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Taking Forward Multilateral Nuclear Disarmament Negotiations:

The 2016 Open-ended Working Group

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UNIDIR and Open-ended Working Groups of 2013 and 2016 for taking forward nuclear disarmament

This paper builds upon and updates several recent papers by UNIDIR:

- OEWG Brief no. 1, 2013, *The Treatment of the Issue of Nuclear Disarmament in Relevant Forums Established by the United Nations*
  www.unidir.org/files/publications/pdfs/oewg-briefing-paper-1-en-465.pdf
- OEWG Brief no. 2, 2016, *The Treatment of the Issue of Nuclear Disarmament since the Open-Ended Working Group in 2013*
  www.unidir.org/files/publications/pdfs/oewg-briefing-paper-no-2-en-646.pdf

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Summary

On 7 December 2015, the United Nations General Assembly reiterated the "universal objective of taking forward nuclear disarmament negotiations" and decided (by vote) to establish an open-ended working group (OEWG) towards that end.[1] The OEWG met in Geneva for three sessions for a total of 15 days between 22 February and 19 August 2016 under the Chairmanship of Ambassador Thani Thongphakdi of Thailand.[2] The Group's report will be considered by the General Assembly later this year. This paper outlines central themes in the discussions and conclusions of the 2016 OEWG and takes stock of its contribution towards nuclear disarmament.

Background

The lack of progress many States perceive in standing, specialized forums for nuclear disarmament,[3] along with growing concerns and new evidence about the humanitarian impacts of nuclear weapons (including potential accidents in handling them), have given rise in recent years to pressure for nuclear disarmament efforts to be taken forward elsewhere and with renewed urgency.[4] The lead sponsors[5] of the resolution establishing the OEWG, as tabled initially in the General Assembly's First Committee,[6] came from all regions of the world. Moreover, concerted international advocacy by civil society for progress towards the eventual elimination of nuclear armaments added to this impetus.

Box A. OEWG terms of reference

In setting up the OEWG, the General Assembly reaffirmed the "urgency of securing substantive progress in multilateral nuclear disarmament negotiations", and via A/RES/70/33 tasked the Working Group with addressing four issues:

i) concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons (operative paragraph 2 or OP2); and

ii) other measures that could contribute to taking forward multilateral nuclear disarmament negotiations, including but not limited to

(a) transparency measures related to the risks associated with existing nuclear weapons;

(b) measures to reduce and eliminate the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations; and

(c) additional measures to increase awareness and understanding of the complexity of and interrelationship between the wide range of humanitarian consequences that would result from any nuclear detonation (operative paragraph 3 or OP3).

Organization of work

The four issues listed in the OEWG's terms of reference (see Box A) were addressed individually at the February and May sessions of the 2016 OEWG. Each discussion was preceded by presentations by panels of experts.[7] Focus was also provided by the Chair through a number of papers[8] culminating in a draft report which itself underwent various revisions, dominating the August session.[9] Member States (and groups thereof) tabled upwards of 40 working papers. Civil society organizations submitted a further 30 working papers, as well as other documents and resource materials.

Participation

As a subsidiary body of the General Assembly, the OEWG was open to participation by all United Nations Member States, international organizations and civil society representatives. Many non-nuclear-weapon States (NNWS), including most of those in military alliances with nuclear-armed States, attended all three sessions. For the adoption of the OEWG's report on 19 August, at least 103 NNWS were present based on voting numbers.[10]

None of the nine States that possess (or are believed to possess) nuclear arms attended any of the OEWG's meetings. When the United Nations General Assembly resolution that established the OEWG was adopted, the five Nuclear Non-proliferation Treaty (NPT) nuclear-weapon States (NWS) expressed their opposition to it on various grounds.[11] They perceived the resolution to be attempting to promote nuclear disarmament whilst ignoring security considerations. In their view, genuine inclusivity could be ensured only

through a consensus-based approach fully anchored in the international security context. Any proposal for a ban on nuclear weapons without the support and participation of nuclear-weapon States would, they believed, undermine the NPT and contradict the "incremental, step-by-step approach" as the "only practical option for making progress towards nuclear disarmament".[12]

Key issues: concrete effective legal measures

The NWS's concerns outlined above were echoed by their nuclear alliance partners participating in the OEWG. The unsettled global security environment, the perceived need for the involvement of nuclear-armed States, the risk of undermining the NPT and the imperative of taking decisions by consensus were central themes of the debate, particularly under operative paragraph 2 of the OEWG mandate. These concerns took on a new dimension when, as the NWS had anticipated, two formal proposals for negotiating a prohibition of nuclear weapons were tabled. Thirty-three Caribbean and Latin American States (The Community of Latin American and Caribbean States, CELAC) proposed "a multilateral diplomatic process for the negotiation of a legally binding instrument for the prohibition of nuclear weapons towards their total elimination".[13] Moreover, a cross-regional group of ten States emerged to champion the convening of a "Conference in 2017, open to all States, international organizations and civil society, to negotiate a legally binding instrument to prohibit nuclear weapons".[14] In addition, five Pacific Island States recommended that the OEWG should "begin immediately the practical work of setting out the elements to be contained in a treaty banning nuclear weapons."[15]

In contrast (and reflecting NWS concerns), a group of 21 States tabled a paper advocating a focus on building blocks consisting of parallel and simultaneous effective measures that would comprise the "progressive approach", a combination of both non-legal measures and legal measures that would be "mutually enforcing".[16] This group[17] styled itself the "progressives"—a term drawn from the 2000 NPT Review Conference's agreed thirteen practical steps for the "systematic and progressive" implementation of article VI of the NPT.[18] Although few of the thirteen steps have yet been taken, the progressive group contrasted an incremental building-block (or step-by-step) approach with that of a prohibition seen by them as merely a "quick fix"—one which would be ignored by nuclear-armed States.

This divergence of views on effective ways forward on nuclear disarmament was characterized by Austria, a prominent supporter of a prohibition, in these terms: Austria suggested that proponents of the step-by-step approach are essentially concerned to avoid taking any step (such as a prohibition) that might undermine nuclear deterrence—the doctrine underpinning the "nuclear umbrella" they see as providing their national security. In contrast, others see dependence by those States on nuclear weapons for their security as inconsistent with the non-proliferation objectives of the NPT. Also, in the view of Austria and many other "humanitarian pledge States",[19] the unacceptable humanitarian consequences and risks associated with nuclear weapons mean that human security can only be achieved if all possible effective measures—legal and non-legal—are taken

in order to move away from a nuclear-weapons-based security system with urgency.[20] Such measures would at the same time help to fill a purported "legal gap" under which other types of weapons of mass destruction—biological and chemical weapons—are specifically prohibited but nuclear weapons are not. These measures would augment and not undermine the NPT.[21] Some "umbrella States", for their part, dispute that a legal gap exists.[22]

The prohibition and progressive approaches were not the only proposed ways forward. In this short paper, it is not possible to analyse these other options raised in the OEWG (including various hybrids[23]), except briefly in Box B. However, what can be noted—and something that has been acknowledged on all sides of the debate—is that irrespective of the approach or process that States decide to pursue to advance nuclear disarmament, mechanisms will at some point have to be agreed among nuclear-weapon possessors and non-possessors in order to verify the destruction of nuclear armaments and their components. It follows that sooner or later a prohibition on nuclear weapons will be necessary, the difference in the OEWG boiling down to whether that should occur before, at the same time as, or after elimination efforts have been achieved.[24]

Box B. Possible ways forward on nuclear disarmament

There are essentially three approaches to legally binding multilateral nuclear disarmament, in contrast with an existing fourth approach of an organizational kind:

1. A comprehensive nuclear weapons convention or treaty (where prohibition, elimination and verification would be provided for in a single, stand-alone legal instrument)[25];
2. A stand-alone prohibition or ban treaty (where, as currently conceived by proponents of this idea, prohibition would precede necessary steps such as elimination and verification, although it could also be negotiated after nuclear armaments have been eliminated); and
3. A framework agreement, under which various prohibitions and other obligations, including elimination and verification, would be foreshadowed, and pursued coherently within the same broad legal framing. These elements could be integrated as protocols or other formal agreements.

Like the types of stand-alone approach in options 1 and 2, a framework agreement and its components would be legally binding on its parties. This is not the case with the fourth approach, which is a framework of an organizational nature, rather than a legal construct:

4. A step-by-step, building block or "progressive" approach where elimination and verification would precede prohibition. This approach envisages incremental negotiation of legally binding multilateral instruments, among a range of other possible measures. Although the *de facto* international approach to date, it has not been articulated in a prescriptive way, except that it would comprise entry into force of the Comprehensive Test Ban Treaty (CTBT) and a ban on fissile material production (a fissile material treaty (FMT) or fissile material cut-off treaty (FMCT)). This approach would not be negated by pursuit of option 2: it could co-exist with it.

The 2016 OEWG Chair's draft report duly recognized that additional efforts will be needed to pursue concrete effective legal measures to achieve and maintain a nuclear-weapon-free world, and contained a recommendation to that effect. The importance of the NPT was reaffirmed, as was the need for effective measures to complement and strengthen the Treaty's three pillars (on nuclear non-proliferation, nuclear disarmament, and peaceful uses of nuclear technology). No State at the OEWG dissented from these conclusions.

However, fourteen States[26] of the progressive group did not agree with the report's "recognition" of "widespread support" for a recommendation that the General Assembly convene a conference in 2017 to negotiate a "legally-binding instrument to prohibit nuclear weapons leading to their total elimination".[27] On the OEWG's closing day, Australia called a vote on the draft as a whole. The Australian delegation said that, in the view of those fourteen States, the Chair's draft implied that the OEWG supported a prohibition treaty, a proposition to which they could not agree—even though the draft noted that 24 States did not support the recommendation. This was an unexpected and last minute deviation from the consensus approach members of the progressive group had insisted from the outset that the OEWG take.

Australia's call for a vote on the OEWG draft report prompted a proposal from Guatemala for the report to recommend outright the convening of a 2017 conference to negotiate a nuclear weapon prohibition. This amendment carried by 62 States in favour, with 27 against and 8 abstentions. The report as consequently amended was then adopted by 68 to 22, with 13 abstentions.[28]

Key issues: other measures

While negotiations on the OEWG's report were concluded in this controversial manner, sight should not be lost of the comparatively constructive discussions of other elements of the OEWG's terms of reference under operative paragraph 3 of the mandate. Although there is not sufficient space to summarize them here, it is notable that the Working Group's report usefully set out the range and strength of views on transparency measures (paragraphs 48-53), measures to reduce risks relating to nuclear weapons (paragraphs 54-58) and raising awareness (for instance, through disarmament education) of humanitarian consequences resulting from a nuclear weapon detonation (paragraphs 59-63).[29] Other themes included concerns about modernization of nuclear weapons, the need to prioritize funding of the Sustainable Development Goals over nuclear weapons programmes, and nuclear security—including preventing terrorists from getting access to nuclear materials.

A stocktake of the OEWG's impact

The vote on the OEWG's report clearly indicates that there are divergent views on the way ahead for multilateral disarmament efforts. Nevertheless, ably managed by a highly

consultative Chair, the OEWG discussions made the most of the limited time available for substantive and open discussion on how to take nuclear disarmament negotiations forward. It is clear that this opportunity has whetted the appetites of many NNWS for negotiations on a prohibition—and alarmed others, as the prospect has become a more imminent possibility. The next step is for the OEWG report to be tabled in the United Nations General Assembly First Committee this October. The report will almost certainly receive a divided response, and action on its recommendations is not automatic. Supporters of commencing negotiations on a nuclear weapons prohibition could face stiff opposition from a forceful minority of the world's States, not only in the First Committee but possibly also in the Fifth Committee, where decisions are taken on allocating resources from the United Nations regular budget for any future negotiation.

For the immediate future, the prospects of bridging the two opposing points of view on any nuclear weapons negotiation will be complicated by various factors stemming from a common reality: prior to the OEWG, multilateral nuclear disarmament was at a standstill. The Conference on Disarmament remains deadlocked after almost two decades, and the failure of the 2015 NPT Review Conference has underlined how inadequately served the larger international community is by these realities. In such circumstances, even pressing for what are supposed to be generally agreed "steps"—entry into force of the CTBT and the negotiation of a FMT—has been in vain. Proponents of the step-by-step approach have thus found it difficult to shrug off criticism that their approach is tired, and perhaps no more than a status quo option. They have struggled to find a way forward that is responsive to the growing sense of urgency for nuclear disarmament, urgency that drove the setting up of the 2016 OEWG based in large part on growing concerns about the humanitarian impacts of nuclear weapons among NNWS and civil society.

If the step-by-step approach appears to be stalled in its tracks,[30] the proponents of a prohibition also face challenges. They are confronted by the criticism that, in effect, they are headed into a cul-de-sac. With nuclear-armed States and many of their allies adamantly opposed to the negotiation of a ban and dismissive of its effectiveness without their participation, a prohibition's contribution at this stage to the ultimate goal of the elimination of nuclear weapons is not a certainty.

Another criticism from the nuclear-armed States (and some of the "umbrella States") is that a nuclear weapons prohibition is polarizing, and thus unhelpful to nuclear disarmament efforts. This was an argument also deployed about the OEWG's establishment, and before that about the so-called humanitarian initiative—in fact, about anything but "step-by-step". Yet it is a harder case to make as it confuses cause and effect. That there is polarization on the way forward on nuclear disarmament is self-evident—the OEWG outcome is symptomatic of this: traditional approaches to multilateral nuclear disarmament are increasingly being seen as inadequate. Aside from bilateral nuclear reduction treaties between the United States and the Russian Federation—an era that, for now, appears to be over—the record of the nuclear-armed States' implementation of nuclear disarmament commitments has been disappointing. For instance, as already noted, the first step in the step-by-step approach, entry into force of the CTBT (a disarmament measure specifically called for by all NPT States Parties) has not yet been

taken. There are also concerns that nuclear-armed States are currently engaged in modernization programmes that will extend the lifetime of their nuclear capabilities by several decades.

These factors undercut arguments for patience with the progressive approach. To be clear: lack of implementation of agreed steps on nuclear disarmament is a fundamental cause of the current polarization. Its effects include frustration and concern among NNWS. This manifests itself in their support for more radical measures than the nuclear-armed States and their allies are comfortable with—even while they continue to uphold existing rules and norms for nuclear weapon non-proliferation, and register their dissent through fully representative United Nations processes such as the OEWG.

Notable in this respect is the care with which paragraphs 33 to 36 of the OEWG report are phrased.[31] For instance, they propose that negotiations be open to all States (as well as international organizations and civil society). The purpose of negotiations would be to draw up a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination. Such a ban would establish general prohibitions and obligations as well as political commitment to achieve and maintain a nuclear-weapon-free world. An instrument prohibiting nuclear weapons is framed as an interim or partial step toward nuclear disarmament, as it would not address elimination but would instead leave measures for the irreversible, verifiable and transparent destruction of nuclear weapons as a matter for future negotiations.

To sum up, characterizing the 2016 OEWG as a tense stalemate would be to discount the value of its proceedings despite the nine nuclear-armed States opting not to attend. The OEWG provided a substantial United Nations forum open to all Member States for airing and weighing the merits of possible ways for taking nuclear disarmament forward. It also conducted a serious and substantive debate, the key elements of which were drawn together in a balanced manner and reflected in a comprehensive report.

These may seem like modest dividends, but they are significant relative to other multilateral nuclear disarmament forums. This is especially so in the case of:

(a) the Working Group's detailed discussion of a range of possible pathways along which nuclear disarmament might proceed, [32] and

(b) measures for reducing and eliminating the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations.

Indeed, regardless of any specific next agreed steps to give effect to the 2016 OEWG report's recommendations, the Working Group's discussions could even enrich the efforts of those other forums, especially as some of the steps explored there are the subject of NPT commitments and undertakings.

Endnotes

1 A/CONF/70/33, 11 December 2015. 184 Member States took part in the decision on the OEWG resolution. 138 voted in favour, while 34 abstained.

2 Ambassador Thongphakdi is Thailand's Permanent Representative to the United Nations and other international organizations in Geneva.

3 See for example the Conference on Disarmament and the review cycle of the Non-proliferation Treaty.

4 Note in this regard the Open-ended Working Group for taking forward multilateral nuclear disarmament, established in 2013 by General Assembly resolution A/RES/67/56.

5 Austria, Brazil, Chile, Costa Rica, Ecuador, Georgia, Ghana, Ireland, Kenya, Liechtenstein, Malta, Marshall Islands, Mexico, Nicaragua, Nigeria, Panama, Peru, Philippines, South Africa, Trinidad and Tobago, Uruguay and Venezuela.

6 *United Nations General Assembly, General and complete disarmament: taking forward multilateral nuclear disarmament negotiations*, UN document, A/C.1/70/L.13/Rev.1, 29 October 2015.

7 These presentations can be found online at: www.unog.ch/__80256ee600585943.nsf/(httpPages)/17fb7b2fea043906c1257fb70033e666?OpenDocument&ExpandSection=1.

8 See Provisional agenda A/AC.286/1, 12 February 2016; Synthesis Paper A/AC.286/2, 20 April 2016; Panel 1 paper A/AC.286/WP.2/Rev.1, 19 February 2016; Panel 2 paper A/AC.286/WP.3/Rev.1, 19 February 2016; and May 2016 Panel papers 1 to 6, A/AC.286/WPs. 28 to 33, all tabled on 28 April 2016.

9 The initial "zero draft" and first revision were circulated under cover of the Chair's letter of 28 July 2016 and 15 August 2016 (A/AC.286/CRP.2). A second revision dated 18 August was followed by A/AC.286/CRP.3 of 19 August 2016.

10 A/71/371, 1 September 2016.

11 Of the nine nuclear-armed States, Israel (which maintains a policy of ambiguity as to its possession of nuclear weapons) also opposed the resolution along with the NWS, while India and Pakistan abstained. The Democratic People's Republic of Korea, however, voted in favour of the decision. A number of States that are in military alliances with nuclear-weapon States opposed the resolution (Czech Republic, Estonia, Hungary, Latvia, Lithuania and Poland), while others abstained.

12 Explanation of Vote by China, France, Russian Federation, United Kingdom and United States, United Nations General Assembly First Committee, 2 November 2015.

13 A/AC.286/WP.15, 12 April 2016, submitted by CELAC.

14 A/AC.286/WP.34/Rev.1, 11 May 2016, submitted by Argentina, Brazil, Costa Rica, Ecuador, Guatemala, Indonesia, Malaysia, Mexico, Philippines and Zambia.

15 A/AC.286/WP.14, 3 March 2016, submitted by Fiji, Nauru, Palau, Samoa and Tuvalu.

16 A/AC.286/WP.9, 24 February 2016, submitted by Australia, Belgium, Bulgaria, Canada, Estonia, Finland, Germany, Greece, Hungary, Italy, Japan, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Turkey.

17 Comprising the sponsors of WP.9 (see previous footnote) and Croatia, Norway and Republic of Korea.

18 NPT/CONF.2000/28 (Parts I and II), adopted 19 May 2000, p. 14.

19 A/AC.286/WP.5, 22 February 2016, submitted by Austria, paragraph 2 referring inter alia to 120 States endorsing the "Humanitarian Pledge".

20 Ibid., paragraph 11, pp. 3-4.

21 See, for example, New Zealand's statement to the OEWG, 9 May 2016, www.unog.ch/80256EDD006B8954/(httpAssets)/AAFCCD091F10F453C1257FAE003FBA42/$file/2016May+Panel+IV_New+Zealand.pdf.

22 See, for example, A/AC.286/WP.16, 12 April 2016, submitted by the Netherlands and A/AC.286/WP.20/Rev.1, 27 April 2016, submitted by Canada.

23 A/AC.286/WP.37, 9 May 2016, submitted by Brazil.

24 See J. Borrie, T. Caughley, T. Graff Hugo, M. Løvold, G. Nystuen, and C. Waszink, *A Prohibition on Nuclear Weapons: A Guide to the Issues*, ILPI-UNIDIR, 2016, Chapter 3.

25 A/AC.286/WP.8, 23 February 2016, submitted by Costa Rica and Malaysia.

26 Australia, Belgium, Bulgaria, Estonia, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Republic of Korea, Romania, Slovakia and Turkey.

27 A/71/371, 1 September 2016, paragraph 67, p. 19. See also paragraph 34, p. 9 which provides details on the goals of the negotiations and participation in them.

28 A/71/371, 1 September 2016.

29 Ibid.

30 See United Nations, Department of Public Information, *Addressing Security Council, Secretary-General Calls for Recommitment to Eradicating Weapons of Mass Destruction 'Once and for All'*, SG/SM/17996-SC/12486-DC/3647, 23 August 2016, www.un.org/press/en/2016/sgsm17996.doc.htm.

31 A/71/371, 1 September 2016.

32 See also J. Borrie, T. Caughley, T. Graff Hugo, M. Løvold, G. Nystuen, and C. Waszink, *A Prohibition on Nuclear Weapons: A Guide to the Issues*, ILPI-UNIDIR, 2016, pp. 18–24.

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