INFORMAL CONSULTATIVE MEETING – February 15th, 2018

DEBRIEF ON THE WORK OF THE PREPARATORY GROUP

GENERAL, SCOPE, DEFINITIONS, VERIFICATION

BY HEIDI HULAN, CHAIR OF THE HIGH-LEVEL FMCT EXPERT PREPARATORY GROUP

As I mentioned earlier this morning, pursuant to resolution 71/259, I am mandated to provide a report on the work of the Preparatory Group at its first meeting.

I intend to divide that into two parts. This morning I will convey a summary of the Preparatory Group’s work in relation to the scope, definitions and verification of a future treaty.

Tomorrow morning, I will convey my summary of the Group’s work on the legal and institutional arrangements of a future treaty. This is the area where I felt the group made significant progress in terms of identifying substantial elements of a future treaty.

I will flag at the outset that these summaries will be provided to you in my personal capacity as Chair, and are consequently not representative of the views of the group.

Those views will instead be captured in what will hopefully be a consensus report coming out of the next Preparatory Group meeting in May and June of this year.

Before getting started on the specifics of the Group’s work, I wanted to take a moment to relay to you some of my more general perspectives on the Preparatory Group, and on other events relevant to the FMCT that have taken place over the course of the past year since we last met.

Following our meeting here last March 2nd and 3rd, Canada held the first meeting of the Preparatory Group in Geneva from July 31-August 12th.

At that meeting, I conveyed to the experts the summary of views that I heard here in New York so that they may be reflected in the Preparatory Group’s work, which is focused — as you know — on making recommendations on substantive elements of a future treaty.

It was clear to me that experts arrived at that meeting ready and willing to work constructively with each other to achieve progress on this treaty.

I do not raise that point casually. The reality is I’ve not witnessed such positive atmospherics often in recent nuclear non-proliferation and disarmament related forums.
As everyone knows, the first stages of the FMCT process ran parallel to the negotiation of a Treaty on the Prohibition of Nuclear Weapons (Prohibition Treaty) which represents a significant development in the area of non-proliferation and disarmament.

This of course generated some debate in public discourse regarding the continued relevance of an FMCT in the context of the Prohibition Treaty.

While the membership is divided on the Ban Treaty, views from on all sides of the debate rightly converge on the fact that it is not in conflict with the FMCT.

On the contrary, it remains clear that concrete measures, such as an effective legal prohibition on the production of those fissile materials required to make nuclear weapons, remain critical.

After all, even in the context of a fully implemented Prohibition Treaty, an FMCT would still be required to ensure that the continued production of fissile material for civilian and naval uses is not diverted to weapons’ programs.

Support for an FMCT has not diminished since the Prohibition Treaty; on the contrary, as demonstrated by the last FMCT votes in the General Assembly, it is near universal.

Nonetheless, it remains a fact that states are increasingly polarized. There is an absence of cooperative spirit, and a politicization of technical bodies.

There is increasing frustration with the lack of progress on disarmament, yet decreasing political will to take the steps necessary to do something about it.

Real doubt has been cast for some time on the ability of Nuclear Weapon and Non-nuclear Weapon States to work constructively together toward shared goals of a nuclear weapon free world.

In fact, efforts on FMCT might be one of the few bright spots on this non-proliferation and disarmament landscape.

In fact, my experience in the Preparatory Group is that discussions have been inclusive, dynamic and fruitful.

I will now do my utmost to convey to you a faithful reflection of some of those conversations to you. This will include my impressions of the Group’s work on each of these treaty aspects, starting with a future treaty’s scope.

The scope of the treaty sets out the basic obligations that states parties would be required to meet. The GGE had recommended that these obligations be set out in the form of prohibited as opposed to permitted activities.
The main treaty element in the area of scope would be an undertaking for states parties not to produce fissile material for nuclear weapons or other nuclear explosive devices.

There are a number of other possible undertakings that could be included in a future treaty’s scope, and the Preparatory Group examined each of these elements in detail.

For example, the Preparatory Group discussed whether and how a treaty could include, in addition to a ban on production, elements related to the potential diversion, acquisition and transfer of fissile material.

The 2015 GGE report had identified these as potential threats to the core obligation of the treaty -- the Preparatory Group took that discussion one step further by examining whether and how to frame specific treaty elements on these issues.

Some ancillary elements in the area of scope also discussed by the experts related to the operational status of fissile material production facilities.

While this could be addressed in the treaty’s verification regime, it might also make sense to include explicit obligations for states parties to close-down, disable, decommission or dismantle facilities used for the production of fissile material for nuclear weapons or other nuclear explosive devices. In the context of verification, these terms have particular significance.

Similarly, the treaty could contain an obligation requiring states parties to convert these facilities to civilian uses and place them under verification.

The Preparatory Group also discussed what elements would be needed to capture the different functional categories of fissile material that were laid out in the GGE report, including, for example, material produced for civilian uses or naval fuel, material in excess of weapons needs, products of future disarmament efforts etc.

Of course, as was the case in the GGE, not all experts agreed on the need for the Preparatory Group to deliberate treaty elements related to the past production of fissile material, often referred to as ‘stocks’.

Nevertheless, the Preparatory Group discussed the options available to negotiators so that different categories of fissile material, including both future and past production, could be treated as elements in a future FMCT.

Clarity of purpose was key to ensuring the Group engaged in a productive and useful discussion on this issue of scope. It was clear that this issue would not be resolved in the context of an expert group, nor was our objective to come to agreement on a way forward.
This provided the latitude for the group to examine these potential treaty elements objectively, and substantively, for the purposes of elucidating options for a final report.

Last but not least on the issue of scope, the Preparatory Group discussed Transparency and Confidence Building Measures (TCBMs). This was one of the most interesting aspects of the discussion for me personally.

In the GGE, TCBMs were identified as measures to facilitate progress on disarmament and potentially address reductions in existing fissile material stockpiles, irrespective of the ultimate scope of the treaty.

The Preparatory Group advanced this discussion further by scoping out how various TCBMs could be included as elements in a future treaty.

For example, a treaty could include either mandatory or voluntary obligations for states parties to declare inventories of previously produced fissile material upon entry into force of the treaty.

A treaty could also include an undertaking by states parties to produce periodic reports or declarations on measures that states parties have taken nationally, bilaterally and multilaterally to reduce national inventories of fissile materials available for nuclear weapons.

There was also an interesting discussion about the potential to use annexes or additional protocols as mechanisms for the inclusion of nuclear disarmament products after the treaty is concluded. Brazil is a proponent of one such model and I am looking forward to hearing Marcelo’s presentation on this idea later this morning.

Turning now to definitions.

The definition of fissile material included in the treaty will have a substantial bearing on the treaty’s scope, verification etc.

The 2015 GGE report determined that a treaty should define “fissile material”, “fissile material production” and “fissile material production facility”. Grounded firmly in the detailed analysis carried out by that GGE, the Preparatory Group examined the options for expressing these elements in a future treaty.

It was clear to experts that other definitions beyond the three just mentioned needed to be considered as potential elements of the treaty as well.

To illustrate, experts examined whether and how alternative fissile materials, such as americium and neptunium, or other nuclear materials such as tritium, should be defined.
Beyond the question of whether or not to define them, the Group’s reflection covered other potential options including linking the treatment of these materials to developments in other regimes such as the IAEA safeguards regime, or having a ‘catch-all’ provision in the treaty to capture such materials at a later point.

For example, additional treaty elements in the area of definitions could include setting out what States Parties should consider to be laboratory-scale vs. industrial scale activities, or what would be the ‘significant quantity’ required for the purposes of verification.

The Preparatory Group also engaged in an interesting debate on the merits of having either treaty-specific definitions or definitions based on existing ones, such as those found in the IAEA Safeguards Glossary.

Finally, the Preparatory Group engaged in a substantive discussion on some of the general considerations -- or principles -- related to treaty elements in the area of definitions.

For example, principles flagged during the meeting included the need for treaty definitions to be credible and coherent with treaty objectives. The need to build flexibility into definitions given that they may evolve over time was also raised as a consideration for negotiators to bear in mind.

Spoiler alert -- the work carried out in the Preparatory Group in the area of verification was not technical in nature.

Instead, experts focused on how the various aspects of verification could be captured as elements in a future treaty.

For example, experts examined different models for the verification regime, that is to say whether a complete verification regime should be negotiated and included in the text of the treaty itself. Or whether the treaty should set out the basics of the verification regime and stipulate that individual agreements/protocols be negotiated between the verification body and individual states parties either before or after entry into force.

Alternatively, the treaty could set out the basics of the verification regime and include a verification annex containing the implementation procedures for the verification regime, applicable to all states.

The Group also spent some time discussing the verification standard and verification approach, and how the options in this regard could be reflected in the treaty.

Experts agreed that from a technical perspective credible assurance would be connected to the appropriate identification and consistent application of treaty
verification measures, and therefore the treaty’s verification toolbox also featured in the Group’s discussions on verification.

Some of this expanded on the discussion that took place in the GGE, and it is clear that it remains an area where further scientific and technical work is required.

To provide a more concrete example, some of the areas flagged specifically as in need of further study include: a mechanism to ensure the completeness of declarations; more work on what a challenge mechanism could look like in the context of an FMCT; and the development of new tools to address the challenges associated with the verification of fissile material produced or previously produced for non-proscribed purposes.

I was extremely grateful to the experts in the Preparatory Group for the highly substantive and interactive engagement they brought to the table.

Clarity of purpose has been key to ensuring that the group’s discussions stay on track and remain productive and substantive.

The Group is harvesting areas of convergence where they occur naturally. We are not, however, negotiating, nor seeking to narrow the range of options for a future treaty, which would of course be tantamount to negotiation.

Instead, the Group is distilling a concise menu of potential treaty provisions, in plain language to facilitate negotiations when they do occur. We are also attempting to capture the various considerations that should be taken into account when these options are weighed by negotiators.

The Group is not triaging or setting aside contextual issues, including the challenging dynamics in the international security environment, nor is it trying to resolve political issues preventing action in the disarmament machinery.

In this regard, I would underscore that a key priority for me as Chair was to maintain the fact-based, policy neutral approach to discussions that were started in the GGE. Nothing is off the table.

I encouraged the Group to focus its work on the value added that this group can bring to the debate, and especially to avoid simply repeating the reflection that occurred in the GGE.

As Chair, during the discussions I have made every effort to avoid putting experts in a position that would compromise their national positions on this treaty, which would of course prejudice any future negotiating posture. I firmly believe this approach has opened the door to an objective and enriching discussion on the possible elements of a future FMCT.
While it is far too soon to speak of results, I am confident that the Group made significant headway toward accomplishing its mandate at the first Preparatory Group meeting.

I look forward to speaking to you tomorrow about the substantial progress made by the group in the area of legal and institutional arrangements of a future treaty.