Report on the Informal Meetings of the Conference on Disarmament on agenda items 1 and 2 with a general focus on the ban of the production of fissile materials for nuclear weapons and other explosive devices

July 2nd and 9th, 2015

According to the decision CD/2015 of the Conference on Disarmament a series of informal open-ended meetings where held on agenda items 1 and 2 with a general focus on the ban of the production of fissile materials for nuclear weapons and other explosive devices on July 2nd and 9th June in Geneva.

The meetings were coordinated by Michael Biontino, Ambassador, Permanent Representative of the Federal Republic of Germany to the Conference on Disarmament.

The discussion followed the structure as proposed by the Coordinator in his letter of June 17th 2015. In the following the main discussion points of the meetings will be summarized. This report, according to CD/2021, is presented in the personal capacity of the Coordinator.

I. Objectives of a Treaty and Scope

- There was general consensus that a treaty should establish a legally binding, non-discriminatory, multilateral and effectively verifiable ban on the production of fissile material for nuclear weapons or other nuclear explosive devices.

- Many delegations noted that there is an interrelationship between the scope, definitions, and verification regime of a possible Treaty.

- The point was made by some that the scope of a future Treaty should be defined previous to formal negotiations; many States noted that the scope of the Treaty will be determined through the negotiation process. The point was made that the scope defines the legal footprint of the Treaty and the debate thereon should not be limited to a discussion on the inclusion/exclusion of stocks.
1. **Objectives of a Treaty**

- Different objectives of the Treaty were mentioned: Some delegations suggested that a ban, along with the verification provisions of the Treaty, could contribute to future disarmament efforts, not least as future reductions of nuclear weapons could build upon a freeze of the production of fissile material for prohibited purposes.

- Some delegations suggested that a Treaty only banning future production merely serves non-proliferation objectives. The point was made that such a Treaty would nevertheless create significant non-proliferation benefits.

- Some other delegations suggested that a Treaty should/would significantly contribute to both disarmament and non-proliferation. The point was made that Article 6 of the NPT and the goal enshrined therein would be reinforced by the Treaty. Some delegations stated that the inclusion of existing fissile material stocks in the Treaty is key and prerequisite to both of the above mentioned aspirations.

- To many delegations agreement on these objectives was not seen as necessary prior to the commencement of negotiations.

- Some delegations see a Treaty as part of a step-by-step approach or a building block approach towards nuclear disarmament.

- The point was made that a Treaty should provide increased and undiminished security of all States.

- The point was made that negotiations on a Treaty should be embedded in a wider approach towards nuclear disarmament.

2. **Requirements in general for a credible and feasible Treaty**

- There was general consensus that the principle of irreversibility should be a cornerstone of Treaty.

- There was general consensus that the Treaty should have a multilateral character.

- There was general consensus that the Treaty needs to be verifiable in order to be credible.

- There was general agreement on the principle of non-discrimination and consequently the Treaty should apply equally to nuclear weapon states and non-nuclear weapon states including equal obligations to all. Some States made the point that the Treaty, despite being non-discriminatory, might have a different impact on States depending on their capabilities and status.

- Moreover, for some States a future Treaty should complement existing regimes in the area of nuclear disarmament. The point was made that the existing imbalances in the nuclear non-
proliferation and disarmament regime should be levelled out.

- The suggestion was made that a Treaty, excluding existing stocks from its scope, could be negotiated between nuclear weapon states, since non-nuclear weapon states under the NPT already have accepted legally binding commitments not to produce fissile material for nuclear weapons and other nuclear explosive devices.

- For some States the international security context is an important factor in the discussions on a Treaty and should therefore be taken in to account. Specifically the regional stability and the concrete security environment needs for some states to be taken in to account.

3. **How to deal with fissile material produced after entry into force of the Treaty**

- Many delegations argued that a Treaty should be formulated in terms of prohibited as opposed to permitted activities.

- There was general agreement that a Treaty must not hinder the peaceful and civilian use and development of nuclear energy, but the diversion of material designated from this purpose will need to be prohibited

- There was general agreement that a Treaty must not hinder the use of fissile material for non-proscribed purposes, such as for naval propulsion and similar activities, but the diversion of material designated from this purpose will need to be prohibited

4. **How to deal with existing stocks**

- Some States mentioned multiple sub-categories within the general term of “existing stocks”, and introduced various definitions such as the definitions contained in a detailed table in the working paper by Pakistan. Other States noted that these sub-categories remain problematic, as there is no consensus on their definition.

- For some States the different views on the inclusion/exclusion of stocks does not constitute an impediment to the start negotiations.

- The point was made that accountancy of all past production would not fall in the purview of a Treaty banning the production of fissile materials for nuclear weapons and other explosive devices but would should be covered by another treaty with other objectives such as arms control. Moreover, such high expectations could block the commencement of negotiations.

II. **Consecutive discussion of the issues of Treaty definitions, verification and legal and institutional arrangements.**

- In general, States see a strong inter-linkage between the Treaty definitions, verification, and legal and institutional arrangements. The point was made that these areas are not only technically relevant, but have also political and legal implications.
1. Treaty definitions

- One delegation provided an overview of the discussions held within the Governmental Group of Experts on Treaty definitions.

- In general, delegations see a strong interrelationship between the use of broad or narrow definitions, the verifiability of the Treaty, and to costs of the verification regime resulting from these decisions.

- In the discussions, a number of States gave preference to a specific definition of “fissile material”, which should be embraced in the Treaty; Some States prefer the IAEA safeguards concept of special fissionable material, as outlined in Article XX of its Statute to be used as Treaty definition for fissile material, while others preferred to use the IAEA safeguards concept of un-irradiated direct use material as Treaty definition. The point was made that a Treaty specific definition of weapons grade material could also be used. A specific isotopic composition, to be determined during negotiations based on the scope and verification requirements of the Treaty, was also brought up.

- Some states also mentioned the inclusion of neptunium and americium in the Treaty. Others found this excessive, due to the lack of actual and practical use of these materials.

- The need to be able to accommodate future developments and technological changes was identified by some delegations.

- As far as the production of fissile material is concerned, some States favored a Treaty definition encompassing enrichment and reprocessing activities. Others underlined the benefits of a broader definition including activities upstream of enrichment and reprocessing. Some would define production as an activity at an early stage of the fuel cycle before the enrichment and reprocessing of the material.

- The question of how to define “fissile material production facilities” was raised, as well as, of the need to define operational status, and scale of the facilities. States expressed diverging views on these issues. Many states preferred a definition containing only enrichment and reprocessing facilities that produce at least a minimum-quantity of fissile material in order to make verification processes viable and cost-effective. Other States stressed the necessity to include small-scale and closed-down facilities in order to eliminate possible loopholes. Some States preferred the whole fuel-cycle to be covered by the Treaty. The point was made that downstream facilities (such as storage) should also be taken into consideration, especially in order to prevent the diversion of this material.

2. Treaty verification

- Several options for verification were discussed and some states expressed a preference of a focused approach concentrating on enrichment and reprocessing facilities, and downstream facilities processing or handling fissile material. Other states preferred a comprehensive approach covering the entire nuclear fuel cycle. A hybrid approach concentrating on critical elements of the nuclear fuel cycle was also mentioned.
The development of a verification toolbox was addressed. Many states mentioned the need to make use of the relevant existing methods and tools of multilateral or bilateral forums, most notably IAEA, but also of the Organization for the Prohibition of Chemical Weapons and the Provisional Technical Secretariat of the CTBTO and NPT. Moreover, INFCIRC/153(Corrected) of the IAEA and the work of the International Partnership for Nuclear Disarmament Verification were also mentioned as a suitable basis for the development of a verification toolbox. Others noted the need for a Treaty specific toolbox, and stressed the specific requirements and challenges of the new verification system.

Delegations mentioned that costs need to be considered by avoiding duplication of structures, and unnecessary spending.

Some States mentioned security concerns regarding the diversion of sensitive or commercial information through the verification regime.

Some States noted that appropriate declaration of Fissile should be provided for, depending on the negotiated Treaty scope and the Treaty definitions and/or could be provided on a voluntary basis. The point was made that such initial declarations could also serve as a starting point for verification once the Treaty enters into force.

Delegations have differing definitions of excess or undeclared material. Some States mentioned the need for verification of these materials. Others pointed out that in all nuclear cycles some amounts of materials exist, in between the different stages of the nuclear cycle, which are difficult to define. The point was made that technical solutions to this issue were already practiced by the IAEA.

The need for a comprehensive accounting of the fissile materials production was noted by some delegations. The point was made that national programmes significantly differ in their structure (as for example whether there is a clear division of production of fissile material for military and civilian purposes) which could have implications to the accounting, declaration and verification of the materials.

3. Legal and institutional aspects

Some States noted that the Treaty body could either have a simple structure with only a conference of States Parties as its sole organ, or a more complex structure, which would include the establishment of a secretariat to oversee/monitor the implementation of the Treaty. A tripartite structure with a secretariat, an executive council and a governing body (such as a conference of State Parties) was also mentioned. It was noted that a decision on the structure of the Treaty is dependent on the objectives and scope of the Treaty.

Some States mentioned that the IAEA could serve as the Treaty organization or host the Secretariat of the Treaty. The point was made that differences in membership to the IAEA and the Treaty might lead to complications, and should therefore be avoided. Other States were in favor of an independent and exclusive Treaty organization to host the secretariat.
- The point was made that the IAEA should provide the Treaty secretariat with relevant information, making the IAEA complementary to the Treaty body and by doing so avoiding duplication of efforts.

- The question on who is best placed to carry out the required verification was touched upon. Some states mentioned the IAEA as the best suited institution for these duties. Others prefer a self-contained treaty organization.

- The point was made that cases of non-compliance should be referred to the United Nations General Assembly, instead of the United Nations Security Council, because, as some delegations noted, the Security Council would be unsuitable to deal with cases of non-compliance by Permanent Members of the Security Council.

- The argument was made that States Parties to the Treaty should have the right to withdraw from the Treaty on the basis of national security concerns. The point was made that withdrawal could be similar to provisions of Article X of the NPT. Moreover, the point was made that in this context, the role of the United Nations Security Council should be decided upon.

- The point was made that two models for the entry into force of the Treaty exist: a quantitative approach (based on a simple unqualified number of States who need to ratify the Treaty) or a qualitative approach (based on the ratification by States with particular relevance to the Treaty). Some delegations mentioned the possibility of a mixed model. References were made to the challenges that have arisen from the entry into force models employed for the Comprehensive Nuclear Test-Ban Treaty and the Convention on Cluster Munitions.

- Some delegations stated a preference to an indefinite or unlimited duration of the Treaty. The point was made that this question is related to the objective of the Treaty. Others argued that the Treaty should have a limited duration, with the possibility to extend its duration upon review.

- Some delegation suggested that the Secretary General of the United Nations should be the depository of the Treaty. The point was made that the Group of Governmental Experts indicated to the possibility of a small number of major stakeholders to be the depositories of the Treaty.

- The point was made by some states that costs arising from the Treaty could be divided in two categories such as institutional costs and verification costs. The funds for the latter would be provided by the States affected by verification activities. The question was raised if the Treaty should be funded by a model of assessed contributions such as the United Nations assessment scale or on a voluntary basis.

- Some delegations mentioned that amendments to the Treaty should be made by consensus.

III. **How to take forward discussions:**

- Many delegations noted that the time is ripe for the commencement of negotiations.
The Shannon report and the mandate contained therein were interpreted in different ways as far as inclusion of stocks is concerned. For many States the Shannon report and the mandate contained therein continues to provide a basis for negotiations. On the other hand, the point was made that the Shannon report and the mandate contained therein is outdated and does not provide an acceptable basis for negotiation, therefore a different mandate should be considered.

Some delegations mentioned that discussions on the Treaty are neither a bilateral nor a regional issue but affects the international community as a whole.

There was general agreement that the Conference on Disarmament would be the appropriate forum for negotiations of a Treaty and therefore negotiations on a Treaty should be included in the “Programme of Work” of the CD. The point was made that in the absence of negotiations, discussions and other arrangements within the Conference on Disarmament should continue on this topic. Furthermore, the point was made that such intensive discussions short of formal negotiations could contribute to a future negotiation process as experienced during the negotiations of the Chemical Weapons Convention. The point was also made that if the CD is blocked other fora/settings could be considered for the negotiations.

There was general agreement that the informal discussions (within the schedule of activities) were very fruitful and should be preserved and build upon.

The delegation of Pakistan submitted a working paper (see annex) outlining its views on a Fissile Material Treaty (FMT) and its various elements. The working paper also included a detailed proposal for dealing with the past production of fissile material in a manner that captured the existing stocks under the treaty’s verification regime. The working paper elicited a debate especially on the issue of stocks during which Pakistan sought to provide additional clarifications on its proposal.

Many delegations noted the report of the Group of Governmental Experts on elements of a Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices which was submitted as a working paper (see annex). They welcomed the in depth and technical nature of the GGE’s work and indicated that the report could serve as an important reference tool for the Conference on Disarmament, enriching the Conference’s discussion on a Treaty.

Delegations who had taken part in the GGE noted that detailed and technical nature of the discussions and the important role it had played in allowing them to not only to better understand elements of a Treaty but also the positions of others. Some delegations indicated that their national positions had been adapted and expanded as a result of the GGE’s work and brought these positions forward during the CD discussions.

Others indicated that while the GGE highlighted divergence of views on issues such as definitions, scope and verification, this was in fact a positive step as it helped uncover where further effort needed to be concentrated in our efforts to bridge the divide.
• A few delegations indicated that they did not support or agree with the work of the GGE and its report. They questioned the value of the report and suggested that CD discussions could achieve the same results as the GGE. The point was made that the composition of the GGE did not reflect the views of all relevant stakeholders.

• France introduced a draft for a Treaty Banning the Production of Fissile Material for Nuclear Weapons or Other Nuclear Explosive Devices (FMCT) as an official document of the Conference on Disarmament on 9 April 2015 (document CD/2020). This draft was presented as a concrete contribution and as a way to enable more in-depth discussions, with a view to preparing future negotiations on a legally-binding international instrument. This draft was submitted as a working paper to the informal discussions (see annex).

• The issuance of working papers during the discussions was warmly welcomed and recommended to foster the discussions in the future.

• All participants agreed they would welcome further in depth and technical expert discussions in the context of future work in the CD on a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices.

• In order to have such discussions in the future, it was noted that more time needs to be consecrated to this matter at the CD. The timely planning of such discussions was noted to allow delegations to make necessary arrangements.

Conclusions

In general, the informal open-ended meetings on the ban of the production of fissile materials for nuclear weapons and other explosive devices showed a high degree of inter-activeness. States participated vividly in the discussions on a future Treaty. This allowed for, in particular, enhanced clarity on positions of States. In general, there was widespread consensus that the discussions in the Conference on Disarmament on the issue has attained the degree of maturity necessary for the beginning of Treaty negotiations. Many delegations expressed their satisfaction concerning the nature of the debate of being exceptionally frank and fruitful.

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