nigeria has traditionally been active in NPT matters. Sri Lanka also has a long history of involvement in NPT issues and Sri Lankan Ambassador Jayantha Dhanapala will be president of the 1995 conference.

ACT: In your discussions with other states, which of the issues are most frequently raised as concerns, and what are some of their goals for the conferences.

Graham: Well, first the arms control issues. The most frequently mentioned issue is the CTB. The United States approves any formal linkage, but I think that is the single most important issue for most countries. For example, Kazakhstan has just joined the NPT, but obviously a ban on nuclear testing is of interest to it because of the environmental damage the country has suffered. It also worries about testing at the Lop Nor test site in China, which is very near Kazakhstan.

There are other concerns. Security assurances from the nuclear powers are mentioned by many states, with Egypt and Nigeria in the forefront. A fissile material cutoff, embodied in an international convention, is occasionally mentioned. And a few countries have mentioned some kind of reaffirmation of the denuclearization objectives stated in the preamble of the NPT. Reaffirming the preamble would make it clear that by indefinitely extending the NPT we are not at the same time legitimizing nuclear weapons for all time.

Regional issues have come up in the context of the Middle East and South Asia, and Article IV peaceful cooperation issues have been mentioned by almost every state I have talked to. They would like more peaceful nuclear cooperation. But ongoing and increased peaceful nuclear cooperation is dependant on a strong and viable NPT, which will not be the case unless it is made permanent. Under U.S. law, the United States cannot engage in peaceful nuclear cooperation except with states having full-scope safeguards. As a practical matter, this means NPT parties or parties to the Treaty of Tlatelolco or other formal agreements with comparable legal obligations.

ACT: What do you see as the biggest threat to achieving an indefinite extension? What issues or factors could make it more difficult to achieve?

Graham: As I see it right now, perhaps the biggest threat would be the failure, for whatever reason, of those countries advocating indefinite extension to stay the course. I believe we

have a reasonable chance of prevailing if we stay the course and do not succumb to arguments that somehow the NPT has to be compromised.

The nuclear arms race is over, the United States is destroying 2,000 nuclear weapons per year. When START I and START II are fully implemented, some 17,000 strategic nuclear weapons will be taken off of U.S. and Russian missiles and bombers. If somehow this whole process got reversed, then obviously that would be a threat to the NPT.

But these are all speculations. Right now I do not see any immediate and direct threat to making the NPT permanent. We do have an uncertain situation and we do have some difficult discussions and negotiations ahead, and an immediate or direct threat might emerge.

We need to make significant progress toward a CTB treaty. The United States would be happy if we could finish negotiations this year, but if that proves not to be possible we need to make every effort to get as far as we can down the road toward a completed CTB treaty between now and the extension conference.

We need to look at updating the security assurances of the nuclear powers and try to reach some kind of understanding on that issue with interested countries such as Egypt and Nigeria. It would be useful if we could make some progress on the fissile materials cutoff convention that President Clinton has proposed, but that has started a bit late and I am not sure how far we can move along that particular negotiation by the spring of 1995.

I think it is very important to keep up the dialogue and to raise the awareness of countries as to how vital and important this decision is because everything depends on the NPT. It is not just some minor agreement that we can do without, it is the foundation of everything. If the NPT is weakened we could be taking the first significant step down the road toward chaos and worldwide insecurity.

ACT: What about the efforts of some to link the NPT to the outcome of the CTB negotiations?

Graham: I do not see why there should be any linkage. The NPT should be extended on its merits and the CTB should be negotiated on its merits. Obviously the United States recognizes that many countries see the two agreements, one existing and one potential, as closely associated. The CTB treaty has been the subject of intense discussion at every NPT review conference since the first one in 1975. And while the United States believes there should not be any formal linkage of either the negotiation as a whole or with particular provisions, we do recognize the two treaties are closely related. But part of one treaty should not be made hostage to the other; they are both too important to do that.

And while we are on the subject of linkage, John Holum presented a compelling series of arguments during a symposium at Notre Dame University in April on why the NPT is vital to the non-nuclear-weapon states as a shield to ward off regional arms races and nuclear dangers. First, they have the security of knowing their neighbors and rivals are not nuclear armed and will not be able to pursue such ambitions. Second are the fiscal savings and "sanity" that come from avoiding arms races. Third is the diminished risk that nuclear weapons will be used somewhere, with all the tragic human and environmental consequences that entails. Fourth are the meaningful security assurances and guarantees that stem from participating in arms control treaties, security arrangements, and regional and global regimes and norms. Finally, there is the access to trade in the fullest range of nuclear-related commodities and technologies. "In sum," he said, "for all those whose

votes will decide its fate, the NPT is the same as it is for [the nuclear-weapon states]—not a source of leverage, but of security; not a poker chip but a life vest. And we should all join together to preserve it."

ACT: What relationship or impact do you see between the current problems with North Korea and with the denuclearization program in Ukraine to a positive result on indefinite NPT extension?

Graham: That is one of the most frequent questions that I am asked. On North Korea, I would argue that rather than damaging the NPT and the chances of a vote to make it permanent, the current confrontation demonstrates to the world community the importance of the NPT. The international community would have no grounds for complaint about anything North Korea is doing if it were not for the NPT. The stronger the NPT regime, the more permanent it is, the stronger is our case against North Korea.

Ukraine is a somewhat different matter. It is very important for the future of the NPT for Ukraine to come into the treaty as a non-nuclear-weapon state party, not only because Ukraine is an important country not only because there are nuclear weapons on its territory—left there by the former Soviet Union—but also because of the condition the Russian Parliament has placed on its ratification of START I. Ukrainian accession to the NPT is essential to permit the reductions scheduled under START I to proceed. So Ukrainian adherence to the NPT is very important to the cause of achieving indefinite extension, or of maintaining a strong NPT.

ACT: Along those same lines, what role do negative and positive security assurances and adoption of no-first-use policies by the nuclear-weapon states play in determining the success of the NPT and its indefinite extension?

Graham: Security assurances can certainly play a role. Earlier I mentioned Egypt as an important state in this process. It has long called for the updating of the positive and negative security assurances that currently exist with respect to the NPT. The 1968 positive security assurance declarations by the United States, Britain and the Soviet Union and the 1978 negative security assurance declarations by those three states need to be updated, and negative and positive security assurances will need to be harmonized among the five declared nuclear states. I think this issue will be important for a number of countries. I think something can be done to help address this issue.

With respect to no first use, if you have in place negative security assurances for non-nuclear-weapon state parties to the NPT, the only thing no-first-use declarations add within the NPT context is a pledge among the five nuclear-weapon states not to attack one another. I know the Chinese have said many times that this is important to them. It does not seem to me to be as important for the NPT positive and negative security assurances because those assurances will affect so many countries. Also, a five-party no-first-use declaration will be more difficult to achieve.

ACT: Is there any likelihood that in harmonizing these assurances, the negative ones in particular, that some of the conditions, like the phrase "except when attacked by allies," might be eliminated?

Graham: I do not see why that is necessary. It should be noted that there is an agreement among the United States, Britain and Russia on a negative security assurance for Ukraine when it joins the NPT. That formulation does include this condition, so we have three of the five nuclear-weapon states in agreement on that issue

and we ought to use that language and try to persuade China and France to join. Then we would have harmonized that security assurance among the five.

ACT: If the CTB is not completed before next April's review and extension conference, does the United States plan to offer any assurances or statements about testing that might be used to buttress its compliance with Article VI of the NPT?

Graham: The U.S. testing moratorium already extends through September 30, 1995, well past the conference and a decision as to whether or not to extend it one year beyond that will have to be made before the conference starts. It will have to be made, as per U.S. law, by March 30, 1995.

So it seems to me the United States has already made its commitment and extended its moratorium beyond the conference. And it has urged all other nuclear-weapon states to observe it. Thus far, all others except China are doing so. President Clinton has stated that the United States wants to achieve a comprehensive test ban treaty "as soon as possible"—and we really mean that. So I hope we will achieve a CTB soon so this issue will not arise. If it does, I would point to our continued adherence to the moratorium.

ACT: There has been some suggestion that the 1995 conference might be recessed for awhile or prolonged if the CTB is not completed by next April in an effort to link the two topics. What is your reaction to these proposals?

Graham: I think that would be unwise in the extreme and of questionable legality.

ACT: How will the United States present the case at the conference on Article VI related to negotiating an end to the arms race?

Graham: At the risk of sounding biased or parochial, I think our case is decisive on Article VI. I would not have said that a few years ago but I would now. We have the Intermediate-Range Nuclear Forces (INF) Treaty, we have signed and are waiting to implement START I and START II, and we have CTB negotiations, the testing moratorium, a fissile material cutoff convention proposal, the Conventional Forces in Europe (CFE) Treaty, the Chemical Weapons Convention, and other agreements in the non-nuclear area.

I have looked at the negotiating record and it seems clear that in formulating Article VI, what was uppermost in the minds of the negotiators was a CTB, a cutoff of fissile material and security assurances. Those are the three things that were, by far, most frequently mentioned and we are doing those three things.

Let me add this: Under the voluntary exchange of offers between President George Bush and Soviet President Mikhail Gorbachev in 1991, a large number of tactical nuclear weapons were eliminated pursuant to this informal arrangement. The United States, pursuant to this agreement and other commitments, is destroying 2,000 nuclear weapons a year, which is as fast as we can do it with the facilities that we have. That is working 16 hours a day, seven days a week.

Russia is doing something comparable, so a tremendous number of nuclear weapons are already being destroyed and in the context of Article VI and the preamble to the NPT, the nuclear arms race is over.

ACT: Article VI also calls for the nuclear-weapon states to pursue a treaty on both general and complete disarmament. Some states might

point to a lack of any concrete proposals. How will the United States respond to that type of concern?

Graham: The first thing to note about general and complete disarmament is that it would apply to all states, not just the nuclear-weapon states. We are doing things, like the CFE Treaty and various confidence-building measures, to try to spread the cause of disarmament as much as possible. And as I said earlier, all these arms control and disarmament efforts depend on the NPT. Even the non-nuclear agreements depend on the NPT umbrella and to weaken the NPT in any way or suggest that it will not be here forever greatly undermines all disarmament efforts.

ACT: What about Article V on peaceful nuclear explosions (PNEs)?

Graham: What is that magic phrase—"O.B.E."—overtaken by events?

No one has found a way to distinguish between peaceful nuclear explosions and nuclear weapon tests in terms of the benefit to be achieved by nuclear weapon programs. Nor has any reasonable use been found for a PNE. At one point some people suggested that perhaps a new Panama Canal could be dug with PNEs. Maybe that would have been good because it would not have needed night lighting. But that was abandoned. So, I would hope that with the end of nuclear testing, the end of PNEs is also at hand.

ACT: India has expressed displeasure with the NPT and is a leader of the non-aligned movement. If India attends the conference as an observer, will this have any effect on the conference?

Graham: In our judgment it will not have an effect on the outcome of the conference if India attends as an observer or in some other status. True, Prime Minister Narasimha Rao made some unhelpful comments about the NPT in parliament a few weeks ago, but India has told us on a number of occasions that it will not in any way play a negative role in relation to the 1995 conference and we expect that assurance will govern its behavior.

ACT: At all the previous review conferences one of the goals was to produce a final consensus document. Is the United States seeking a final document from this conference?

Graham: We see no need for a final document. If others want to urge one upon us we would not oppose it. We would oppose, however, any effort to make the vote on extension contingent upon, or hostage to, agreement upon or resolution of a final document.

ACT: What type of roles do you expect Sri Lankan Ambassador Jayantha Dhanapala and Nigerian Ambassador Isaac Ayewah to play?

Graham: We expect Ambassador Ayewah will play a constructive role in managing the third PrepCom. We have already met with him several times and it is clear to me that he plans to conduct it in a professional manner. We have had two good discussions with him about the issues that might come up at the third PrepCom and how they might be handled.

Ambassador Dhanapala, who has been selected as the president of the 1995 conference, is a very experienced diplomat who knows a great deal about the NPT and has wide experience in the area. He was chairman of Main Committee One at the 1985 review conference and he was the Sri Lankan ambassador to the Conference on Disarmament in Geneva for a number of years. I am sure he will do an excellent job of leading the conference in 1995. *ACT*