Open-ended Working Group meeting, Geneva, 22 February 2016
Comments by UNIDIR (Tim Caughley) on UNIDIR paper OEWG Brief No. 2

At the Chair’s request, UNIDIR has been pleased to update a paper prepared for the 2013 OEWG surveying the nuclear disarmament landscape. Copies of that update, OEWG Brief No. 2, are available in the back of this room and on our website unidir.org. UNIDIR is grateful to various Governments whose institutional support has made these papers possible.

I am not going to try to outline the features of OEWG Brief No. 2. Instead, and consistent with the Chair’s wish that the OEWG be as interactive as possible I will a try to identify what seem to me to be some pressure points deserving dialogue in this forum. Before doing so, I have four general comments.

1 First, obviously this isn’t the Conference on Disarmament (CD). Nor is it a meeting under the Nuclear Non-proliferation Treaty (NPT). I will, however, make brief mention of those forums, so I apologise in advance, to those states that are not members of the CD or the NPT. This is the place also to note the welcome inclusion of all states and international organisations and civil society in this OEWG.

2 The second point is a more fundamental one. In principle, nuclear disarmament resulting in the ultimate elimination of all nuclear weapons is a universally shared objective. It is enshrined in the NPT, as well as in UNGA resolutions dating back to 1946. Yet multilateral commitment to a coordinated, time-bound process is still lacking.

Progress has been hampered by deadlocks in traditional multilateral mechanisms such as the CD and the United Nations Disarmament Commission (UNDC). Despite apparent consensus among states parties to the NPT on the decisions and outcomes of its 1995, 2000 and 2010 review conferences, systematic implementation of those conclusions has not occurred, and four of the nine nuclear-armed states are not party to the NPT and thus not bound by its terms.

3 Thirdly, the reason often given for this inertia is the problematic security environment in all its regional and global guises. The default mode for multilateral nuclear disarmament efforts is the status quo. Whether nuclear arms ensure global security or jeopardise it, whether nuclear deterrence protects us, whether nuclear weapon use is unthinkable for its humanitarian consequences, whether the deterrence doctrine is infallible, are issues that can be debated ad infinitum. But what we do know, as I’ve just said, is that the ultimate elimination of all nuclear weapons is a universally shared objective. This leads me to the fourth point.

4 Fourth, partly because of the perceived lack of progress towards that objective, and partly because of growing concerns and new evidence about the humanitarian impacts of nuclear weapons (including potential accidents and risks in handling them), a perceptible trend has emerged. Increasingly states have begun to speak about nuclear disarmament in a less general way.
The talk is less rhetorical and more concerned with actual approaches to achieving eventually the elimination of nuclear weapons. For example, support for the humanitarian pledge can be seen as symptomatic of a new momentum and impulse for a growing number of states towards that goal. But the arguments for and against a step-by-step approach, or a comprehensive nuclear weapons convention, or a framework agreement, or a ban treaty although more focused now, remain somewhat confused.

The agendas of the three humanitarian conferences concentrated on reviewing evidence of humanitarian impacts rather than on seeking agreement to pursue a particular approach. Yet in describing the humanitarian hazards posed by nuclear weapons, those meetings indirectly raised the question how to make progress on nuclear disarmament.

In NPT terms, this can be expressed—as under article VI of that treaty—as the need to discuss ‘effective measures’ for nuclear disarmament. Article VI explicitly obliges all parties to ‘pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament’.

In the 45 years since the NPT entered into force, certain actions have been taken that were either intended as—or constituted—partial ‘effective measures’ under Article VI. Individual NPT nuclear-weapon states have reduced the size of their arsenals, sometimes acting in concert through bilateral agreements (such as through the negotiation of the ‘New START’ treaty between Russia and the United States). At a regional level, non-nuclear-weapon states have negotiated agreements establishing zones in which the presence of nuclear weapons is prohibited (NWFZs). And at a global multilateral level the Comprehensive Test Ban Treaty (CTBT)—the prohibition on explosive testing of nuclear weapons—was negotiated in the 1990s, although it has still not entered into force. The CTBT specifically declares the parties’ intention to ‘take further effective measures towards nuclear disarmament’.

Another indication of the increased focus on effective measures lies in the evolving analysis by the New Agenda Coalition (NAC) of the possible options put forward by the Coalition in the paper it first tabled in the 2013 OEWG. That analysis has since narrowed the alternatives to a choice between two legally distinct approaches—‘a standalone agreement, whether a comprehensive convention or a ban treaty’ on the one hand, and a framework agreement of ‘mutually-supporting instruments’ on the other.

Those possible approaches and the more process-driven ones such as the ‘step-by-step’, ‘building blocks’ or ‘full spectrum’ methods are increasingly part of the debate over effective measures. (Possible approaches are a subject of a new publication produced by UNIDIR and the International Law and Policy Institute as our latest contribution to that debate.) But, as already noted, some confusion surrounds these approaches. In particular, there has been some overlapping among them, blurring them somewhat. This is touched on in my remaining comments about possible
approaches to nuclear disarmament in the context of the guiding questions posed by the Chair [A/AC.286/WP.3].

‘Step-by-step’ approach:

Supporters of the step-by-step approach often describe it as the only way forward noting that many steps remain to be taken along the road to the eventual elimination of nuclear weapons. Supporters of this approach also point to the entry-into-force of the CTBT and the negotiation of a ban on the production of fissile material (FM(C)T) as the logical next steps. But for various reasons these steps are blocked. This gives rise to several uncertainties about proceeding step-by-step in a negotiation involving all states, international organisations and civil society, for example,

(i) whether logic also dictates that in the meantime it would be useful to identify for preliminary discussion one or more of the remaining steps, mapping them in sequence? These need not be confined only to those steps that are of a multilateral kind.

(A similar question could be asked in relation to the ‘building blocks’ and ‘full spectrum’ approaches.)

‘Framework’ approach:

The question just raised might be seen as foreshadowing—and overlapping with—the negotiation of a procedural skeleton or agenda or framework for pursuing the necessary steps towards, and including, the elimination of nuclear armaments. For instance, the United Nations Secretary-General envisaged in his 5-point proposal on nuclear disarmament a framework of ‘separate, mutually reinforcing’ legal instruments. This could comprise an umbrella agreement containing a commitment to the elimination of nuclear weapons and anticipating that an agreed set of concrete steps would be pursued, perhaps in sequence, perhaps time-bound until elimination was eventually achieved. Questions that might help address this apparent overlap of approaches are:

(ii) whether there is scope and utility for amalgamating the step-by-step approach and a framework approach (i.e., procedural skeleton or umbrella agreement), and, if so,

(iii) how feasible the inclusion of a time-bound element would be?

‘Comprehensive’ approach(es):

In the debate to date, ‘comprehensive’ has been used in connection with the ambitious ‘draft Model Convention on Nuclear Weapons’ tabled in 2007 in the United Nations General Assembly by Costa Rica and Malaysia (an updated version of the original 1997 proposal). But ‘comprehensive’ has also been used to describe the range of prohibitions that might be concluded in a treaty banning nuclear arms. Thus, we sometimes hear the words ‘comprehensive prohibition of nuclear weapons’. This is confusing. As the latest NAC paper has expounded, a comprehensive convention on nuclear weapons and a ban treaty (whether on
possession and use (as sought by ICAN) or just use (as proposed by India)) can both be described as ‘standalone’ agreements. But that is where the similarity ends: they are likely to be significantly different in scope.

The manner in which these approaches have at times become blurred in the debate is complicating the assessment of the effectiveness of these proposed measures as steps towards nuclear disarmament. Challenges for the proponents of ‘standalone’ treaties include clarifying:

(i) just how comprehensive their respective approaches are, and

(ii) the sequencing they envisage in relation to other possible steps leading to the elimination of nuclear weapons.

Fulfilling the mandate of this OEWG by teasing out possible effective measures and narrowing them down may seem a daunting task in the face of current global uncertainties. But attaining and maintaining a world without nuclear weapons, as specifically envisaged by the OEWG resolution, is not a question of whether but when. If logic and principle and multilateralism count for anything, this United Nations working group should be equal to that challenge.