Summary of recommendations

- This paper calls on the UN General Assembly to establish open-ended working groups on nuclear disarmament and prevention of an arms race in outer space.

- The open-ended working group on nuclear disarmament would have three main committees: a convention or framework agreement on nuclear disarmament; fissile materials; and negative security assurances and the prohibition of use of nuclear weapons.

- An open-ended working group would also be established on preventing an arms race in outer space.

- In addition to cutting off future production for weapons purposes, an agreement on fissile materials must prevent the use of existing materials, civilian and military, in weapons, and contribute directly to irreversible disarmament. Its negotiation must not be treated as a step to be completed before negotiations on elimination of nuclear forces are commenced. A convention or framework agreement on nuclear disarmament could have a protocol on fissile materials, or provide for its subsequent negotiation. The policy of sequentialism, which has not proved to be an efficient way to achieve nuclear disarmament, must be abandoned, and a policy of integration and parallelism adopted.

- The General Assembly could stipulate the rules of procedure for the open-ended working groups in a resolution, as it did with the arms trade treaty resolution establishing a negotiating conference, or the working groups could establish their own rules. We suggest following the General Assembly’s rule that decisions are taken by a two-thirds majority, or the rules for negotiating the cluster munitions convention, that consensus is pursued but voting is permitted if “all feasible efforts to reach general agreement have failed.”
Introduction

The Conference on Disarmament (CD), the UN-affiliated body mandated to negotiate disarmament treaties, has been deadlocked for 15 years. Since 1996, all disarmament treaties have been negotiated outside of the CD, including the bans on anti-personnel landmines and cluster munitions. So far, the nuclear and outer space files have remained within the CD’s mandate and no serious attempts to remove them have been undertaken. But the continued deadlock is taking its toll and civil society and many governments are pushing for immediate action to change this status quo. On 24 September 2010, UN Secretary-General Ban Ki-moon hosted a high-level meeting to revitalize the work of the CD. Delegations participating in this meeting made a number of suggestions for moving forward. Discussions continued at the October 2010 session of the UN General Assembly First Committee on Disarmament and International Security and the first two parts of the CD’s 2011 session.

Several governments have suggested taking negotiations of a fissile materials treaty outside of the CD; others have suggested revising the CD’s rules of procedure so that it no longer operates by consensus. Some have even suggested cutting the CD’s funding and essentially pulling the plug on the body. Many others, however, argue the problem is the political will of a few key countries—namely, the nuclear weapon states—who are not willing to engage in any negotiations that require a change to the status of their own arsenals or compromise their nuclear “capabilities”. While this seems to be the case, well-functioning multilateral disarmament machinery should be designed to work in all conditions. Complicated negotiating environments and opposing positions exist in all areas of international relations; solutions must be found for complex problems rather than simply allowing them to continue indefinitely.

Ahead of the 24 September 2010 high-level meeting, Reaching Critical Will of the Women’s International League for Peace and Freedom and the Lawyers Committee on Nuclear Policy prepared a menu of options that governments could consider for revitalizing the CD and/or beginning negotiations on nuclear disarmament-related issues. This paper focuses on one of these options: engaging in negotiations in Geneva in a process outside of the CD.

Setting up a parallel process

As stated in the Final Document of the First Special Session on Disarmament, “The General Assembly has been and should remain the main deliberative organ of the United Nations in the field of disarmament and should make every effort to facilitate the implementation of disarmament measures.” After the member states of the CD themselves, the responsibility for the work mandated to the CD lies with the General Assembly. Each year, the General Assembly calls upon the CD to commence work. In its 2010 session, it adopted eight resolutions containing specific calls for the CD to resume substantive work in 2011.¹ Once again, the CD has failed to respond to the calls of the international community; therefore, the General Assembly should resume responsibility for pursuing disarmament and establish a parallel process until the CD is capable of delivering substantive results.

This has been attempted before, in the draft resolution proposed by Brazil, Canada, Kenya, Mexico, New Zealand, and Sweden in the margins of the General Assembly in 2005. In this approach, the General Assembly would have established ad hoc committees on the CD’s four core issues—
nuclear disarmament, fissile materials, negative security assurances, and prevention of an arms race in outer space (PAROS). Our proposal recommends that the General Assembly establish two open-ended working groups, on nuclear disarmament and on PAROS.

Rules of procedure

The UN General Assembly could stipulate the rules of procedure for the open-ended working groups in a resolution, as it did with the arms trade treaty resolution establishing a negotiating conference, or the working groups could establish their own rules. Member states should seriously consider working under different rules of procedures than the CD. The Charter of the United Nations stipulates decisions by a two-thirds majority for the work of the General Assembly, a procedure which the working groups could follow as well. A variation of this could include a two-thirds majority for decisions on matters regarding procedure, while retaining the consensus rule for adoption of substantive text.

Examples of successful negotiations that have avoided the consensus rule entirely include the Ottawa and Oslo processes. At the Dublin diplomatic conference in 2008, the negotiations of the convention on cluster munitions were guided by rules stipulating that while the negotiating “Conference shall make its best endeavours to ensure that the work of the Conference is accomplished by general agreement”, voting is allowed if “all feasible efforts to reach general agreement have failed.” Reaching decisions by consensus is still predominantly used at intergovernmental meetings, even where ultimately there can be recourse to voting. In cases that allow for voting, such as the nuclear Non-Proliferation Treaty (NPT) and the Convention on Certain Conventional Weapons, political pressures not to use it are often immense. Having the option to take a decision by voting also significantly changes the dynamic of negotiations; political positions and national “red lines” cannot operate as vetoes on going forward. Of course, states would still bear in mind how decisions on substantive matters affect prospects for objecting states to eventually join the treaty.

Integrate negotiations on nuclear disarmament by creating an open-ended working group on nuclear disarmament comprised of three committees: a convention or framework agreement on nuclear disarmament, fissile materials, and negative security assurances and the prohibition of use of nuclear weapons

The notion that only a fissile material cut-off treaty (FMCT) based on the 1995 Shannon Mandate is ready to be negotiated should be reconsidered. While it is often described as the only “ripe” issue for negotiation by a subset of the CD’s membership, the vast majority of CD member states appear ready to work on any of the other core issues on the CD’s agenda. While an FMCT would be part of the architecture of a nuclear weapon free world, as generally envisaged today it seems of limited relevance to nuclear disarmament or non-proliferation. It is a quite indirect and slow way of attempting to address nuclear arms racing in South Asia. Because approaching disarmament structured through the four core issues has led to nothing but deadlock in the CD, it is time to reconsider how these items are dealt with.

A fissile materials treaty (FMT) or protocol would control the materials used to make nuclear weapons. It therefore would be at the core of a convention or framework agreement on nuclear disarmament. Negative security assurances (NSAs) relate to a central element of a convention or
framework agreement on nuclear disarmament: a prohibition on use in any circumstance of nuclear weapons. The most coherent approach would be to connect negotiations on an FMT or protocol, and negotiations on NSAs and prohibition of use, to negotiations on a convention or framework agreement on nuclear disarmament. This could be accomplished by setting up one working group on nuclear disarmament with three committees on the express understanding that negotiations in the committees are linked.

Such an approach would not preclude adopting an FMT, or NSA or prohibition of use instruments, prior to adoption of a convention or framework agreement on nuclear disarmament. But it would place FMT negotiations where they belong, in the context of nuclear disarmament. It is absolutely crucial that an FMT (or FMCT) not be treated as a step to be completed before negotiations on elimination of nuclear forces are commenced. The policy of sequentialism, which has not proved to be an efficient way to achieve nuclear disarmament, must be abandoned, and a policy of integration and parallelism adopted.

**What an FMT should look like if negotiated**

Regarding an FMT, a verified cut-off of future production is important. It would subject production facilities in states possessing nuclear weapons to monitoring, accustoming those states to the intrusive verification complete nuclear disarmament will entail. It would also halt nuclear arms racing among those states which have not yet accumulated vast stocks of fissile materials. However, a verified cut-off is by no means sufficient to meet disarmament and non-proliferation objectives. The treaty must additionally verifiably ban use in weapons of existing fissile materials in civilian use; fissile materials in weapons-dedicated stocks and from dismantled warheads; and highly-enriched uranium reserved for future use in naval reactors. And the treaty must contribute to reduction and elimination of weapons-dedicated stocks and materials now in warheads.

One method for an FMT to contribute directly to disarmament would be to require that all materials removed from warheads and weapons stocks pursuant to disarmament agreements, bilateral or multilateral, would come under control mechanisms established by the FMT. This would integrate the FMT with a convention or framework agreement on nuclear disarmament. A second method would be for the FMT itself to require reduction and elimination of such materials. This approach would make the FMT one of the main mechanisms for disarmament, along with, e.g., obligations of dismantlement of warheads and destruction or conversion of delivery systems. It would put the FMT at the centre of a convention or framework agreement for the prohibition and elimination of nuclear weapons. In both methods, an FMT could be a simultaneously adopted protocol to a convention or framework agreement on nuclear disarmament. It would also be possible to negotiate a comprehensive convention that would, *inter alia*, provide for control and disposition of fissile materials, and forego creating a separate FMT. Or a fissile materials protocol could be negotiated subsequent to a framework agreement.

Related tasks are establishing a verifiable ban on the production and use of both highly enriched uranium and plutonium for any purpose since these are weapon-useable materials, and requiring that all nuclear fuel cycle facilities be under international or multinational ownership and management. Such obligations could be set forth in an FMT/protocol or in a convention or framework agreement on nuclear disarmament.
The essential point is that a process parallel to the CD must be structured so that an agreement on fissile materials, in its design, negotiation, and implementation, is embedded in an explicit disarmament context, and contributes directly to complete, verifiable, irreversible elimination of nuclear weapons. It is quite doubtful that this would be the case if an FMCT is negotiated as a stand-alone item, disconnected from other topics and perhaps outside the Geneva milieu, simply in order to circumvent Pakistan’s refusal to participate in CD negotiations. Such an approach also seems unlikely to lead to Pakistan and India, and perhaps China as well, accepting a ban on fissile materials production for weapons in the near term.

Set up a separate open-ended working group for the prevention of an arms race in outer space (PAROS)

This issue needs to be given its own separate space and could certainly involve experts and negotiators other than those who deal with the nuclear weapons portfolio. While the committee could remain in Geneva in order to benefit from the disarmament expertise already present, it would be beneficial to bring in representatives from UN Committee on the Peaceful Uses of Outer Space and other space-specialist bodies. The 2005 proposal suggested that an ad hoc committee on this topic should “identify and examine, without limitation, any specific topics or proposals, which could include confidence-building or transparency measures, general principles, treaty commitments and the elaboration of a regime capable of preventing an arms race in outer space, including the possibility of negotiation relevant international legal instruments.” In our version of such a proposal, an open-ended working group on PAROS must be able to work together with the newly established Group of Governmental Experts on transparency and confidence-building measures in outer space in order to further an international legal framework for dealing with space security.

Key players

It is often stated that any initiative concerning nuclear disarmament would be useless without having the “key players” at the table. A General Assembly decision may very well not gain consensus support, in particular the support of all states with nuclear weapons. Waiting for all nuclear-armed states to be on board with each initiative from the beginning is a recipe for paralysis and continued deadlock. History has shown that despite hold-outs, treaties continue to be negotiated and implemented. The recalcitrance of France and China, among others, regarding the NPT did not stop other states from negotiating the treaty and embedding its norms in international law. Later France, China, and numerous other states joined the NPT.

Civil society

A clear majority of governments have spoken in favour of increasing the role of non-government organizations and other civil society actors in disarmament fora. Civil society has been historically important in helping governments achieve outcomes that enhance international security. Representatives of civil society have expertise and insights that will benefit negotiations and discussions. The CD has been particularly restrictive of NGO participation due to lack of reform and modernization; the open-ended working groups established by the General Assembly should take care to permit and facilitate civil society participation.
In the meantime...

Until an FMT is negotiated, all nuclear weapon possessors should act as if it is already in force, as they do with the Comprehensive Test Ban Treaty. The five NPT-acknowledged nuclear weapon states should maintain, and publicly declare, their moratorium on the production of fissile materials for weapons purposes and the other four nuclear weapon possessors should join this moratorium. All states possessing nuclear weapons should also engage in collaborative transparency and verification measures regarding their fissile material production facilities and stockpiles in cooperation with the International Atomic Energy Agency.

To build trust and signal good intentions in order to achieve the commencement of negotiations on an FMT and a convention or framework agreement on nuclear disarmament, states possessing nuclear weapons should immediately cease and rescind their plans for the modernization, replacement, refurbishment, and upgrading of their nuclear weapon arsenals, complexes, facilities, and delivery systems. Similarly, countries truly interested in nuclear disarmament should apply pressure on nuclear weapon possessors to end their nuclear weapon modernization programmes, redirect nuclear weapon expenditure to meeting human needs, and negotiate concrete and legally-binding commitments to nuclear disarmament.

Notes

2 Rules of procedure at the Dublin diplomatic conference on cluster munitions