



# Trust and Verify

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## Special Edition — The Non-Proliferation Treaty: Options for 1995

### Introduction

A decision is to be made, at a conference next year, on the future duration of the nuclear Non-Proliferation Treaty (NPT). The Treaty requires this decision as the negotiators wanted a chance to reconsider its duration after the Treaty had been in force for 25 years.

The conference will also be carrying out a review of the operation of the Treaty 'with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realised'.

### Background

The decision to be taken by the conference, in April/May 1995 in New York, is commonly known as the extension decision, although the term can be slightly misleading as the Conference is not convened to decide *whether* the NPT should be extended but is there rather to decide *by how much* the NPT should be extended.

Certainly in the West, the debate has become polarized as a choice between a limited extension and an indefinite extension; this makes the debate too narrowly focused and inhibits discussion on the full range of options as criticism of one is taken as support for the other.

The NPT, in Article X.2, allows for the conference to decide 'whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods'.

There are three clear options. This special edition is an attempt to illustrate the advantages and disadvantages of each option that observers from different viewpoints have been arguing without being judgmental.

### Criteria

The advantages and disadvantages for each option are judged based on the following criteria:

- the achievement of disarmament goals as specified in the Treaty, e.g., Article VI and statements in the Preamble;
- the maintenance of international stability, i.e., avoiding actions that some states would use as excuses to justify withdrawal from the NPT; and
- the creation of a path to the achievement of the NPT's stated aims, including the removal of its discriminatory elements, either by supplementary measures or a replacement treaty or protocol.

## The Non-Proliferation Treaty

The NPT was opened for signature in 1968 and entered into force in 1970. It currently has over 160 parties.

The NPT is widely regarded as the cornerstone of the non-proliferation regime — the collection of unilateral, bilateral and multilateral measures adopted by states to stop the spread of nuclear weapons.

### The NPT and nuclear disarmament

The NPT is not only a treaty that obliges parties to refrain from acquiring nuclear weapons, it is also the sole multilateral instrument that commits parties with nuclear weapons to get rid of them.

It is the progress, or lack of it, by the nuclear-weapon states to fulfil this commitment that is the underlying cause of most of the controversy regarding the NPT.

### 'Atoms for Peace'

One major area of contention is the issue of technical co-operation on the peaceful uses of nuclear energy, which includes not only nuclear power but also, for example, the provisions of isotopes for medical and engineering purposes. Such co-operation is covered by Article IV of the NPT

Supporters of the technical co-operation programme say it is a vital part of the trade-off for not developing nuclear weapons with some saying that the programme does not go far enough. Opponents of the programme say that the encouragement of the peaceful uses of nuclear energy spreads knowledge of nuclear technologies and gives access to nuclear materials that may help states develop nuclear weapons.

A detailed discussion on the arguments for and against civil nuclear programmes are beyond the scope of this paper.

## Option 1 — indefinite extension

This option would mean that the NPT would remain in force forever, or until another treaty supplanted it.

### Advantages

- Would continue the status quo; this is seen by many as a advantage.
- Would preserve the advantages of the NPT forever, or until another treaty supplanted it. These include the measures to stop the spread of nuclear weapons.
- Ensures that the non-proliferation regime always has a multilateral treaty at its core as the NPT would only cease to have effect if it were to be supplanted by a new treaty.
- Allows the timescale for introducing measures to remove the discriminatory elements of the NPT, whether this be by instruments that supplement the NPT or a new instrument that would replace it, to be dictated by the needs of the new measures rather than by an artificial timetable. The 'transitional' nature of the NPT has parallels with the Partial Test Ban Treaty (PTBT) as a transitional treaty of indefinite duration which is to be supplanted by a Comprehensive Test Ban Treaty (CTBT).

### Disadvantages

- Would continue the status quo; this is seen by many as a disadvantage.
- Would preserve the disadvantages of the NPT forever, or until another treaty supplanted it. These include the current possession of nuclear weapons by some parties; it is argued that an indefinite extension would legitimize this possession.
- Reduces the leverage that some parties may wish to bring to play on others [see sections below].
- Would lead to a double-think situation in that the NPT, which was negotiated as an attempt to freeze the spread of nuclear weapons as a prelude to nuclear disarmament, is 'transitional' as it is merely one step on the road to disarmament. If an indefinite extension were chosen, it would make this transitional document permanent, which is highly contradictory.

## Option 2 — single fixed period extension

This option would mean that the NPT would be in force for the length of time specified by the conference. At the end of that period the Treaty would expire and could not be renewed; this is the fundamental difference between option 2 and option 3.

### Advantages

- It is argued that a single fixed extension would allow for leverage by the non-nuclear-weapon states on the nuclear-weapon states to obtain concessions for a treaty to replace the NPT at the end of the period as the nuclear-weapon states recognize the security advantages of a treaty to prevent states acquiring nuclear weapons.

### Disadvantages

- Such an extension would allow for leverage by the nuclear-weapon states on the non-nuclear-weapon states to obtain concessions for a treaty to replace the NPT at the end of the period as the non-nuclear-weapon states recognize the security advantages of a treaty to prevent states acquiring nuclear weapons.
- It has been argued that this is the most dangerous option as it gives the NPT a strictly limited life and so

relies on another treaty to replace the NPT at the end of the extension period; if that treaty is not in place, then the whole non-proliferation regime would be in serious trouble. There is also no mechanism for keeping states within the non-proliferation regime during the bringing into force of a new treaty if this were to be delayed.

### Timescales

If a fixed extension is decided upon, the question is of what duration.

There are only two possible aims for a single fixed extension: to lead to the replacement of the NPT with another treaty (as the Treaty will have expired, there is no locus for supplementary measures) or to let the NPT lapse. If the purpose of the extension is the latter, then the period is insignificant.

A ten-year extension would be the minimum realistic period to allow for the negotiation of a new treaty and for it to enter into force. However, ten years would also be the period required for a state of moderate technological capability to carry out a low-key research programme into the possibilities of developing nuclear weapons. Some states would find it difficult to resist pressures within their establishments for such research to be carried out. At the end of this time such a state could be merely months away from manufacturing basic weapons and they would also be free of their obligations under the NPT.

A period longer than ten years would allow more time for the negotiation and entry into force of a new treaty; conversely, this extra time allows for greater prevarication by states. Needless to say, the disadvantages of a ten-year extension would also apply in the last decade or so of a longer extension period.

A twenty-five year extension would mirror the first period of duration of the NPT, and this symmetry seems to attract some support.

## Option 3 — rolling fixed periods extension

This option is similar to the fixed period extension except that the extension would be repeated at the end of each period until it was decided that the Treaty should cease.

The extension mechanism for periods after the first is not specified in the Treaty and is the subject of some discussion. A consensus seems to be building that such extensions would be automatic unless a conference were convened to take a vote for no further extension. There is another viewpoint that conferences should be held at the end of each period to positively decide on the new extension, although this may require an amendment to the NPT which has an unworkable amendment procedure.

The reasoning behind this is that, although the Treaty has no mechanism for a conference for further extension after 1995, a conference could be held to consider whether to terminate the Treaty.

Even if the extension were automatic until a negative vote, a conference could be called by parties at the end of each period to discuss whether such a vote should be taken.

### Advantages

- Allows a certain amount of leverage at each extension decision by the non-nuclear-weapon states on the nuclear-weapon states to remove the discriminatory elements of the NPT either through supplementary measures or a replacement treaty.

## Making the NPT non-discriminatory

The NPT was negotiated as a 'holding action' in order to stop the spread of nuclear weapons. When it was agreed it was recognized that the Treaty was discriminatory as it allowed some states to retain nuclear weapons (the 'nuclear-weapon states' (NWS) — USA, USSR (now Russia), UK, France and China) while the others were obliged not to seek them (the non-nuclear-weapon states (NNWS) — the rest).

The NPT itself contains the mechanism to make itself non-discriminatory via the Article VI obligations (on all parties):

to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament ...

and the preambular statement:

Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a treaty on general and complete disarmament under strict and effective international control.

There are three legally-possible routes for fulfilling the NPT's obligations for nuclear disarmament: by amendment of the NPT itself; the conclusion of supplementary measures that may or may not be legally linked to the NPT but which enact provisions fulfilling the obligations; or the replacement of the NPT with a new instrument or instruments.

### Amending the NPT

The procedure to amend the NPT for whatever purpose is complex — once an amendment is proposed, a conference is called; the amendment must be agreed by a majority of the votes of the conference, including the all NWS parties and the parties that are members of the International Atomic Energy Agency (IAEA) Board of Governors; the amendment then enters into force once a majority of parties, including the all NWS parties and the parties that are members of the IAEA Board of Governors, have ratified the amendment, but only for those parties that have ratified it.

The NPT is widely regarded, for all practical purposes, as unamendable.

### Supplementary measures

Supplementary measures can take a wide variety of forms and need not be directly linked with the NPT.

Advocates of such measures note that as each measure takes a further step towards disarmament, this goal will be achieved through a step by step approach. Critics note that such a gradualist approach allows for prevarication by the NWS.

Supplementary measures currently being proposed include: a complete ban on nuclear testing; an agreement to cease production of fissile materials for nuclear explosive purposes and an agreement to strengthen security assurances by nuclear-weapon states to non-nuclear-weapon states.

The first two of these are being considered at the Conference on Disarmament (CD) in Geneva, an

international negotiating body and it is likely that the first of these will be enacted as the Comprehensive Test Ban Treaty (CTBT) in the near future.

The NWS also cite the progress made through agreements such as the START treaties, although these cover only two of the five NWS

While these measures clearly fulfil Treaty obligations to move towards disarmament, further movement will be required in the future.

While other measures may be agreed as time passes, the final supplementary measure would be a treaty between the NWS to dismantle their nuclear weapons, together with obligations never to manufacture them again. As many NNWS would wish to be party to verification arrangements to inspire confidence in the commitments of the NWS, it would be helpful if this new treaty were open for other states to sign.

### A new treaty

Some have argued that supplementary measures to remove the discriminatory elements of the NPT would be inadequate and take too long and that the solution would be to create a new convention that outlawed nuclear weapons altogether. The model that is taken for this is the Chemical Weapons Convention, signed in 1993.

Others have stated that such a treaty should not be forced as the provisions of a forced treaty are almost certainly going to be less adequate than one reached through more careful negotiation and the confidence built up through the implementation of other agreements.

Assuming that such an instrument could be negotiated, a 'Nuclear Weapons Convention' would be, in effect, the last of the supplementary measures referred to above, together with some elements of other measures, only on a much faster schedule.

A difficulty with a new convention is managing the transition from the NPT to the new instrument. This is especially crucial if a single fixed period extension were chosen for the NPT. It is not inconceivable that a few states would wish to exploit any gap between the two to free themselves of their non-proliferation obligations.

### Advantages and disadvantages

A new convention would have to be negotiated in a forum such as the CD, and would probably take a minimum of several years to negotiate, during which time any states wishing to prevaricate on this convention could also divert attention from other measures, and slow down progress on them, by moving to include them in the convention.

On the other hand, the negotiation of supplementary measures with the final goal of removing the discriminatory elements of the NPT will be of necessity a step-by-step approach which requires constant pressure and which can also be subject to many delays.

Another factor for consideration is the means by which other states, such as Israel, Pakistan and India, all of which are believed to have had research programmes for developing nuclear weapons, may be brought into the non-proliferation regime

- If the discriminatory elements of the NPT are to be removed through supplementary measures, then such an extension allows the Treaty to remain in force, unlike the single fixed period extension option.
- If the discriminatory elements of the NPT are to be removed through a replacement instrument then such an extension allows the NPT to stay in force until all of its parties have joined the new instrument, thus keeping states within the non-proliferation regime.
- Unlike the fixed extension option, a rolling extension allows a 'safety net' if a replacement treaty is being sought but is not in place at the end of the first extension period as the NPT may then be extended again.

### Disadvantages

- Even if legal experts come to a consensus as to the mechanism for extending the NPT after the first extension period, there is likely to be a wide discussion of the subject. This discussion may be a diversion from other issues at the extension conference.
- If a replacement treaty takes longer than expected to be negotiated, or a short period is chosen, then the NPT may be subject to repeated reviews of its extension, whether by a negative or a positive procedure; considering that review conferences have two out of four times failed to reach consensus, a failed extension review is possible and could severely weaken the treaty politically.

### Timescales

If a rolling extension is decided upon, the question is of what duration the periods would be.

If the period is too long then each extension decision has a reduced political significance as much of the time it will be seen by political establishments as far in the future. If the period is too short then the extension decision is in danger of becoming routine.

A period of five years would coincide with the NPT's review process; however, an extension decision at each review may divert attention from the reviewing function.

A period of ten years would mean that only half the review conferences would coincide with extension conferences and would give a minimum realistic length of time for a new treaty to be negotiated and for it to enter into force; however, this minimum length could lead to an artificial timetable for negotiations that may end up counter-productive.

A twenty-five year period would allow for full implementation of a new treaty, although, as before, would allow for some states to prevaricate more. A twenty-five year period would also mirror the first period of duration of the NPT, and this symmetry seems to attract some support.

## The 1995 NPT Conference

The 1995 conference will not only consider the extension decision but will also be the fifth of the Treaty's five-yearly Review Conferences.

Preparations for the conference are being made by a Preparatory Committee (PrepCom) which has already held two meetings, on 10-14 May 1993 and 17-21 January 1994 in New York.

Two further PrepCom meetings have been scheduled for 12-16 September 1994 in Geneva and 23-27 January 1995 in New York.

Many procedural questions have yet to be decided, for example, by what mechanism should a vote be carried out, and decisions on the financing of the Conference have to be taken.

### Voting or Consensus?

All states recognize that where a decision may be made by consensus it is preferable to a decision taken by majority vote, as there will be losers in such a vote.

However, there are many states, particularly those of the neutral and non-aligned states who feel they are being pushed into a consensus decision on indefinite extension and that, even if the majority of states wish for indefinite extension, they would like a vote in order to show their opposition.

A compromise decision is a goal worth working for as a vote would be divisive and would bind those that voted with the losing minority as they are legally committed to accept a majority decision.

### 'a majority of the Parties'

Article X.2 states that any decision on extension should be taken by 'a majority of the Parties to the Treaty'. In other words, not just a majority of those Parties that participate in the 1995 Conference.

The significance of this can be shown by looking at the attendance at the five-yearly Review Conferences, which, incidentally, will continue as long as the NPT is in force. In 1990, when the NPT had 140 Parties, 84 Parties participated in the Review Conference — only 13 more than a majority of the Parties.

The NPT currently has 164 parties. If the 1995 Conference had the same number of participants as 1990, they would barely make a majority. This would allow little space for any abstentions, negative votes, or votes in favour of an alternative extension resolution.

The meetings of the PrepCom have so far had a wider attendance: 128 delegations attended the first and 118 attended the second.

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