Framework Forum: Taking forward nuclear disarmament
April 18, Geneva

On April 18, 2016, representatives from twenty-two governments joined a small group of disarmament experts at a roundtable forum in Geneva to discuss Issues and proposals for taking forward nuclear disarmament. The roundtable included a range of States, including some that possess nuclear weapons, some that are part of nuclear-security alliances, and some non-nuclear-weapon States (see * below for full list).

The roundtable was hosted by the Permanent Mission of Canada to the UN and was co-sponsored by the Middle Powers Initiative (MPI) and Friedrich-Ebert-Stiftung, as part of the Framework Forum – a process engaging governments in building the framework for a nuclear-weapon-free world. Previous Framework Forum roundtables have been organised in Vienna (May, 2012), New York (Oct, 2012), Berlin (Feb, 2013) and Geneva (August 2013, September 2014 and September 2015).

The roundtable followed on from the 2015 United Nations General Assembly, at which a number of resolutions on nuclear disarmament were adopted, including to begin negotiations in the Conference on Disarmament (CD) on a fissile materials treaty, and one establishing an Open Ended Working Group (OEWG) with a mandate to recommend measures to take forward multilateral nuclear disarmament negotiations.

The roundtable provided an opportunity to reflect on some of the key issues being raised in the CD and the OEWG, and consider the possibilities for progress on a range of measures, including recommendations for action by non-nuclear, allied and nuclear-armed States.

1. **Political and Security Challenges and Opportunities**

In the opening session Daryl Kimball, Executive Director of the Arms Control Association, outlined a range of security issues and political tensions that have not only stalled nuclear disarmament negotiations, but are contributing to a renewed nuclear arms race. He noted that "…all of the world's nine nuclear-weapon states are, to varying degrees or another, are devoting vast sums of money to modernize, upgrade, and in some cases expand the size and lethality of their nuclear arsenals and delivery systems."

However, Kimball also noted that there are some opportunities to advance nuclear disarmament measures, even if they are limited. One option, in follow-up to the humanitarian initiative, would be to 'press each of the nuclear-armed states to report, in detail, on the physical, environmental, and human impacts of their nuclear war plans, if these plans were to be carried out, and how they believe the use of hundreds of such weapons would be consistent with humanitarian law and the laws of war as some nuclear-armed states claim.' If the nuclear-armed States remain reluctant to undertake such an exercise, the UN could be tasked to do so.

Another option would be for non-nuclear States to negotiate a ban on the **use** of nuclear weapons. Even if the nuclear-armed States did not join such a treaty in the short-term, its adoption would strengthen the legal norm against the use of nuclear weapons and put pressure on nuclear weapon States to reduce the role of nuclear weapons in their security doctrines.

Kimball did not think that a 'ban treaty' (i.e. a ban on possession negotiated by the non-nuclear States) would have the same impact on the nuclear-armed states – 'the nuclear weapons states will simply ignore the process and the results.'

In order to build political traction and public attention to nuclear disarmament measures, Kimball recommended that a group of middle power states initiate a series of nuclear disarmament summits, and invite the nuclear-armed states to join. Such summits – at the level of heads of government - could emulate good practice from the successful Nuclear Security Summits. "Participants should be encouraged to bring "house gifts"—specific actions by states that would concretely diminish the threat of nuclear weapons use, freeze or reduce the number of nuclear weapons, reduce the role of nuclear weapons, bring into force key agreements such as the Comprehensive Test Ban Treaty."

Tarja Cronberg, Chair of the Middle Powers Initiative, spoke about the potential of effective diplomacy to resolve difficult nuclear-related conflicts. She outlined the Iran negotiations as an example of this and made some key observations.

Firstly, successful negotiations often take a long time, sometimes with mistakes and re-starts, and usually with multiple, reinforcing approaches. The negotiations with Iran started as far back as 2003. There were a number of phases where some progress was made, followed by set-backs, until finally the Joint Comprehensive Plan of Action was negotiated in 2013-2015 and adopted in July 2015.

Secondly, negotiations on such difficult issues often require a mix of bi-lateral, pluri-lateral and/or multilateral negotiations. With respect to the Iran deal, the bilateral (US - Iran) negotiations were crucial, as were the pluri-lateral (P5+1 - Iran) negotiations and measures.

Thirdly, the Iran deal demonstrates the positive links between resolving conflicts or at least reducing tensions and nuclear non-proliferation/disarmament measures. In the case of Iran, the adoption of the Joint Comprehensive Plan of Action led to the lifting of sanctions, restoration of trade deals and improvement in diplomatic relations between Iran and the West. It could also play a positive role in management of other conflicts in the Middle East, such as Syria.

However, a criticism Cronberg made of the Iran situation is that there was discriminatory treatment of Iran which undermines the rule of law and the Non-Proliferation Treaty. Iran, which had not developed nuclear weapons, faced rigorous sanctions and threats of military attack, and had to accept comprehensive and intrusive control and verification measures, while North Korea and Israel which have developed nuclear weapons, have not been placed under the same international spotlight. Nor has the same spotlight been placed on the nuclear arsenals of the P5 and their NPT obligation to negotiate for nuclear disarmament. Cronberg argued that such discriminatory practice is likely to erode the NPT and diminish international confidence in the law.

In the discussion there was definite interest in the idea of a ban on the use of nuclear weapons. It was noted, for example, that there has been a de facto moratorium on the use of nuclear weapons for 70 years. A ban would ensure that such practice extended forever.

There was also considerable interest in the idea of nuclear disarmament summits, with questions raised as to which countries might be best placed to initiate and lead such a process.

There were also a number of comments reinforcing the connection between conflict resolution, tension reduction and nuclear disarmament. It was noted that the Iran deal unraveled a range of political, economic and non-proliferation opportunities, and that attention should be given to expanding the example and momentum of this successful negotiation into other nuclear-related conflicts.

2. **Possible Measures to take Forward Nuclear Disarmament**

Ambassador Thani Thongphakdi, Chair of the Open Ended Working Group, opened the second session with an outline of the different legal measures, or rather approaches, proposed to achieve and maintain a nuclear-weapon-free world. The main approaches are a comprehensive nuclear weapons convention, a building blocks approach (a package of mutually reinforcing instruments), a framework agreement and a 'ban treaty'.

Ambassador Thani noted that the approaches include similar measures that are required to achieve a nuclear-weapon-free world, but differ primarily in terms of the timing and sequencing of the adoption of such measures. The nuclear weapons convention, frame work agreement and ban treaty all place a prohibition of nuclear weapons threat and use at the beginning of the process followed by elimination of nuclear stockpiles. The building blocks approach – sometimes called the progressive approach – puts prohibition after stockpile reduction and other measures.

Another difference between the approaches is in terms of participation. The ban treaty gives a lead role to non-nuclear States to negotiate the agreement even if the nuclear reliant states do not participate. The other three approaches assume the participation of, at least some of the nuclear armed and reliant states if not all of them.

John Burroughs, Executive Director of the Lawyer's Committee on Nuclear Policy, explored the differing approaches in more detail. He outlined nuances regarding the proposals, and indicated that the differences between the approaches might not be as great as is sometimes assumed. He noted, for example, that the proposal for a NWC would indeed be more like a package of agreements than a single treaty, as it would build on, and incorporate, many non-proliferation and disarmament measures that have already been achieved.

Burroughs outlined how a framework agreement might work by drawing upon examples of framework agreements in human rights and environmental fields, with particular reference to the UN Framework Convention on Climate Change.

Burroughs also made the distinction between a framework agreement that is primarily or heavily legal in nature, and one which is primarily political in nature. A political framework agreement might be the option when there is insufficient political will to adopt a binding legal framework. However, it would also be possible to adopt a mixed political-legal framework. Such a nuclear disarmament agreement, '…could for example:

- reference the disarmament obligation in NPT Article VI and general international law
- reference the incompatibility of use of nuclear weapons with IHL
- state the desirability of extending forever the practice of non-use
- set out, as in the Paris Agreement for levels of greenhouse gases, aims for achieving reductions and elimination of nuclear weapons; in the Paris Agreement, achievement of those aims is not

legally required, nor are national measures to meet limits on national contributions to greenhouse gas emissions
- set out processes for achieving these aims, as in reporting, perhaps negotiations; these could be legally required, as in Paris Agreement, or take the form of political commitments

Ambassador Robert Wood, Permanent representative of the United States to the CD, spoke about the International Partnership for Nuclear Disarmament Verification. He noted that there are three working groups: Working Group 1 is considering the dismantlement phase of the nuclear weapons lifecycle, including the types of information and criteria needed to determine whether those objectives are being met. Working Group 2 is examining existing on-site inspection regimes to assess the lessons from these for future nuclear arms control agreements. Working Group 3 is identifying solutions to technical challenges related to nuclear warhead verification.

Ambassador Wood noted that the disarmament verification work could remove one of the barriers to nuclear disarmament negotiations, i.e. a current lack of confidence in the capacity to adequately verify the elimination of nuclear weapons.

In the discussion, there were a number of comments about the elements and approaches for multilateral disarmament. One question was whether a ban treaty could be incorporated into a framework agreement or whether it was a totally separate approach.

Another question was whether a framework agreement could be similar to the building blocks approach. The response to this was that a framework agreement differs as it would include at the outset an overarching agreement on general obligations and on the range of measures that would need to be adopted. Indeed the building blocks approach would be more like a package/framework of agreements than a framework agreement.

Another question was whether the lessons being learned from the Verification Partnership, and the recommendations arising from it, would be fed into the OEWG, Conference on Disarmament and United Nations General Assembly.

There was a question on whether the Marshall Islands case to the International Court of Justice on the disarmament obligation would add to, or diminish, the credibility of the court. And there was a comment that the proposal to accept India into the Nuclear Suppliers Group would likely further aggravate Pakistan and make it less likely to move them to agree to join negotiations for a fissile material treaty.

3. **Prospects for success**

Jarmo Sareva, Director of UNIDIR, opened the final session with an introduction to what is meant by 'success'. Drawing from the Oxford Dictionary, Sareva noted that 'success' means 'the accomplishment of an aim or purpose', and that accomplishment refers to 'achieving something noteworthy.' He remarked that, where-as the existing UN machinery – especially the CD – has under-achieved over the past two decades, the OEWG provides an opportunity for some success.

Firstly, the 'teasing out possible effective measures and narrowing them down would already be something noteworthy'. The OEWG has already enabled a start to this. 'We observed at the February session that States have increasingly begun to talk about nuclear disarmament in a less general way, and

in a less theoretical manner. We noted that 'the talk has taken a more practical turn: it has gradually moved away from the rhetoric of the UNGA, CD, UNDC and NPT to the eventual, actual elimination of nuclear weapons.' In other words, the talk has turned into discussing not only what to achieve but also how to do it.'

Secondly, where-as deliberations in other forums are often a negotiation of positions from differing country groups, the deliberations at the OEWG are much more focused on the advantages and disadvantages of different approaches. In this way, the participating countries are demonstrating that they are able to not just come together in a multilateral forum, but also to work together. 'As Henry Ford is quoted saying "coming together is a beginning, keeping together is progress, working together is success".'

On the other hand, Sareva pointed to a deep and fundamental difference between the some of the non-nuclear States in the OEWG and other states including all the nuclear reliant states. Where-as some non-nuclear States 'hold that a nuclear weapons prohibition treaty could—and indeed, should—pave the way for the elimination of nuclear weapons, the nuclear umbrella states argue that elimination of nuclear weapons should precede their prohibition… As long as two fairly distinct groups of states continue to present diametrically opposed answers to the questions of what needs to be done when and by whom, drafting a synthesis of states' views seems like an impossible task.'

Ambassador Matthew Rowland, Permanent Representative of the UK to the CD, followed with an outline of the UK proposal to the CD and an update on the P5 process.

On February 19, 2016, the UK proposed that the CD adopt a work program which would 'establish a working group and associated programme of work for the duration of the 2016 session to identify, elaborate and recommend effective measures on nuclear disarmament, including legal provisions and other arrangements that contribute to and are required for the achievement and maintenance of a world without nuclear weapons; the legal provisions could be established through various approaches, including a stand-alone instrument or a framework agreement.'

The proposal has not been adopted by the CD. Ambassador Rowland attributed this to a 'filibuster proposal' submitted to the CD by the Russian Federation on March 3 calling for including in the work program the establishment of a working group 'to conduct negotiations with a view to elaborating basic elements of an international convention for the suppression of acts of chemical terrorism.'

Ambassador Rowland was no more optimistic about the progress possible in the P5 process. He noted that the 2010 NPT Final Document provided a basis for cooperation amongst the P5 up until 2015. However, this has been curtailed due to the tensions between Russia and the West, and the failure of the 2015 NPT Review Conference to renew the P5 mandate.

Ute Finckh-Krämer MdB, Vice-Chair, Bundestag Sub-committee on Disarmament and Arms Control, focused her comments on building political will. She noted that in the current times of political tension and negotiating blocks between governments, the role of parliamentarians becomes even more important. Finckh-Krämer reported on parliamentary actions in the Bundestag, OSCE Parliamentary assembly and the Inter Parliamentary Union calling for reduction of international tensions and nuclear threat postures, urging governments to reduce the role of nuclear weapons in security doctrines and supporting international treaties and negotiations.

Highlighted the important role of the OSCE in building confidence and cooperative security, and emphasized the obligation that NATO has to 'actively seek to create the conditions necessary for a world without nuclear weapons.' Until those conditions are established, NATO 'should not use this to block further initiatives in nuclear disarmament.'

In the discussion it was noted that the conflict between Russia and the West is not absolute nor irreversible. Indeed, there is still considerable cooperation between Russia and the West including in the Iran negotiations and in the elimination of Syria's chemical weapons.

On the other hand, a view was expressed that the eastward expansion of NATO and the use of force by NATO and/or other western countries in Iraq, Libya and Kosovo in apparent disregard for Article 2 (4) of the UN Charter has contributed to the current tensions with Russia and possibly to their apparent violation of international law in annexing/reclaiming Crimea.

There were also comments on conflicts and tensions in other regions – such as Asia - that relate to maintenance of nuclear doctrines, and the need to explore cooperative security and conflict resolution approaches to resolve these.

In concluding comments, Ms Cronberg noted the importance of building political will to ensure success. She mentioned specifically the proposal for nuclear disarmament summits and the importance of parliamentarians and civil society in building such will. Cronberg lamented the fact that parliamentarians and civil society have virtually no resources in order to act as effectively as they could. And she called again upon NATO to fulfil its obligations to create the conditions to achieve a nuclear-weapon-free world.

Documents:

- Framework Forum concept and program
- Participants list
- Message from Jonathan Granoff
- Presentation by Daryl Kimball
- Presentation by Ute Finckh-Krämer

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* Participating governments : Australia, Austria, Canada, Colombia, Costa Rica, Finland, Germany, Indonesia, Ireland, Japan, Jordan, Kazakhstan, Malaysia, Netherlands, Poland, South Africa, Sweden, Switzerland, the United Kingdom and the USA.