

Fissile Material Negotiations – Ways ahead: Comments by Tim Caughley, Resident Senior Fellow, UNIDIR, on 7 August 2009

On procedure, the way ahead is comparatively clear. Obviously, there is CD/1864 with this year's programme of work, and in addition there will hopefully soon be CD/1870 Rev something containing practical measures to implement the decision on the work programme.

At the start of 2010, as everyone knows, the CD will need to agree its agenda and its programme of work for 2010. It has become the practice of the Conference to simply roll over its agenda from year to year.

By the same token, as Brazil pointed out earlier this week, there is no reason why the CD should not simply roll over CD/1864, substituting 2010 for 2009 in the heading.

This same sentiment should also apply to the practical matters for implementing the work programme.

Given the international significance of the substantive issues – and heightened expectations of the CD following the breakthrough on CD/1864 – the early adoption of the agenda, the work programme and accompanying decisions on modalities should be able to be taken for granted.

By that time, 8 months will have elapsed since the breakthrough. Any other outcome is unthinkable. Further delays on relevant procedural matters at that point 8 months on would surely, raise questions of something of which diplomats quite rightly speak about very sparingly indeed, good faith. Personally, I do not anticipate such a problem: no country has an interest in standing in the way of pursuing such a comprehensive programme for nuclear disarmament and non-proliferation. And every country knows that its interests are ultimately protected by the consensus rule.

As is clear from Rebecca's insights into the CTBT negotiations, the issues of substance which will be engaged by a fissile material negotiation are at one and the same time complex and of inevitable sensitivity to matters of national security. The way ahead on matters of substance will be tortuous, although a great deal of useful spade-work has been done both inside the CD and outside, e.g., by the IPFM, members of which will, as Theresa mentioned, be giving a seminar here in a fortnight's time. And in terms of challenges, the CTBT was also a highly complex negotiation engaging many of the security concerns that will be at stake in the fissile material exercise.

Those CD members that are party to the NPT envisaged in the 2000 Rev Con - in step 3 of the programme of steps to achieve nuclear disarmament - that the negotiation of a treaty banning the production of fissile material for nuclear weapons was capable of completion within 5 years. (The NPT parties first called for immediate commencement and early conclusion of a fissile material treaty at their Review Conference in 1995, over 19 years ago.)

The assumptions on which the objective in step 3 was based presumably did not include the possibility that the CD would have a work programme quite as comprehensive and as

demanding, indeed punishing, as CD/1864. How long it will take in practice to complete the fissile material negotiations alongside dealing with the other three main topics is difficult to gauge, but at least in determining the balance of effort to be devoted by the four working groups a hierarchy of sorts has been prescribed. That hierarchy will be an intrinsic element in the way forward and in determining, long term, the requisite balance of effort.

More specifically, the way ahead on substance will no doubt entail most if not all of the phases of an international treaty negotiation.

There will be a general phase where delegations set out their objectives.

More detailed phases will follow in which focus is placed sequentially on key sub-issues, scope of the treaty – whether it will be limited to banning future production of fissile material, a verification mechanism, definitions, legal provisions (entry into force) etc. Questions as to the need for and advantages of sub-groups and expert groups will arise.

(It is worth noting here that since 1998, the last occasion on which the CD set up a working group on fissile material, the question of scope has been complicated by concerns about terrorism, giving rise to the question in the minds of some of the wisdom of extending a prohibition merely to production of highly enriched uranium for *explosive* purposes.)

Already, some ideas have been expressed in the CD on the sequencing of treatment of issues, albeit on a personal level. Ambassador Bernhard Brasach made several interesting observations in his farewell statement on 2July:

“...there is a clear triangular relationship between definitions, scope and the possibility of effective verification. Accordingly, they have to be treated in parallel. They have to be fine-tuned neatly to each other in parallel throughout the negotiations.”

Ambassador Brasach was concerned to avoid focusing initially on definitions without having first explored the issues of scope and verification. Using the word “scope” in the broadest sense, clearly the way forward will be determined by gauging the parameters of the negotiations in the initial general phase. Definitions in treaties are normally a means to an end, i.e., they are included in order to assist with interpreting matters of substance. They are of course substantive in their own right but they are generally not ends in themselves.

In relation to the scope of the production ban and to verification, Ambassador Brasach saw merit in beginning the discussion on scope *“in the context of the requirements for an effective verification system”*. In his view, if an *“effective verification of the production ban required a specific tangible baseline for the cut-off, it might be necessary to provide data on the size of the existing stocks at least in an aggregate manner”*.

It seems clear that with a fissile material treaty, the actual extent of the production ban agreed by the negotiators will determine the kind of verification measures that will be required to provide the level of effectiveness of the regime envisaged by the mandate.

I mention Ambassador Brasach's viewpoint without trying to prejudge the issue of scope, but simply to note inevitable inter-linkages. The CTBT negotiators also grappled with definitions of nuclear explosions (the zero yield issue), scope in terms of setting a threshold for the yield of tests and deciding whether to cover Peaceful Nuclear Explosions, and the relationship of the issue of scope with verification and the extent of intrusiveness thereof.

In the case of the CTBT, the monitoring of the obligation not to carry out any nuclear weapon test explosion or any other nuclear explosion is clearly more effectively achieved than would have been the monitoring of peaceful nuclear explosions or nuclear weapon test explosions permitted subject to not exceeding a specified yield.

My final comment on the ways ahead is this: the issues are complex politically and technically. A new ethos of sustained work will be entailed. It will be necessary for all participants from time to time to stand back from the daily intensity and recall the overall objective of the fissile material mandate under Item 1 of the CD's agenda. The fissile material working group will not be the only vehicle serving the cause of nuclear disarmament as well as that of non-proliferation but it will certainly carry the same hopes as the international community invested in the CTBT. UNIDIR naturally stands ready to assist delegations in preparing for and carrying out this negotiation and this ambitious programme of work.