

Is There Any Fizz Left in the Fissban? Prospects for a Fissile Material Cutoff Treaty

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The pursuit of a multilateral ban on the production of fissile material, highly enriched uranium (HEU) and plutonium, for nuclear weapons has been one of the longest-running post-World War II enterprises of the international community and unfortunately probably among the most futile to date. It is a sobering fact for the disciples of multilateral diplomacy that 2007 marks the 50th anniversary of UN General Assembly Resolution 1148, which explicitly called for “the cessation of the production of fissionable materials for weapons purposes.”

Why, despite the widespread support for the conclusion of a treaty to accomplish this goal, have negotiations failed to proceed? The present article will review the impediments to progress, discuss recent diplomatic efforts to promote negotiations, and examine options for starting work on a fissile material production ban in the future. As even the choice of acronyms to describe the treaty is a point of contention, between those who prefer FMCT (fissile material cutoff treaty, suggesting a focus on prohibiting production) and those who favor FMT (fissile material treaty, with its implication that past production will also be controlled), I will opt for the generic and more neutral contraction fissban to refer to the envisaged treaty.

Frozen by the Cold War

Although the goal of a fissban was already formally endorsed by the United Nations in the aforementioned General Assembly resolution of 1957, the massive nuclear build-up that characterized the Cold War period meant that little practical effect to this aspiration could be achieved during those decades.

The possibility of a fissban, however, appeared more promising with the end of the Cold War confrontation between the United States and the Soviet Union. As part of the general build-down of nuclear forces in the post-Cold War period, four out of the five recognized nuclear-weapon states under the nuclear Nonproliferation Treaty (NPT) indicated officially that they were no longer producing fissile material for weapons purposes. (China made no official announcement to this effect but informally suggested that it too had ceased such production.)

In 1993 the General Assembly passed by consensus a resolution calling for the initiation of multilateral negotiations on a fissban. In parallel, work on the issue within the 65-member-state Conference of Disarmament (CD) in Geneva quickened with the appointment of Canada’s Ambassador Gerald Shannon as special coordinator. Shannon’s report and the mandate for negotiation contained therein were adopted by the CD in March 1995. Additional political momentum in favor of a fissban was imparted by the 1995 NPT Review and Extension Conference, which directed “the immediate commencement and early conclusion of negotiations” for a fissban in accordance with the Shannon mandate. This mandate was even operationalized, via an ad hoc committee of the CD, for a couple of weeks in the summer of 1998, but the negotiations could not be sustained.

Progress was blocked by the development in early 1999 of a gridlock situation with respect to the CD's program of work that pitted China and Russia as advocates of negotiations on outer space against the United States and those wishing to limit CD negotiations to a fissban. This dispute over what should be included in the CD program of work has persisted since then, and the resumption of fissban negotiations at the CD has remained an elusive goal despite its regular reaffirmation as a priority of the international community, including at the 2000 NPT review conference.

In the summer of 2004, a new complication arose when the Bush administration, in a sharp break with previous U.S. policy, announced that it had concluded pursuant to an internal review that the Shannon mandate's requirement for international and effective verification was impossible to achieve and that henceforth the United States would not support this part of the agreed mandate. Although the United States reaffirmed its commitment to a fissban and even tabled a draft mandate and treaty text at the CD, this break from the existing consensus around the Shannon mandate further complicated an already difficult situation.

Irrespective of the difficulties being encountered at the CD, international concerns over nuclear programs in Iran, Iraq, Libya, and North Korea as well as the classic nuclear arms race underway in the Indian subcontinent have all served to maintain a certain external pressure for pursuing the multilateral efforts for a fissban as one further firebreak against proliferation. Considerable creative diplomacy was evident in the last two years at the CD with the innovation of united platforms on the part of the rotating CD presidents, who hitherto had pursued individual and often uncoordinated agendas, that provided structured and focused discussion of a fissban and other key issues.

After an initial session (January to March) of intensive, informal discussions on all CD agenda items, this year's six presidents ventured so far as to put before the conference on March 23 a draft decision that sets out a work program on four core issues (nuclear disarmament, fissban, outer space, and negative security assurances) under the direction of four coordinators. This proposal provides for "negotiations, without any preconditions, on a non-discriminatory and multilateral treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices." The "without any preconditions" clause was devised to accommodate both the supporters and the opponents of the Shannon mandate by suggesting that the negotiations of a fissban would be open to all perspectives and its parameters would be defined in the course of the negotiations rather than before the negotiations started.

Although it had been hoped that this decision could be adopted at the start of the CD's second session on May 15, it soon became evident that a handful of delegations were not in a position to agree to its adoption. China, Iran, and Pakistan have now indicated a variety of concerns with the draft decision, and all have called for any future fissban negotiation to be conducted under the Shannon mandate. Iran and Pakistan have also explicitly called for stockpiles to be covered by any such treaty. The six CD presidents sought to accommodate some of these concerns via a complementary statement without opening up the text of their proposal. Regrettably, these efforts failed to bring the reluctant states onboard, and the CD's 2007 session ended mid-September without agreement on the draft decision and without substantive work having been undertaken since the conclusion of its first session in March.

The reasons behind the opposition of China, India, and Pakistan to the proposed program of work are not altogether clear. Pakistan has been the most vocal and explicit in its rejection of the draft decision, with its National Command Authority (the country's most senior political-military body chaired by the president) meeting on August 2, 2007, and issuing a press release reaffirming Pakistan's position in favor of the Shannon mandate. Ambassador Masood Khan, Pakistan's permanent representative to the CD, elaborated on his country's position regarding fissban negotiations in an October 18 statement to the General Assembly's First Committee, saying that "[a] Fissile Material Treaty without verification would amount only to a unilateral moratorium. A[n] FMT which freezes or accentuates asymmetries, will accelerate, not arrest proliferation." Pakistan is concerned that, without ironclad verification and inclusion of stocks, a fissban could perpetuate existing imbalances with regional rival India and spur rather than subdue further increases in fissile material holdings and associated nuclear weapons. In voicing his country's objection to the "without preconditions" formula for fissban negotiations set out in the CD draft decision, Khan argued that "dropping the agreed basis for negotiations is a precondition.... The Shannon mandate was agreed

and now there are moves to shelve it.”

Finally, both the National Command Authority release and Khan’s statement make the connection between the proposed U.S.-Indian nuclear deal and the Pakistani perspective on a fissban. As Khan stated, “We are assessing the full impact of the incipient U.S.-India nuclear deal on fissile material production in our region. This has already influenced our position on the Fissile Material Treaty.” Pakistan seems to be saying that it no longer views the initiation of fissban negotiations to be in its national security interest and will oppose efforts to launch such negotiations on any basis other than the Shannon mandate.

China, the state for which strategic calculations leading to a rejection of a fissban likely loom the largest, may see the need to preserve an option for future fissile material production in light of scenarios involving a buildup of Indian nuclear forces or U.S. ballistic missile defenses. Iran, which continues to declare the exclusively peaceful nature of its nuclear program, appears to see opposition to initiation of fissban negotiations as a means of leverage vis-à-vis the international community and the United States in particular in its ongoing battle over its nuclear activities. Given the strict consensus procedures at the CD, the opposition of any one of these states (all CD members) is sufficient to deny a start to negotiations despite the support of the overwhelming majority of CD members.

A Fissban: Still Worth the Effort?

The implications of the opposition by China, Iran, and Pakistan to the presidents’ proposed work program for the CD in 2008 are enormous. Having pushed matters to this point, there would appear little appetite among leading CD delegations for a retreat or falling back to some form of limited informal discussions on a fissban. At the same time, the six CD presidents for 2008 (Tunisia, Turkey, Ukraine, the United Kingdom, the United States, and Venezuela) will face a daunting challenge in devising the means to get the CD back to work on its core issues, including negotiations on a fissban, when it reconvenes in January. It would thus seem an appropriate time to assess whether a fissban remains a valid goal. I believe that it does for several reasons.

First, a fissban represents a necessary step on the road to nuclear disarmament and contributes to nonproliferation. Given that military stocks of HEU are estimated at 1,400-1,800 metric tons and that plutonium holdings approximate 500 tons roughly evenly split between military and civilian holdings, the world is awash with fissile material, and a cap on at least that part of production destined for nuclear weapons is a necessary precondition for eventual nuclear rollback.

Second, the top priority attached within the NPT context to a fissban, alongside the need for the Comprehensive Test Ban Treaty (CTBT) to enter into force, imbues it with particular diplomatic significance as an indicator of progress by the nuclear-weapon states in fulfilling their NPT Article VI disarmament commitments and as a litmus test of multilateral arms control and disarmament activity generally. Because the CTBT, although still not formally in force, is a concluded treaty with wide support, the contrast with the fissban, which remains only a gleam in a negotiator’s eye, is all the more striking and underscores the deficiency of multilateral action in this regard. This deficiency in turn undermines the political basis for enhanced international cooperation on nonproliferation efforts.

Third, although the five original nuclear-weapon states are believed to be respecting a moratorium on fissile material production, this situation is vulnerable to a sudden reversal in the absence of a formalized commitment via a fissban.

Fourth, although a fissban limited to the five original nuclear-weapon states would be an accomplishment in itself, the potential for a fissban to bring in the non-NPT nuclear-weapon-possessing states (India, Israel, and Pakistan) and put a cap on their nuclear weapons ambitions remains a valuable goal for regional and global security.

Of course, the resistance of the non-NPT parties (I include North Korea in this grouping) to this last goal is probably the primary reason why fissban negotiations have not been launched. India, North Korea, and Pakistan have been actively and openly engaged in a buildup of their nuclear arsenals

and hence wish to avoid any constraint on their fissile material production potential. Israel has kept a low profile on this matter at the CD and, despite its reservations about a fissban, has so far adroitly avoided being cast in a spoiler role.

Possibilities for Progress

In light of the continued reservations of at least three CD members, what are the options for making some progress? In my view, the international community should not allow issues of form or fora get in the way of coming to grips with the substance of the fissban, i.e., agreed prohibitions on fissile material production for nuclear weapons. Several feasible options exist for realizing the fissban enterprise, but these diplomatic choices will all require sufficient political will to move the fissban off square one. Some possibilities that suggest themselves are:

- 1. Stay the course in the CD:** This option would envisage a renewed push to gain acceptance of the existing draft decision on a program of work when the CD reconvenes in January 2008. Such a strategy would build on the widely held preference to negotiate the fissban in the CD and the progress made in fashioning a compromise program of work that enjoyed broad support. This approach, however, remains vulnerable to being “vetoed” by one or more CD members, with Pakistan’s firm public opposition making it especially unlikely that it would go along with a reversal of its stance anytime soon. An added danger is that efforts to accommodate Pakistan and others over the Shannon mandate could result in losing U.S. acceptance of the current compromise.
- 2. Initiate negotiations in the NPT:** This option would entail starting fissban negotiations under the auspices of the NPT, whose members have all committed themselves to such negotiations at the 1995 and 2000 review conferences. Taking this route would utilize a forum already committed to immediate commencement of fissban negotiations and would get around the problem of Pakistan’s opposition, along with India and Israel, non-states-parties of the NPT. By the same token, it would leave the three non-NPT nuclear powers outside the treaty, at least initially. It would also represent a new departure for NPT members, and any action would probably have to wait for approval from the next NPT review conference in 2010.
- 3. Negotiations held under the auspices of the IAEA:** Given the close association between a fissban and the system of fissile material controls maintained by the International Atomic Energy Agency (IAEA), it may be possible to start negotiations under IAEA auspices with the director-general inviting all nine states that possess fissile material for nuclear weapons use to take part. A variant of this option would have these states joined by an equal number of non-nuclear-weapon states with advanced nuclear programs. This approach would provide a “neutral” but inclusive forum (all nine states with the current exception of North Korea being agency members) and could facilitate aligning responsibilities of states possessing fissile material for nuclear weapons purposes with existing restrictions on non-nuclear-weapon states pursuant to the IAEA’s international safeguards system. The required consensus in the IAEA would be vulnerable however to a veto by one or more members unless its director-general acted under his own initiative. Such an initiative would also represent a departure from the IAEA’s traditional technocratic role by engaging in a negotiation with an explicit international-security character.
- 4. An independent initiative of the five nuclear-weapon states:** This option would aim to codify the existing declared moratoria on fissile material production by at least four of these states. Such an undertaking would get the ball rolling by having the states with the greatest holdings of fissile material for nuclear weapons and the greatest responsibility under the NPT to cease its production and eliminate the arms fashioned from it initiate action. It could serve as a means of “priming the pump” for eventual, broader negotiations including non-NPT states-parties. Such a step would require, however, a degree of leadership on the part of one or more of the nuclear-weapon states that has not recently been in evidence on this issue. China’s ambiguous position concerning its own cessation of fissile material may make it unwilling to join the rest of the states in such a fissban initiative, which would detract from its appeal.
- 5. Establishing an open-ended UN negotiation:** This option would build on earlier General Assembly resolutions in favor of a fissban by establishing an open-ended working group to negotiate such a treaty. Taking this path would build on existing consensual or near-consensual support in the

universal body of the General Assembly for the negotiation of a fissban. As a resolution of the General Assembly, decided by majority vote, it would not be subject to the veto of an opposing state. At the same time, pursuing this option would represent a reversal of hitherto support for the CD as the forum to negotiate a fissban. It might also mean that states possessing fissile material that had opposed the resolution would not participate in any negotiation pursuant to it.

Although each has its own particular advantages and disadvantages, all of the options described above constitute diplomatically feasible means of starting negotiations on a fissban. Some would entail new departures for the organizations or groups involved, but these would not be out of keeping with similar initiatives on related subject matter in the past. One might cite in this regard the negotiations on the Convention on the Physical Protection of Nuclear Material held under IAEA auspices or the elaboration of the Hague code of conduct on ballistic missiles initiated by member states of the Missile Technology Control Regime but extended subsequently to more than 125 states. Some would carry the risk of nonparticipation of some states of the targeted group (those possessing fissile material for nuclear weapons). Yet, these risks would cut both ways, and the negative implications for a state that stood against the near-universal support for a fissban would not be negligible.

The key missing ingredient to date seems to be the political will to overcome the ever-present obstacles and achieve a significant result. Nevertheless, at a time when leading nuclear-weapon states' opposition to nuclear proliferation appears highly subjective and selective, it is difficult to conceive of these states generating the necessary political direction and determination to initiate one of the negotiating options for a fissban suggested above. As long as these powers see no major benefit to curbing the fissile material production of other nuclear-weapon states, they may be unwilling to expend the political and diplomatic capital to ensure the commencement of a negotiation, let alone persevere to ensure an outcome.

At the same time, recent or impending leadership changes in several of the states possessing fissile material for nuclear weapons provide some basis for hope that the fissban enterprise will be revalued and its potential contribution to strengthening the international nonproliferation and disarmament regime positively reassessed. This in turn could help generate some of the diplomatic purpose and energy on behalf of a fissban that has been lacking in recent years. Such renewed engagement in favor of a fissban would be the best way to mark the 50th anniversary of the UN General Assembly resolution calling for the negotiation of this treaty and to demonstrate some solidarity with those states that forswore the acquisition of nuclear weapons long ago.

Shannon Mandate

In March 1995, the Conference on Disarmament adopted a mandate offered by Canada's Ambassador Gerald Shannon, whose text is below. Disagreement over the call for international and effective verification as well as whether to link the mandate with progress on nuclear disarmament and an outer space treaty has contributed to delay in negotiating a fissile material treaty.

1. The Conference on Disarmament decides to establish an ad hoc committee on a "ban on the production of fissile material for nuclear weapons or other nuclear explosive devices."
2. The Conference directs the Ad Hoc Committee to negotiate a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices.
3. The Ad Hoc Committee will report to the Conference on Disarmament on the progress of its work before the conclusion of the 1995 session.

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Published on Arms Control Association (<https://www.armscontrol.org>)

and International Trade of Canada.

Source URL: https://www.armscontrol.org/act/2007_12/Meyer