The Treatment of the Issue of Nuclear Disarmament in Relevant Forums Established by the United Nations

Prepared by UNIDIR

1. Background

The Open-ended Working Group (OEWG) is the result of a resolution tabled in the First Committee of the sixty-seventh United Nations General Assembly in October 2012 by Austria, Mexico, and Norway as lead sponsors. That initiative, entitled “Taking forward multilateral disarmament negotiations” (A/C.1/67/L.46), proposed the setting up of a working group that would be open to participation by all United Nations Members States.

The tasks of the OEWG are “to develop proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons” and to “submit a report on its work, reflecting discussions held and proposals made” to the sixty-eighth General Assembly. In a vote in the First Committee, the resolution passed by 134 in favour to 4 against, with 34 abstentions. These figures changed slightly in the General Assembly itself (A/RES/67/56) where 147 votes were cast in support with 4 against—France, the Russian Federation, the United Kingdom, and the United States. There were 31 abstentions, including China, India, Israel, and Pakistan.

As agreed in the resolution, the OEWG will be convened in Geneva in 2013 for up to 15 working days. At its organizational meeting on 14 March, the OEWG agreed that Ambassador Manuel B. Dengo, Costa Rica, should chair the group. At his request, this paper was prepared by UNIDIR. It contains background information about the treatment of the issue of nuclear disarmament in relevant forums established by the United Nations.

2. Nuclear disarmament in the United Nations General Assembly

2.1. First Special Session on Disarmament (SSOD I)

Nuclear disarmament was the subject of the first resolution adopted by the United Nations General Assembly in 1946. In 1978, the first special session of the General Assembly on disarmament (SSOD I) made clear in its consensus resolution that the accumulation of weapons, particularly nuclear weapons, constituted much more a threat than a protection for mankind. While “general and complete disarmament under effective international control” was identified
as the “ultimate objective”, nuclear disarmament and the prevention of nuclear war was described as “the highest priority”.

2.1.1. Outcome of SSOD I: nuclear disarmament and the Conference on Disarmament

At its initial session in 1979, the Committee on Disarmament (precursor of the CD), which was established by SSOD I, agreed a list of issues (A/S-10/4) for its future work on the cessation of the arms race and disarmament. At the top of this list of 10 subjects, often referred to as the “Decalogue”, was nuclear weapons in all its aspects.

SSOD I required the CD (as it is now known) to report annually (or more frequently as appropriate) to the General Assembly. SSOD I directed the CD to adopt its own agenda, which provides the basic structure for the annual reports to the General Assembly, and to operate by consensus. The agenda for 1979 (CD/12) contained six items, three of which related to nuclear disarmament:

- a nuclear test ban;
- cessation of the nuclear arms race and nuclear disarmament; and
- effective international arrangements to assure non-nuclear-weapon states against the use or threat of use of nuclear weapons.

The first proposal on the issue of “cessation of the nuclear arms race and nuclear disarmament” was submitted to the CD by the Group of Eastern European States on 1 February 1979 (CD/4). It envisaged negotiations on the cessation of the production of all types of nuclear weapons and the gradual reduction of their stockpiles until their complete destruction. That document was followed by a number of working papers (including CD/37/Rev.1 of 12 July 1979) submitted by the Group of 21 (members of the Non-Aligned Movement) proposing that the CD should begin informal consultations on the elements for negotiations on nuclear disarmament and subsequently establish a working group for negotiations of agreements and concrete measures on nuclear disarmament. No consensus emerged on any of these early proposals or on other proposed mandates for nuclear disarmament tabled in the 1980s.

As of 1994, under the item “cessation of nuclear arms race and nuclear disarmament”, the CD began closer consideration of the prohibition of the production of fissile material for nuclear weapons or other nuclear explosive devices. Initially, proposals to list fissile material as a separate agenda item from nuclear disarmament did not achieve consensus but, in order to ensure that fissile material would continue to be addressed, the CD agreed on 25 January 1994 that the President would make a statement (CD/1239) following the adoption of the agenda that this issue could be dealt with under the nuclear disarmament item.

From the beginning of the 1995 session the atmosphere in the CD was influenced by uncertainties surrounding preparations for the Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (17 April–12 May) and its outcome. It was expected by many non-nuclear weapon states that reciprocation for their agreement to the indefinite extension of the NPT would generate momentum for dealing with nuclear disarmament in the CD.
In 1996 as the negotiations in the CD of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) entered their final stages, the Group of 21 intensified its efforts for the immediate establishment of an Ad Hoc Committee to negotiate on a phased programme of nuclear disarmament and for the eventual elimination of nuclear weapons within a time-bound framework (CD/1388).

Although this proposal did not command consensus, a number of members of the Group of 21 submitted a three-phase “programme of action for the elimination of nuclear weapons”, (CD/1419) as a basis for work of an Ad Hoc Committee. The first phase (1996–2000) envisaged measures aimed at reducing the nuclear threat and measures of nuclear disarmament, the second phase (2000–2010) included measures to reduce nuclear arsenals and to promote confidence between states, and the third phase (2010–2020) was planned for “Consolidation of a Nuclear Weapon Free World”.

In the aftermath of the CTBT negotiations a range of other proposals emerged in the CD, among them one by Japan to appoint a Special Coordinator on nuclear disarmament charged with identifying issues in the field of nuclear disarmament that could be negotiated in the CD (CD/1445).

South Africa submitted a draft decision and mandate for the establishment of an Ad Hoc Committee on nuclear disarmament “to deliberate upon practical steps for systematic and progressive efforts to eliminate nuclear weapons as well as to identify if and when one or more such steps should be the subject of negotiations in the Conference” (CD/1483).

And Algeria submitted a dual proposal on nuclear disarmament and fissile material (CD/1545).

The first President of the 1998 session, mindful of the growing interest of members in addressing nuclear disarmament, conducted a series of consultations and issued a statement (CD/1500) in which he acknowledged the “extremely high priority” of the agenda item “Cessation of the nuclear arms race and nuclear disarmament”. Later that year, the CD established subsidiary bodies on fissile material and non-state actors but not on nuclear disarmament per se, prompting the Group of 21 to state that a “satisfactory solution to the issue of nuclear disarmament will have a direct bearing on the work of the CD in the future” (CD/1549).

Thereafter mandates for subsidiary bodies were fused into a single document—the so-called “comprehensive and balanced programme of work”—under which no progress has been made on any of the core issues, including nuclear disarmament. None of the work programmes proposed during the current deadlock has entailed a negotiating mandate for nuclear disarmament, including CD/1864 (29 May 2009), which was adopted by consensus in May 2009 but never implemented. However, CD/1933/Rev.1 (March 2012) sought to strengthen the relevant mandate through the term “deal with nuclear disarmament” in contrast to CD/1864’s notion of an exchange of views on this issue.

The latest attempt to initiate substantive work on nuclear disarmament (CD/1948, 11 February 2013) included a mandate under which a working group of the CD would “consider proposals of multilateral character to take forward nuclear disarmament negotiations with the ultimate goal of the elimination of nuclear weapons by progressive and systematic efforts, and, as a first step thereof, to begin substantive work towards a
treaty banning the production of fissile material for nuclear weapons”. This was a novel attempt to address the political stand-off at the centre of the CD’s paralysis, namely how to accommodate those members on the one hand who attach high priority to a fissile material ban and those on the other hand who remain determined to push for a multilateral process on nuclear disarmament. The proposal did not, however, secure the necessary consensus.

The CD’s preoccupation with trying to agree a basis for detailed work on nuclear disarmament and other core issues has meant that only cursory attention has been directed to the substance of the issue. The Conference has however held some debates on nuclear disarmament in recent years. These are reflected in the procès verbal of the CD.

The debates are also summarized briefly in the following documents: CD/1827, CD/1846, CD/1877, CD/1899, and CD/1918.

2.1.2. Outcome of SSOD I: nuclear disarmament and the UNDC

SSOD I ordained that the United Nations Disarmament Commission (UNDC), created in 1952, should be a deliberative body whose function would be to consider and make recommendations on various problems in the field of disarmament and to follow up the relevant decisions and recommendations of the special session. It should also consider the elements of a comprehensive programme for disarmament to be submitted as recommendations to the General Assembly and, through it, to the negotiating body, the CD. As a subsidiary organ of the General Assembly, the UNDC functions under the rules of procedure relating to the committees while making every effort to ensure that, in so far as possible, decisions on substantive issues are adopted by consensus.

In 1989, the UNDC decided that its substantive agenda should be limited to a maximum of four items. From 1993, it has, in practice, dealt with two or three items, each of which has usually been considered for three consecutive years. In 1998, by its decision 52/492, the General Assembly decided that the Commission’s agenda, as of 2000, would normally comprise two substantive items per year from the whole range of disarmament issues, including one on nuclear disarmament.

Since 1999 UNDC has been unable to agree on any recommendations to the General Assembly on any issue. At the most recent (2013) session, the second in a cycle of three years, the Commission achieved no more than an agreement to forward to the third and final year of the cycle a conference room paper containing comments and proposals by delegations and working papers by the three Chairs as a basis for further work next year. While it was clear that the papers remained the responsibility of the working group Chairs and in no way prejudiced or prejudged the positions of delegations, in the view of this year’s Chair they put the UNDC on course for a positive outcome in 2014.

For reference purposes, papers on nuclear disarmament that were tabled in UNDC in 2013 include the following:

- Preventing the use of nuclear weapons: Working paper submitted by the United States of America (A/CN.10/2013/WG.1/WP.1*)
Recommendation for achieving the objective of nuclear disarmament and non-proliferation of nuclear weapons: Working paper submitted by the Chair (A/CN.10/2013/WG.I/WP.2)

General guiding elements for achieving nuclear disarmament and non-proliferation: Working paper submitted by the Chair (A/CN.10/2013/WG.I/WP.3)

Recommendations for achieving the objective of nuclear disarmament and non-proliferation of nuclear weapons and practical confidence-building measures in the field of conventional weapons: Working paper submitted by Egypt (A/CN.10/2013/WP.1)

2.2. Resolutions on nuclear disarmament in the First Committee

It is not feasible to trace in depth here the treatment of nuclear disarmament in the First Committee of the General Assembly—“the Disarmament and International Security Committee”, the United Nations body whose remit covers all disarmament and related international security questions.

A wide range of resolutions on nuclear disarmament are tabled in the First Committee each year, many of which are voted upon. Almost one third of the 59 resolutions in the sixty-seventh session of the General Assembly dealt with aspects of nuclear disarmament.

The most complete proposal on nuclear disarmament yet to be tabled in the United Nations is a “Model Nuclear Weapons Convention”. The initial version of that draft instrument was tabled in the General Assembly by Costa Rica and Malaysia as a discussion document in 1997 (A/C.1/52/7). Costa Rica and Malaysia submitted an updated draft (A/62/650) on 18 January 2008 that was circulated to Member States by the United Nations Secretary-General. The proposal has also been tabled in the NPT (see NPT/CONF.2010/PC.I/WP.17). It envisages framing obligations not only to prohibit the development, testing, production, stockpiling, transfer, use, and threat of use of nuclear weapons but also to ensure their elimination, all contained in the one instrument. States possessing nuclear weapons would commit to destroying their nuclear arsenals in a phased manner. These phases would unfold as follows: taking nuclear weapons off alert, removing weapons from deployment, removing nuclear warheads from their delivery vehicles, disabling the warheads, removing the triggers (or pits), and placing the fissile material under international control. Under the model convention, delivery vehicles would also have to be destroyed or converted to a non-nuclear capability. In addition, the convention would prohibit the production of weapons-usable fissile material.

The draft model convention has yet to be the subject of negotiations, although references have been made to it in the General Assembly, CD, UNDC, NPT (including in the 2010 Action Plan), and in the United Nations Secretary-General’s five point plan. It is sometimes described as a “comprehensive” approach to nuclear disarmament in contrast to a “step-by step” approach—represented, for example, by the NPT Action Plan and the “holistic” approach of the United Nations Secretary-General’s five point proposal which avoids any sequencing of steps (see section 4).
2.3. International Court of Justice

As the principal judicial organ of the United Nations, the role of the International Court of Justice (ICJ) is to settle, in accordance with international law, legal disputes submitted to it by states and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies. In this latter regard, on 15 December 1994 the General Assembly decided to request the ICJ “urgently to render its advisory opinion on the following question: ‘Is the threat or use of nuclear weapons in any circumstance permitted under international law?’” (A/RES/49/75K). On 8 July 1996 the ICJ replied to the question put by the General Assembly, as follows:

A. Unanimously,
There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons;

B. By eleven votes to three,
There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such;

C. Unanimously,
A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful;

D. Unanimously,
A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons;

E. By seven votes to seven, by the President’s casting vote,
It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake;

F. Unanimously,
There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.

An advisory opinion of the ICJ derives its status and authority from the fact that it is the official pronouncement of the principal judicial organ of the United Nations, but as the word “advisory” implies, such opinions, although authoritative, are non-binding on states.
2.4 General Debate of the General Assembly

The United Nations General Assembly opens its annual session with a general debate attended by high-level representatives of Member States. A valuable source of references to nuclear disarmament made in the most recent (sixty-seventh) general debate from 25 September to 1 October 2012 can be found on the website of Reaching Critical Will.


The Security Council’s preoccupation in the last decade has been with matters of nuclear non-proliferation. Its main measures affecting nuclear disarmament in this period are:

3.1. The 1540 Committee

In 2004, the Security Council unanimously adopted resolution 1540, under Chapter VII of the Charter of the United Nations, obliging states to refrain from supporting non-state actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their delivery systems.

3.2. Summit on Nuclear Non-Proliferation and Disarmament

On 24 September 2009 the Security Council affirmed its commitment to the goal of a world free of nuclear weapons and established a broad framework for reducing global nuclear dangers, in an historic summit-level meeting presided over by the President of the United States. By adopting resolution 1887, Security Council members stressed that the Security Council had a responsibility to address nuclear threats and to consider situations of non-compliance with nuclear treaties. This meeting was only the fifth in the Security Council’s history to be held at the level of heads of state.

4. United Nations Secretary-General

Ban Ki-moon said in October 2008 that one of his priorities as Secretary-General was to promote global goods and remedies to challenges that do not respect borders. A world free of nuclear weapons would, in his view, be a global public good of the highest order. He put forward a five point proposal of which the following is a summary:

1. He urged all NPT parties, in particular the nuclear-weapon states, to fulfil their obligation under the treaty to undertake negotiations on effective measures leading to nuclear disarmament. They could pursue this goal by agreement on a framework of separate, mutually reinforcing instruments. Or they could consider negotiating a nuclear-weapons convention, backed by a strong system of verification, as has long been proposed at the United Nations. Upon the request of Costa Rica and Malaysia, the Secretary-General circulated to all Member States a draft of such a convention, which, he said, offered a good point of departure.

2. The Security Council’s permanent members should, in his view, commence discussions, perhaps within its Military Staff Committee, on security issues in the nuclear disarmament process. They could unambiguously assure non-nuclear-weapon states that they will not be the subject to the use or threat of use of nuclear weapons. The Security Council could also convene a summit on nuclear disarmament. Non-
NPT states should freeze their own nuclear-weapon capabilities and make their own disarmament commitments.

3. In respect of the “rule of law”, new efforts were needed to bring the CTBT into force, and for the CD to begin negotiations on a fissile material treaty immediately, without preconditions. He supported the entry into force of the Central Asian and African nuclear-weapon-free-zone treaties and encouraged the nuclear-weapon states to ratify all the protocols to the nuclear-weapon-free-zone treaties. He strongly supported efforts to establish such a zone in the Middle East. And he urged all NPT parties to conclude their safeguards agreements with the International Atomic Energy Agency, and to voluntarily adopt the strengthened safeguards under the Additional Protocol.

4. In the interests of accountability and transparency he invited the nuclear-weapon states to send material on their disarmament efforts to the United Nations Secretariat, and encouraged its wider dissemination. The nuclear powers could, in his view, also expand the amount of information they publish about the size of their arsenals, stocks of fissile material, and specific disarmament achievements. The lack of an authoritative estimate of the total number of nuclear weapons testified to the need for greater transparency.

5. Complementary measures were needed including the elimination of other types of WMD, new efforts against WMD terrorism, limits on the production and trade in conventional arms, and new weapons bans, including of missiles and space weapons.

5. Treaties

5.1. Nuclear Non-Proliferation Treaty

Nuclear disarmament is one of the three pillars of the NPT, the others being non-proliferation and peaceful uses of nuclear energy.

The NPT is a landmark international treaty whose objective is to prevent the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament and general and complete disarmament. The Treaty represents the only binding commitment in a multilateral treaty to the goal of disarmament by the nuclear-weapon States. Opened for signature in 1968, the Treaty entered into force in 1970. On 11 May 1995, the Treaty was extended indefinitely. A total of 190 parties have joined the Treaty, including the five nuclear-weapon States. More countries have ratified the NPT than any other arms limitation and disarmament agreement, a testament to the Treaty’s significance.

At their most recent five-year review of the treaty in 2010, the parties agreed to a final document containing an Action Plan that included conclusions and recommendations for follow-on actions agreed by consensus. The Action Plan contains measures to advance nuclear disarmament, nuclear non-proliferation, the peaceful uses of nuclear energy, and regional issues, including the implementation of the 1995 Resolution on the Middle East. Under the nuclear disarmament chapter, there are listed a number of objectives and
principles and 22 actions relevant to the nuclear disarmament obligation that stems from article VI of the treaty.

The Action Plan calls on the five nuclear-weapon states parties to report to the Preparatory Committee in 2014 on specific undertakings. Then the 2015 Review Conference will take stock and consider the next steps for the full implementation of article VI.

5.2. Other multilateral treaties dealing with nuclear disarmament

A number of multilateral treaties have been established with the aim of preventing nuclear proliferation and testing, while promoting progress in nuclear disarmament. These include the NPT, the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, also known as the Partial Test Ban Treaty (PTBT), and the Comprehensive Nuclear-Test-Ban Treaty (CTBT), which was signed in 1996 but has yet to enter into force. (It is beyond the scope of this paper to provide references to other multilateral or plurilateral initiatives or independent commissions or bilateral treaties such as the Strategic Arms Reduction Treaty (New START) between the United States of America and the Russian Federation of 8 April 2010.)

6. United Nations Institute for Disarmament Research

UNIDIR works on the basis of the provisions of the Final Document of the First Special Session of the General Assembly devoted to Disarmament and also takes into account relevant General Assembly recommendations. Nuclear disarmament is at the centre of UNIDIR’s mandate:

The work of the Institute shall aim at:

(a) Providing the international community with more diversified and complete data on problems relating to international security, the armaments race and disarmament in all fields, particularly in the nuclear field, so as to facilitate progress, through negotiations, towards greater security for all States and towards the economic and social development of all peoples;

(b) Promoting informed participation by all States in disarmament efforts;

(c) Assisting ongoing negotiations on disarmament and continuing efforts to ensure greater international security at a progressively lower level of armaments, particularly nuclear armaments, by means of objective and factual studies and analyses;

(d) Carrying out more in-depth, forward-looking and long-term research on disarmament, so as to provide a general insight into the problems involved, and stimulating new initiatives for new negotiations.

For a list of recent UNIDIR analyses on nuclear disarmament, see the following Annex.
Annex. Links to relevant documentation

UNIDIR

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UNIDIR Projects and Analysis

Transparency and Accountability in Nuclear Disarmament

A New START Model for Transparency in Nuclear Disarmament (2013)
Transparency in Nuclear Disarmament (2012)

Dealerting: The Next Step for Nuclear Disarmament

Reducing Alert Rates of Nuclear Weapons (2012)

NPT Action Plan (Discussion Series)

World Nuclear Industry: Renaissance or Decline? (2012)
Prospects for Nuclear Power in the Middle East after Fukushima and the Arab Spring (2012)
The NTI Nuclear Materials Security Index (2012)
Universalization of Comprehensive Safeguards—Next Steps (2012)
Disposition of Excess Russian Weapon HEU and Plutonium (2012)
Disposition of Excess Military Nuclear Material (2012)
Transparency in the Nuclear Non-Proliferation Regime (2012)
Practical Steps towards Transparency of Nuclear arsenals (2012)

Humanitarian Impact of Nuclear Weapons

Viewing Nuclear Weapons through a Humanitarian Lens: Context and Implications (2013)
International Cooperation Mechanisms on Nuclear Security


Multilateral Approaches to the Nuclear Fuel Cycle (2011)

Multilateralization of the Nuclear Fuel Cycle: A Long Road Ahead (2011)
Multilateralization of the Nuclear Fuel Cycle: The First Practical Steps (2011)
Multilateralization of the Nuclear Fuel Cycle: Helping to Fulfil the NPT Grand Bargain (2010)
Multilateralization of the Nuclear Fuel Cycle: The Need to Build Trust (2010)

The Conference on Disarmament: Breaking the Ice (2011)

Breaking the Ice in the Conference on Disarmament: A Wrap-up (2011)
New Types and Systems of WMD: Consideration by the CD (2011)
Transparency in Armaments: Consideration of the Item in the CD (2011)
Comprehensive Programme of Disarmament: Consideration of the Item by the CD (2011)
Transforming the Conference on Disarmament: Multilateral Arms Control and Disarmament for a Pluralistic World (2011)
The Conference on Disarmament and the Prevention of an Arms Race in Outer Space (2011)
The Conference on Disarmament and Negative Security Assurances (2011)
The Conference on Disarmament and Engagement with Civil Society (2011)
Civil Society and the Conference on Disarmament (2011)
Fissile Material Negotiations in the Conference on Disarmament (version 2, updated February 2011)
Nuclear Disarmament in the Conference on Disarmament (2011)
The Conference on Disarmament: Breaking the Ice (2010)

Fixing the Broken Disarmament Machinery (2010)

Disarmament Machinery: A Fresh Approach (2010)


Fissile Material Negotiations in the Conference on Disarmament (version 2, updated February 2011)
Treatment of Pre-existing Fissile Material Stocks in an FM(C)T (2010)

Unfinished Business: the Negotiation of the CTBT and the End of Nuclear Testing (2009)

Options Paper for the Conference on Disarmament (2009)


Implementing Resolution 1540: the Role of Regional Organizations (2008)


Relevant *Disarmament Insight* blog posts

Back to Basics in the Conference on Disarmament (20 February 2013)
First Committee: A weather report (7 November 2012)
Nuclear disarmament: Promises and hope (16 October 2012)
Conference on Disarmament: Nuclear disarmament (20 June 2012)
The CD - a conundrum (28 March 2012)
Conference on Disarmament: Some misconceptions (29 November 2011)

UN Office for Disarmament Affairs

Nuclear weapons
NPT pages

Conference on Disarmament

Records of Meetings by year, including PVs
CD documentation on nuclear disarmament

Reaching Critical Will

First Committee
UNDC
NPT
CD
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