

**“The FMCT preparatory group process  
and possible characteristics of a future FMCT”**  
**Comments by Tim Caughley, UNIDIR, at Canada’s side-event during the NPT  
Preparatory Committee Meeting in Vienna on 3 May 2017**

Thank you for inviting UNIDIR to contribute to this panel. It’s a pleasure to be associated with this initiative of Canada and to have an opportunity to draw attention to some important issues facing the High-level FMCT expert preparatory group. My framing today is to step back and make some comparisons between France’s draft treaty and that of the International Panel on Fissile Materials (IPFM).

### **Introduction**

As a Geneva-based observer for 15 years of efforts to get negotiations on a fissile material production ban (or ‘fissban’) underway, I can’t help begin by making reference to the Conference on Disarmament. Early hopes that the CD would be the roof under which a fissban would be developed petered out when it became clear that progress on that front depended on progress on another core issue in that body, multilateral nuclear disarmament. Whether a fissban could serve a nuclear disarmament purpose as well as a non-proliferation one was the essence of disagreement over the potential scope of a fissban, i.e., whether it would encompass *existing* rather than just *future* production of fissile material for nuclear weapons or other nuclear explosive devices, an outcome strongly opposed by some possessors of nuclear weapons.

Today, separate actions on these two core CD issues are taking place—both of them outside the CD—in the UN expert preparatory group on fissile material and in the UN Conference to prohibit nuclear weapons. How far these orphans-for-the-time-being of the CD will produce effective measures in terms of the NPT or lay the grounds for doing so is too early to say. What is clear is that prohibitions on the production of fissile material for nuclear weapons and on those weapons themselves are fundamental to the NPT’s objective (quoting from the Preamble) to “*facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all [their] existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery ...*”, all in the interest of easing international tension and strengthening trust amongst states.

### **Characteristics of a future FMCT: Non-discrimination**

Given that we are here today on the margins of the NPT review process, a treaty that is sometimes described as discriminatory, it should be noted that the CD’s initial negotiating remit in 1998 under the Shannon mandate, spelled out that an FM(C)T that would be “non-discriminatory”—meaning that restrictions and verification should apply equally to all nuclear weapon and non-nuclear weapon states. Both the French and IPFM draft treaties also refer to the need for a non-discriminatory outcome.

On this objective I should refer you to a recent paper by my UNIDIR colleague, Pavel Podvig, on a non-discriminatory treaty. Formal equality in the treaty's provisions and obligations does not of course automatically translate into the actual equality of states party to the treaty. Like the CTBT, the fissban will have different implications for different states. While the Comprehensive Nuclear Test-Ban Treaty imposes equal obligations on all its parties not to test, the states that have tested nuclear weapons in the past retain the knowledge they accumulated through their test programmes. Under a fissile material treaty, materials that were produced before its entry into force could still be used in nuclear weapons, but whether a possessing state did so would depend on factors relating at the time to the strength of norms against such fissile material use and indeed against nuclear weapons per se. Inherent inequality would be addressed by explicitly taking into account the fact that the FM(C)T would not be a stand-alone instrument but rather a part of a broader nuclear arms control, non-proliferation, and disarmament framework. This could help create a fissile material control regime that is accepted as non-discriminatory and therefore is more stable in the long run.

### **Characteristics of a future FMCT: Scope**

The disagreement on scope of a fissban to which I referred earlier plays out, as we have heard this afternoon, in the respective approaches of the proposal of France and the International Panel on Fissile Materials, both tabled in the CD, the latter by Canada, the Netherlands and Japan. The IPFM draft treaty envisaged the possibility of dealing also with pre-existing non-weapon stocks of fissile materials, including civilian stocks, stocks declared excess to military purposes, and stocks of highly enriched uranium declared for use as fuel for naval-propulsion and other military reactors. Those stocks would be the subject of specific undertakings of non-use for weapons or other explosive devices.

Certainly, debates in the CD have shown that many non-nuclear-weapon states, joined by Pakistan, argue that a fissban should go beyond banning the production of new fissile material for weapons. Some states fear that the existing stocks of fissile materials in some nuclear-weapon states are so large that a cut-off would have no practical effect in restricting the number of nuclear weapons that they could produce. They therefore want a cut-off treaty that includes deep cuts in existing weapons stockpiles, at least in those of Russia and the United States, and would prevent the conversion to nuclear weapons of pre-existing stockpiles of civilian and other fissile material declared excess to weapon needs.

Now with reference to France's proposal, I want first to commend France for its efforts to build debate in the CD by tabling a fully-fledged draft prohibition treaty banning the production of fissile material for nuclear weapons. Given the level of importance attached by many states in the CD and NPT to the negotiation of such a ban it seems strange that so few initiatives of that kind have been taken. France's proposal helped fill that gap and did, indeed, prompt some debate notably on the position it takes on the issue of scope. The basic obligation envisaged in the French draft is that each party, from the date of entry into force for it, would cease all

production of fissile material for nuclear weapons, declare its production facilities and agree to verification of treaty compliance.

In any event, if a mere “cut-off” of future production proves to be the height of ambition of fissile negotiations that is unlikely to be the full picture. Almost certainly, it would need to involve some form of compromise—perhaps in a separate instrument—that achieves an outcome for nuclear disarmament, and not just for non-proliferation: in other words, a result that bans the future production of fissile material from the point at which the treaty enters into force, but which also addresses *existing* stocks in some way.

Clearly, the question of whether the FM(C)T should address the fissile materials that were produced before entry into force is one of the most divisive issues in the discussions on the future treaty. It is nevertheless possible to outline an agreed approach that the treaty could adopt in dealing with existing stocks of fissile materials. These options could range widely from an outcome based only on trust, to a legally binding duty contained within the treaty obliging nuclear-weapon-possessing states to declare their existing stocks and to have these declarations subject to verification. Compromise may lie in an outcome under which as already mentioned it would be agreed that existing stocks would not directly be dealt with in the treaty except as part of a broader framework. Such stocks could be covered by a separate protocol - as proposed by Algeria in 1998 - or be subject to a phased, multi-faceted approach entailing binding unilateral or plurilateral declarations or other binding commitments by the nuclear weapons-possessing states - as suggested by Brazil in 2010.

### **Characteristics of a future FMCT: Verification**

Turning to the necessary verification mechanisms for ensuring compliance with a fissile material treaty, one difference of note between the French and the IPFM proposals is that while both envisage the setting up of a new organisation, the IPFM envisage a greater role in verification activities for the IAEA than does France’s draft. The latter recognises, however, the need to avoid duplication of the IAEA’s NPT-oriented verification role. The IPFM’s draft treaty requires states to separate military materials from their civilian nuclear sectors before the treaty comes into force for them. That draft also asks states to declare and submit to IAEA monitoring fissile materials from weapons that are excess to their military requirements, as well as future excess materials resulting from unilateral, bilateral, or multilateral nuclear disarmament measures.

Even if the treaty imposes no obligations on its parties regarding existing stocks, nothing in the treaty would prevent a state from submitting to verification any amount of its fissile material produced before entry into force of the treaty. As envisaged by my UNIDIR colleague, Pavel Podvig, that material could be treated as new production and the verification arrangements would ensure that it is not used for banned purposes. If the material submitted to verification was of military origin, the state may want to protect sensitive information associated with it (such as

isotopic content). This can be dealt with by mixing it with non-military material to mask the sensitive information. If the material had been submitted to verification on a voluntary basis, there would be no restriction on such manipulations.

[Omitted for considerations of time] The experience of the United States–Russian bilateral process demonstrates the possibility for more complex arrangements to allow elimination of a specified amount of material and confirm the weapon-origin of the material. Under the Plutonium Management and Disposition Agreement, the United States and the Russian Federation agreed to eliminate 34 tons of weapon-grade plutonium. The quantity of plutonium will be verified during the disposition process. Also, under the “Trilateral Initiative”, the United States, the Russian Federation and the IAEA demonstrated the possibility of placing sensitive weapon-origin fissile material under IAEA safeguards. The results of this work strongly suggest that if necessary, the FM(C)T obligations could be extended to a wide range of categories of fissile materials produced before its entry into force.

Whether or not the treaty includes any provisions related to pre-existing stocks, it will probably need to establish a legal, technical and organizational structure that would be capable of accepting existing fissile materials. In other words, the verification system that the treaty will establish to deal with new production should be capable of accepting past production as well. It will need to ensure that once fissile material is submitted to verification, it can no longer be used for weapons.

## **Conclusion**

Sometimes the complexity and enormity of security issues surrounding the eventual elimination of nuclear weapons seem daunting. We don't lack for a cornerstone as our base—the NPT, even if we're still struggling to construct or put in place the necessary building blocks on that base. However we characterise it, the process ahead has to be incremental, and forums such as the High-level FMCT expert preparatory group have a role to play in shedding light on the issues and options for addressing and resolving them. Transparency about their work is all the more important when their membership is limited, and I commend Canada for all its efforts in this regard.

UNIDIR  
3 May 2017