

**Multilateral negotiations on nuclear disarmament – ways forward:
Sharing experiences and views on possible ways forward for
multilateral negotiations on nuclear disarmament:**

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My task is to share my experiences and views on possible ways forward for nuclear disarmament negotiations. But first let me mention UNIDIR's contribution through the background paper to which attention has already been drawn. Thailand's support for the project that produced that paper is much appreciated. The paper is the third in a series of backgrounders written by UNIDIR since the 2013 Open-ended Working Group chaired by Costa Rica.

The comments that follow anticipate what is probably taking place in many capitals as Governments weigh their positions on a resolution tabled recently for taking nuclear disarmament forward through negotiations on a prohibition of nuclear weapons. In terms of policy considerations for advancing nuclear disarmament multilaterally, the options are relatively limited.

Open-ended Working Groups of the UN General Assembly (OEWG)

OEWGs obviously are one of the possible ways forward for nuclear disarmament. They have certain attributes. As subsidiary bodies of the United Nations General Assembly they are open to all member states. They come with well-known and well-understood rules of procedure. And there is scope for imagination in the way discussions are arranged, as was well utilised this year by Thailand. But the mandates for the OEWGs of 2013 and 2016 were not negotiating ones, although in the case of this year's Working Group their discussions were channelled by Ambassador Thani towards narrowing differences and, in that limited sense, negotiation to bridge gaps among delegations can occur. Often, OEWGs—like UN-mandated Groups of Government Experts—are staging points towards UNGA resolutions convening negotiations.

Conference on Disarmament (CD)

The Conference on Disarmament, on the other hand, was established specifically as a negotiating body, one with the power to develop—by consensus—negotiating mandates for subsidiary bodies on issues on its agenda. These currently include nuclear disarmament and related issues such as prohibiting the production of fissile material for weapons purposes and negative security assurances. All states that possess nuclear weapons and all those that have nuclear energy programmes are among the 65 members of the CD. Thus it is representative in one respect, but not of UN membership at large. Nor since the CTBT in 1996 has it proved capable of establishing any subsidiary body that undertook actual negotiations except twice in 1998 and those efforts were very short-lived.

My sense is that possible ways forward in the CD on nuclear disarmament, and anything else, will remain blocked for as long as members are content to misapply the rules of procedure. Not until the CD returns to its original practice of separating the required programme of work or schedule of activities from negotiating mandates will progress be possible.

Nuclear Non-proliferation Treaty (NPT)

Turning then to another possible way forward, let us look briefly at the NPT. Negotiating nuclear disarmament in the NPT faces a single major practical problem. Four states that possess nuclear weapons are not party to the Treaty. Until they join, meaningful negotiations in a NPT context will be handicapped, although not entirely pointless: holding the NPT nuclear weapon states to their nuclear disarmament obligations could be expected to increase *political* pressure on the non-NPT weapon states. But not until the common interest in a nuclear weapon free world can be raised to the level of common interest in the non-proliferation of nuclear weapons, can the NPT play more than the kind of exhortatory role it currently serves, often with only limited effect in the case of the nuclear disarmament pillar.

UN Conferences or ‘Diplomatic Conferences’

United Nations diplomatic conferences are typically convoked by a resolution of the General Assembly, and are open to participation by all member states. Such a resolution typically defines the objective of the conference and the general conditions for states to participate therein. Conferences convened by the United Nations are not, however, organs of the latter but remain a conventional inter-state or ‘diplomatic’ conference, with an independent existence governed by their own rules of procedure and general international law. It is usually the conference itself that adopts any treaty resulting from the negotiations, although in the case of the Arms Trade Treaty, the final draft was tabled in the General Assembly and adopted there.

The recent proposal for the negotiation of a legally-binding instrument to prohibit nuclear weapons leading towards their total elimination (A/C.1/71/L.41) envisages a similar pattern to the one that produced the ATT. The negotiation of that treaty took place over four preparatory meetings and a six weeks-long UN or diplomatic conference in two sessions, culminating a week later in formal adoption of the draft treaty by the General Assembly after a vote.

It needs to be reiterated that it is open to the General Assembly in initiating any negotiation to recommend conditions for the process including the manner in which decisions should be taken. UN Conferences such as those that produced the ATT are, however, masters of their own rules. In arms control and disarmament negotiations, consensus is usually followed, particularly if nuclear weapon states are participating. Recourse to voting in those instances would otherwise always leave those states in a small minority and thus out-voted, most likely vitiating the negotiated outcome.

Voting incidentally is possible under the NPT's rules of procedure but is avoided for that reason.

Diplomatic Conferences not only originate from UNGA resolutions. A state or states or inter-governmental body (e.g., the ICRC, initiator of the Geneva Conventions on the Laws of Armed Conflict) may decide to convene such a meeting. The host would issue general or specific invitations to states, international organisations and civil society. The procedures of conferences that originate in this way are widely varied, but of relevance to these comments today are three main points:

- They are self-funding, unlike UN Conferences that typically request the UN Secretary-General to provide the necessary support.
- They may or may not be inclusive.
- And they may or may not formally adopt rules of procedure.

In this latter regard, they might proceed on an understanding simply that the product of the negotiations will be adopted by consensus if possible, voting being a matter of last resort. The initiatives that resulted in the Cluster Munitions and Mine Ban Conventions were led by like-minded states that in cooperation with civil society steadily gained a broader constituency during the course of the negotiations to the point where the adoption, by consensus, of those treaties at diplomatic conferences involved well in excess of 100 states.

Conclusions

The venues and processes I have just outlined are the main possible ways forward for nuclear disarmament negotiations. But in the wake of the emergence of a draft resolution proposing negotiations on a prohibition—an event that post-dated the UNIDIR paper—I need to note the existence of other—sometimes overlapping approaches. These include a comprehensive nuclear weapons convention, possible frameworks and hybrids, as well as the notion of proceeding incrementally or progressively in a 'step-by-step' manner.

To my mind, the focus, however—at least for NPT parties—is the obligation under article VI of that Treaty to develop 'effective measures' for nuclear disarmament. The CTBT is a self-described such measure. An agreement prohibiting the production of fissile material for weapons-use would be another. Verification of the dismantlement of nuclear weapons—the subject of a separate UNIDIR paper— will be yet another effective measure. For many years NPT Review Conferences (notably those in 1995, 2000 and 2010) have identified potential effective measures such as these. But the problem is that, like the CD, the agenda is settled but there is no programme of work, nor any schedule of activities on when and how to put measures into effect. The step-by-step approach reminds us of the 'to-do' list but it has not yet taken the form of an action plan. A framework for the next steps has not emerged because there is opposition to anything susceptible to having a time-frame attached to it.

The reality, as we know, is that nature abhors a vacuum. In the case of progress on nuclear disarmament (or lack of it), the prohibition initiative has emerged to try to fill it. Will it do so? Will it amount to an effective measure? What will be the test of effectiveness?

There may be a number of tests. It may be judged on its effectiveness in drawing public attention to the lack of entry into force of the CTBT, to the lack of negotiations on fissile materials, to the lack of any counterpart to the prohibitions on chemical and biological weapons. It may be judged on the extent to which it inspires new leadership in the upcoming NPT review cycle, to the extent to which those that see it as undermining the NPT take new initiatives to strengthen the implementation of that central treaty. It may be judged on its impact on international law including international humanitarian law.

There are many tests of its possible effectiveness. But whether it passes some or all of them will not, in my view, become clear until the negotiations have concluded. Incidentally, a prohibition as I understand it does not pretend to be a substitute for verifiable elimination of nuclear weapons: it is seen, however, as helping build momentum towards the complex negotiations that will be needed to achieve that objective.

In any case, as governments weigh their policy options on how best to take nuclear disarmament forward they are likely to be well aware that sooner or later a prohibition on the possession of nuclear weapons will be needed to assure civilisation that a nuclear weapon free world, once achieved, will remain a world free of nuclear armaments. In this regard, the decision on the new resolution will amount to a referendum not only on views of one immediate way forward but also on the perceived need for urgency towards what is generally regarded as a common ultimate objective.