

The Conference on Disarmament

Breaking the Ice

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The CD Discussion Series

Between December 2010 and July 2011, the UNIDIR project “The Conference on Disarmament: Breaking the Ice” and the Geneva Forum are organizing a series of thematic discussions to examine the myths and realities of the CD—as well as the critical challenges facing it—with the aim to increase understanding of the history, processes and issue areas of this unique negotiating forum.

Breaking the Ice in the Conference on Disarmament: A Wrap-up

Tim Caughley
Resident Senior Fellow, UNIDIR

Introduction

1 Early in 2000 UN Secretary-General Kofi Annan warned of the dangers of the accumulation of “rust” in the multilateral disarmament machinery. Over 10 years later that rust has developed to such an extent that neither the Conference on Disarmament (CD) nor the UN Disarmament Commission has produced any concrete results since 1996 and 1999 respectively.¹ What kind of oil should we apply to this machinery, especially the CD, or has the machinery become obsolete?

2 Before embarking on this examination, a prior question needs to be asked. Is the laboured, unproductive operation of parts of the multilateral disarmament machinery merely a symptom of more deep-seated considerations? If so, will those factors prove also to be obstacles to efforts to develop solutions? Is the problem one of international politics and security, or one of defective, unresponsive disarmament mechanisms, or both?

3 In other words, are the problems in the CD merely symptomatic of larger problems rooted in more complex international security circumstances in the face of which delegates to the Conference are largely powerless? Or, notwithstanding a more complicated negotiating environment than existed in the largely bipolar era in which most of the past successes of the CD were secured, are there ways in which delegates can get the rusted wheels of the Conference to move

once more?² Is it possible to develop mechanisms that are more sensitive to delivering outcomes sought by the majority of states while still recognizing—without being held hostage to—the legitimate national security concerns of other states?

4 There is a tendency to blame the current situation on lack of “political will”. But the political will that does exist is pulling with equal force in opposite directions—a “sure recipe for staying stuck in one place”.³ Multilateral machinery, especially for something as fundamental as disarmament negotiations, should be designed to work in all conditions, although it does not operate in a vacuum untouched by the broader security environment. This paper, however, concentrates on several internal processes of the CD that lend themselves to correction irrespective of external influences impinging on the work of the Conference.

Priorities—hierarchy

5 The problem for the CD of resolving differences of view over setting its priorities, as we know, has become chronic. This has been manifested in the Conference’s inability since 1998 (except for an unconsummated agreement in May 2009) to adopt (with the necessary consensus) its programme of work. In 2009, the priorities *were* agreed; even a hierarchy of treatment of issues was laid down. Mandates were settled for all four core issues. A fissile material (cut-off) treaty (FM(C)T) would be *negotiated*, while the other three core issues would be “substantively discussed” (PAROS, NSAs) or be the subject of an “exchange of views” (nuclear disarmament). Agreement on these latter three ostensibly lesser mandates in the work programme was without prejudice to the possibility of future negotiations on them or to their ultimate outcome, i.e. whether the products should be in binding, legal form like an FM(C)T. A further three issues were to be handled by Special Coordinators who would seek the views of members on appropriate ways for dealing with the respective issues. All seven mandates were contained in a single package.

6 Second thoughts, though, by one member on the mandate for an FM(C)T, led to an unwinding of that particular mandate and therefore of the overall package. That member has subsequently rejected altogether the notion of a negotiating mandate on an FM(C)T. In practice, this has meant—through the unfortunate manner in which the CD interprets the consensus rule—that a single member state, rather than defend its interests in a negotiation, has been able to prevent the negotiation from even getting underway. Surely, the United Nations General Assembly did not envisage the consensus rule being used to this effect when, during its first Special Session devoted to Disarmament in 1978, it ordained the CD as the world’s “single negotiating body”.

Consensus/voting

7 Bodies such as the CD that eschew voting have thereby denied themselves the normal means of breaking an impasse such as this long-standing failure to resolve the Conference’s priorities. That is not to say that the *objective* of taking decisions by consensus is fatally flawed. There are credible reasons for reaching decisions by consensus even where ultimately there can be recourse to voting. Even where the opportunity for voting exists (for example, in the NPT and the CCW), political pressures not to use it are often immense. But when a negotiating body such as the CD is unable to carry out its

fundamental purpose for well over a decade, it is understandable that, in the absence of a voting mechanism, frustrated members will seek external solutions.⁴

8 Rethinking the manner in which the CD applies the consensus rule is vital if confidence is to be restored to the treaty-making processes of this institution. In bodies that have no recourse to voting and take decisions only by consensus, ostensibly any member can choose to block any decision to which it is opposed. Ordinarily, a member would exercise this right very cautiously in the knowledge that in circumstances where that member might itself be pursuing a particular course of action, another member could similarly stand in the way of the decision being promoted by the first member. In the Conference on Disarmament, however, the consensus rule has become a somewhat blunt instrument. There needs to be a readiness to revisit what is meant by “consensus” or to develop an understanding constraining application of the consensus rule in certain prescribed situations.

9 If “consensus” were to be given its normal meaning of “general agreement” following a process that had assiduously sought to resolve minority objections, that would help the CD get away from the notion of veto that has become associated with the consensus rule. As Magnus Hellgren pointed out in our initial seminar of this series, the conventional wisdom that has developed in the CD is that the consensus/veto rule is necessary to comfort the major powers’ fears that otherwise they may somehow be pressured to compromise on their national security interests. But, to quote Professor Goldblat, “there is no risk to national security in adopting veto free procedures, because no conference or organization can impose treaty obligations on a sovereign state through voting”.⁵ Whatever treaty the CD may negotiate, it remains a sovereign decision by states to accept it or not.

10 It is clear from this perspective that the CD’s consensus rule is being misinterpreted and misused. If the Conference is not willing to confront this reality, might it be willing to develop an informal understanding on its application in certain circumstances? These occasions would relate to matters largely of a procedural nature in the implementation of an agreed work programme (e.g. appointment of chairs of subsidiary bodies and coordinators) or even the adoption of a simplified programme of work (discussed later in this paper). However, any tampering with the consensus rule even through informal understandings will be viewed by some as the thin end of the wedge towards eventual modification of what, despite the CD’s difficulties, remains for many a hallowed, though misinterpreted, precept.

11 This does not mean that efforts to *interpret*—as opposed to change—the rules should not be attempted, at least in respect to decisions that are precursors to negotiations getting underway. Treating the work programme as an “administrative and procedural decision”, as suggested by the Blix Commission,⁶ warrants careful consideration, although for as long as work programmes are “loaded” with mandates as at present, it will not be possible to treat the adoption of them as though they were merely matters of procedure.

Divergences on issues of substance

12 Beyond the CD's continuing inability to determine its priorities and its unfortunate treatment of the consensus rule as tantamount to a veto power vested in each member, any analysis of the CD's current paralysis would be incomplete if it failed to acknowledge that important matters of substance also lie at the heart of the CD's paralysis. There exists a fundamental disagreement, for instance, on the issue of the treatment of existing stocks of fissile materials in the mandate for negotiation of an FM(C)T. This problem has proved to be deeply resistant to attempted drafting solutions for an agreed mandate for beginning work on a treaty. There has been no meeting of minds between those members that want such a treaty to include coverage of existing stocks of fissile material and those members that do not.

13 Although various ideas for finding common ground have been put forward in the event that negotiations did actually get under way, disagreement over the mandate has prevented any sustained engagement on fissile material to date within the Conference. As any explicit mention of coverage of existing stocks in the mandate has been strongly opposed, it would seem that if the CD is ever going to be able to take up this issue it would need to be under an anodyne mandate that refers to the topic in general terms only. For example, the mandate might simply direct members "to negotiate on fissile materials", negotiations during which members will pursue, and if possible compromise on, their respective positions. An example of a somewhat general and open formulation used in the past is the mandate for negative security assurances adopted in 1998 under which the CD agreed to "negotiate with a view to reaching agreement on effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons". It must be said, however, that a mandate of this kind might merely serve to postpone deadlock until the negotiations themselves.

14 Remembering that we are talking only about a mandate to negotiate rather than the actual signing of a treaty, it must be asked here why are the holders of these divergent positions not prepared to battle out their differences in the negotiations? In other words, why are they unwilling to agree the work programme and then leave it to their negotiating skills as to whether they prevail in getting their position reflected in the final draft? As the UN Secretary-General has remarked, "Prior agreement on the scope or outcome should not be a precondition for talks—or an excuse to avoid them—but rather a subject of the negotiations themselves".⁷ How does one persuade members who are preventing negotiations from getting underway that those negotiations will not prejudice their positions? After all, in the final analysis, no member has to agree to the outcome—the adoption of the outcome of negotiations will necessarily require a decision for which consensus is required. Surely, thus, any member will be able to decide at that point whether or not to block the consensus on the negotiated text.

15 Nonetheless, holdout members may not want to be subjected to the kind of pressure that would be brought to bear if they were seen to block consensus on the adoption of the ultimate product of the negotiations. Even if a state would not wish to become party to the resulting treaty, the very existence of that agreement may create norms that are seen by that state as antithetical to its national interest and would subject it to pressures to accede to the treaty. Because of the enormous effort required to produce a negotiated outcome, such pressure would be much more intense than

exists in relation to the blocking of the *initiation* of the negotiation. It may be that a holdout member does not trust the CD to retain to itself the decision to adopt the final draft—c.f. the CTBT outcome when the final text was removed to the General Assembly to avoid its being blocked in the CD.⁸ Or a holdout member may choose to block a decision (arguably against the spirit of the consensus rule) as leverage to try to secure an outcome that is *external* to the CD.

Linkages

16 The deep-seated disagreement over whether a fissile material treaty should cover existing or just future stocks is at the heart of the CD's paralysis but is not the only sticking point. Unlocking the question of inclusion of stocks, however, should enable lesser problems of substance on the FM(C)T issue to be overcome. But, ease of progress towards the commencement of negotiations would depend on linkages made with the other core issues and the nature of the mandates sought in respect to them. Nonetheless, after such a fallow period in the CD, a breakthrough—unlikely though it may be—on an FM(C)T mandate of the anodyne kind just described might improve levels of trust in the Conference and be conducive towards improving the prospects for compromise.

17 The problem of linkages among the core issues is complex. The cynical tactic of a member making its acquiescence to a mandate of lesser interest to it conditional upon securing consensus on the mandate that the member is pursuing has dogged the CD since 1995.⁹ This ploy is used by members to protect their vested interests in the status quo and has become deep-seated in the Conference. It will not be easily resolved, especially because of the current approach taken by the CD of embodying all the mandates within a single programme of work (a problem that will be addressed shortly) and of the application of the consensus rule as tantamount to the right of each member to exercise a veto. Moreover, differences of view over all four core issues relate not only to how they should be prioritized—and the associated practical issue of the capacity of members (especially those with small delegations) to deal with them all more or less simultaneously—they relate also to the manner in which topics should be addressed (as negotiations, discussions, or by an exchange of views), and whether their outcome (legally binding as in a treaty, or not) should be stipulated in the mandate.

Work programme

18 As noted earlier, divergences over priorities in the CD have complicated efforts towards achieving agreement on the programme of work—at least the misconceived work programme that the CD has been pursuing for too long. The CD has become fixated on linking the mandates for each of its subsidiary bodies in a single programme,¹⁰ instead of keeping separate the matter of order of business (i.e. timetable or schedule of activities) from the determination of mandates for subsidiary bodies.¹¹ A simplified programme of work (one that does not try to include mandates for subsidiary bodies) should be pursued by the Conference, as was the case in the 1990s (see for example CD/963).¹²

19 A simplified programme of work entails two steps. The first step is to agree on the organizational framework for the year ahead, including the allocation of time

or space for subsidiary bodies. No mention would be made of actual mandates for those bodies. The second step is to settle upon mandates for any subsidiary bodies that members agree to establish. Obviously, at its broadest abstraction, the UN General Assembly's mandate for the CD, as already noted, is that the Conference must operate as a negotiating body. Hence, it would be logical that at least one of the mandates for subsidiary bodies would be a negotiating mandate or would foreshadow one. Incidentally, the CD is not compelled to establish subsidiary bodies, but can do so "when it appears that there is a basis to negotiate a draft treaty".¹³

20 Having come to the view that it should take an issue forward in a subsidiary body, the CD would need to reach agreement on the mandate for such a body.¹⁴ This immediately raises the question, however, whether, in terms of the current impasse, the idea of simplifying the work programme by separating out the four mandates will serve the cause of progress. Will it not simply postpone momentarily the inevitable discord over the terms of the mandates?

21 Certainly, the act of separating mandates from the programme of work will not automatically overcome the issue of linkages. For so long as any decision entails approval of more than one mandate, the risk that some delegations may seek to link them in order to increase the likelihood of disagreement on the package will persist. Separate—unlinked—mandates have been agreed in the past, including, in 1998, on two of the four current core issues, fissile materials and negative security assurances,¹⁵ although unfortunately that agreement was not carried over into the following year.

22 Once the simplified work programme is adopted and the focus of attention moves to agreeing mandates for subsidiary bodies, it would be essential for the CD to deal with mandates one by one. Succumbing to the temptation to lump mandates together will ensure deadlock in the same way as currently exists with the unnecessarily complex and overloaded programme of work.

23 In treating each mandate individually (as in 1998), the concerns of delegations with the terms of that particular mandate can be brought out into the open and treated one by one rather than being submerged in the broader disagreement over the work programme, as is now the case. For example, can member state X explain more precisely why mandate A does not meet its needs? Will member state Y clarify why it is unable to accept a negotiating mandate on issue B? Without honest engagement at this level in which hold-out members are placed on the spot, issue by issue, the prospects of breaking the deadlock over the programme of work are negligible.

Intermediate steps—pre-negotiations

24 Efforts to intensify discussions on the core issues in both formal and informal plenary meetings have been conducted in the shadow of fruitless if well-meaning efforts by successive presidents to find agreement on a programme of work, and thus have not matured. Unless the CD is prepared to seek a simplified programme of work of the kind just mentioned, consideration could be given to finding some other means of proceeding to deepen the treatment of one or more of the core issues without first trying to agree a programme of work of the current, multi-mandate kind. The UN Secretary-General has suggested¹⁶ that, as a first step, the Conference could begin an informal process on the

fissile material treaty before it agrees on formal negotiations within the CD. He envisaged that it would simply be a basic process to educate each other and build the necessary trust and levels of knowledge to inform and facilitate the formal process once the CD adopts its work programme.¹⁷

25 It needs to be noted, however, that the Rules of Procedure require some kind of work programme, albeit one that need not take the unfortunate form utilized this past decade. Unless members were to turn a blind eye to this rule for the purpose of getting discussions of the kind envisaged by the Secretary-General underway, it would be open to any delegation resistant even to informal discussion of the fissile material issue to invoke that rule to oppose a work programme. Slavish application of the rule on the programme of work and continued misapplication of the consensus rule regrettably would also mean that a single delegation could block a work programme that sought only to *schedule* such discussions.

26 Pursuit of other intermediate steps that might serve the purpose of building trust and the knowledge base could include the formation of a Group of Scientific (or other kinds of) Experts, as was used to prepare the way on matters of substance for negotiation of the CTBT.¹⁸ Interesting in this regard is the statement on nuclear disarmament and non-proliferation made in Berlin on 30 April 2011 by the Foreign Ministers of a cross-regional grouping comprised of Australia, Canada, Chile, Germany, Japan, Mexico, the Netherlands, Poland, Turkey and the United Arab Emirates. The Ministers said that they “consider that the establishment of a group of scientific experts with the assignment to examine technical aspects of an FMCT could facilitate and contribute to the start of negotiations”.

Scope for self-reform?

27 Whatever the causes of the CD’s paralysis, whether they arise from the way the its members are approaching its business or are merely symptomatic of broader geo-political considerations, concern about the Conference’s chronic lack of productivity has been expressed at the highest levels of the international community. Witness the UN Secretary-General’s recent actions including the convening of a “High Level Meeting on revitalising the work of the CD and taking forward multilateral disarmament negotiations”.¹⁹ As efforts to revitalize the Conference are showing few signs of bearing fruit, attention is increasingly turning to possible alternative mechanisms for carrying forward items on the CD’s agenda.

28 Such is the lack of confidence in the ability of the CD to pull itself up by its bootstraps that there has so far been more focus amongst its own members on pursuing those issues outside the Conference than there has on any wholesale reform of the CD itself. It is perhaps a tacit acknowledgement of the paralysis of the CD that many members seem more inclined to take an issues-based approach rather than an institutional one. The notion of once again initiating consultations—as in 2002—on “Improved and Effective Functioning of the CD”,²⁰ examining the increasingly outmoded agenda, working methods and rules, has not yet gathered momentum.

29 If such consultations did get underway, however, would they be aimed at the micro level addressing rules-related problems such as those identified already in this paper, or would they have a broader writ? A clean slate approach, if mandated—or for

that matter any external review of the CD—would need to be sensitive to current geo-political considerations, without becoming transfixed by them. If a replacement for the CD was favoured, should it operate in a less autonomous manner than as at present? That is, should it be more responsive to the UN General Assembly?

30 Certainly, any replacement body would need to be sensitive to the allocation of the resources needed for a new or revamped forum for multilateral disarmament negotiations. Pressures on public expenditure resulting from the global economic downturn might result in a somewhat less automatic annual allocation of resources for supporting essential services (interpretation, translation and documentation) than normally occurs.

31 If the outcome of any review was that the CD should be mothballed or convened only on an “as needed” basis, should existing UN bodies (the Security Council and General Assembly) take on a greater role in mandating negotiations and deliberations on selected issues? Should such a role be temporary until new institutions are established, or be permanent? Should the General Assembly, acting independently in the exercise of its powers under article 11 of the UN Charter²¹ or in conjunction with the Security Council, enjoin Member States to initiate appropriate processes in response to priority issues? How would such processes and priorities be determined and resourced? Would the mechanics of making such determinations be an appropriate focus for a fourth Special Session devoted to Disarmament or a World Summit?

32 The CD has a special relationship with the United Nations. It adopts its own agenda, and, in doing so, is obliged by its rules of procedure to “take into account” recommendations made to it by the General Assembly and the proposals presented by Member States. The expression “take into account”²² can have several interpretations. Its plain English meaning is that members are required to be sensitive to General Assembly recommendations. And it can be interpreted as a reflection of some inherent superiority of the Conference over the UN General Assembly in the sense that, though obliged to take such recommendations into account, it is not bound to implement them.

33 The latter interpretation is unsustainable, and is not borne out by reality. The CD’s own rules of procedure also require it to report to the General Assembly annually, and the financial and personnel resources required for the Conference’s operation come from the United Nations. The CD, it is true, can amend its rules of procedure (by consensus), and, technically, it is not a UN body as such. It is difficult not to conclude, however, that irrespective of its own sense of autonomy, in practice its existence is ultimately in the hands of the General Assembly in much the same way as the Assembly *via* the first Special Session devoted to Disarmament created the CD in its modern form. It would seem to be a case of the proverbial “he who giveth can surely taketh away”.

34 In any event, the convergence of the Conference’s recent barren record with the current pressure on resources in the United Nations suggests that there may be scope for disaffected CD members to encourage the General Assembly to be less forthcoming with the UN funding needed for the 24 weeks of meetings allocated each year to the CD. At the least, more conditionality might be attached by the General Assembly to the availability of resources, making agreement of a work programme a *sine qua non* to funding beyond a defined period—say one month—at the beginning of the annual session. Alternatively, given the absence of any regular, routine process of self-review by the CD, the General

Assembly might mandate an extraordinary, time-bound self-review, directed towards producing a justification for its continued existence.

New institutions; ad hoc processes

35 Important disarmament, arms control and non-proliferation processes already take place without the need for any dedicated institution other than the United Nations. For example, in 2006, the General Assembly requested the Secretary-General to establish a group of governmental experts to look into “the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms”.²³ The report of that group in 2008 prompted the General Assembly to start discussions focused on a possible arms trade treaty, open to all Member States.²⁴ In 2009, the First Committee of the General Assembly resolved “to convene the United Nations Conference on the Arms Trade Treaty (ATT) to sit for four consecutive weeks in 2012 to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms”.²⁵ Despite difficulties along the route, a negotiating mandate has been developed and this process has successfully been launched within the framework of the largest, most representative multilateral conference of them all, the United Nations.

36 Ad hoc processes, whether initiated as diplomatic conferences by the United Nations or by like-minded groups, might be a more pragmatic way of conducting negotiations on issues such as those that feature perennially in the CD’s draft work programmes. The Ottawa and Oslo processes on anti-personnel landmines and cluster munitions, respectively, were driven by like-minded groups of states for most of whom the existing machinery was seen as incapable of meeting their objectives. The two processes succeeded in circumstances in which the conventional weapons they were addressing had received “bad press” for their impacts on civilian populations, and a critical mass of governments was sensitive to the high public profile of campaigns to stigmatize them.

37 Stigmatization of landmines and cluster munitions has had an impact beyond the boundaries of the states parties to the Ottawa and Oslo Conventions.²⁶ Yet detractors of these ad hoc processes assert that the failure to date of key producers, possessors and users of the weapon systems prohibited by these two conventions to become states parties impairs the usefulness of the conventions both in themselves and in their value as precedents for processes for tackling non-conventional weapons, especially nuclear weapons. Whether or not major producers and possessors of weapons that become the subject of an ad hoc negotiating process participate in those negotiations, their approach to those armaments may ultimately be modified by the outcome. There should be no a priori assumption that the absence of key players from such processes dooms them to failure.

38 Continuing with this look at the usefulness of ad hoc processes, one factor on which the participants would need to be clear is the rules of procedure—when to develop them and what they should contain, particularly on decision-making. If the ad hoc process being pursued is a conference or working group mandated by the United Nations in which a full spectrum of interests is engaged, it is normal to agree rules of

procedure, even provisionally, at an early stage in the process. It is also customary under UN processes that such rules would have the following characteristics. The conference or working group would take decisions on questions of procedure by a simple majority of states present and voting. Substantive decisions would be taken, if possible, by consensus. If consensus was not attainable, a 24-hour period of deferment would be called by the chair and every effort would be made to facilitate consensus. If this procedure was not successful, the conference might take a decision by a two-thirds majority of states present and voting. If the issue arose as to whether or not a question was one of substance, that question would be treated as a matter of substance.

39 Where ad hoc treaty negotiations are initiated and sustained by a core group of like-minded states, as with the Ottawa and Oslo processes, a more informal approach to the development of rules of procedure may be warranted. Despite differing degrees of like-mindedness, such endeavours can proceed on the understanding that what is essentially a common objective could be achieved without recourse to voting—not consensus at all costs, but an understanding that, if a deadlock emerges, voting will be necessary. In the Oslo case, an informal text was gradually refined by successive chairs based on their judgment on where compromise was possible. Only at the point at which the final phase began—the Dublin Diplomatic Conference—was that text invested with such formality as to give rise to a possible need to vote on it.²⁷ Against the possibility that voting was indeed needed, rules of procedure were adopted at the outset of the Dublin Conference. In the event, the treaty was adopted without the need to resort to the rules.

40 In the absence of opportunities to do so in the CD, pressures are also building for nuclear disarmament to be tackled elsewhere. There is a sense that in so far as the nuclear-weapon-possessing states are seen as amongst the strongest protectors of the CD, despite its stagnation, the CD in its paralysis is in effect “protecting” nuclear weapons. Certainly, the staccato reductions of nuclear arsenals, if not stonewalling by the five NPT nuclear-weapon states in the face of their obligations under article VI of that treaty, has worn thin. Growing concerns also about nuclear weapons proliferation have inspired new thinking for initiating an ad hoc process towards the elimination of nuclear weapons based on the notion articulated in the outcome of the eighth review conference of the NPT of May 2010. Significantly, the NPT states parties, by consensus, expressed their “deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons”, a sentiment whose echo is beginning to resound widely and will inevitably be harnessed if not in the CD then elsewhere.²⁸

41 In the absence of any strong impetus for internal review of the CD, possible issue-based approaches outside the CD could take several forms and involve several of the core issues. On an FM(C)T, the possibility that a group of fissile material producing states (presumably without participation by the member state opposing negotiations on fissile materials) might tackle that issue either among themselves or through some other means outside the CD has been mooted for a number of years but has attracted renewed interest lately, notably among France, the United Kingdom and the United States.²⁹ In this later regard, the Foreign Ministers of Australia, Canada, Chile, Germany, Japan, Mexico, the Netherlands, Poland, Turkey and the United Arab Emirates said in their statement on nuclear disarmament and non-proliferation in Berlin on 30 April 2011 that “Our preference remains to negotiate an FMCT within the CD. However, if the CD, in its 2011 substantive session, remains unable to find agreement on launching FMCT negotiations, we will ask

the UN General Assembly, which is already seized of the matter under agenda item 162 entitled ‘Follow-up to the high-level meeting held on 24 September 2010: Revitalizing the work of the Conference on Disarmament and taking forward multilateral disarmament negotiations’, to address the issue and consider ways to proceed with the aim of beginning negotiations”.

42 Interest has also been shown in reviving an idea floated informally by six states at the UN General Assembly in 2005 to set up open-ended Ad Hoc Committees in Geneva for each of the four core issues under the aegis of the General Assembly.³⁰ The 2005 proposal envisaged that those groups would work independently of the CD for as long as it took the CD to resolve its differences over its programme of work. Under strong pressure from several nuclear weapon states, the draft proposal was not tabled. Perhaps its day has come.

Case for a fourth Special Session of the UN General Assembly devoted to Disarmament

43 International bodies generally do not reinvent themselves in the absence of universal support to do so. The status quo tends to be the default option. In the absence of any dramatic revitalization by the CD of itself, it is difficult not to conclude that systemic change must be initiated by the UN General Assembly through a special session devoted to disarmament or otherwise. Given its universal nature, a quality that the 65-member CD patently lacks, the General Assembly is fundamental to advancing the cause of disarmament and non-proliferation.

44 It is true that efforts to date to convene a fourth Special Session devoted to Disarmament have not been very promising for pursuing a global review of multilateral disarmament machinery. Indeed, Ambassador Alfredo Labbé, chair of the initial open-ended working group (OEWG) established by the General Assembly to consider the case for a fourth Special Session, has observed that, to command political authority comparable to the 1978 first Special Session devoted to Disarmament, “the final document of a fourth special session should be a coalescing vehicle for all United Nations Member States. As such, it must enjoy significant consensus (including all key players) and add value over and above what was accomplished by the first special session”.³¹

45 The General Assembly decided in 2010 to convene a further OEWG to consider, “working on the basis of consensus”, the objectives and agenda for a fourth Special Session, including the possible need for establishing a preparatory committee.³² The Working Group is required to report to the General Assembly before the end of the 2012 session. Clearly, a Special Session is not going to happen any time soon. Moreover, France, the United Kingdom and the United States abstained from voting on the resolution that gave rise to the new OEWG, explaining that they believed its establishment prejudged the work being undertaken by the UN Secretary-General’s Advisory Board in the wake of the High Level Meeting of 24 September 2010. (At the time of writing, the Board has yet to complete its work.)

46 In these unpropitious circumstances, is it inevitable that a fourth Special Session would be unable to “add value” in the manner envisaged by Ambassador Labbé? Is the risk of a failed Special Session too great? If these are not regarded as propitious times

for such a meeting, must we resign ourselves to continuing stagnation in multilateral disarmament affairs? On the other hand, can the cause of multilateral diplomacy afford the chronic lack of productivity of elements of its machinery such as the CD and the Disarmament Commission? What is to be lost by convening a well-prepared Special Session to air differences and debate concerns and possible remedies? For so long as these questions remain unanswered, pressures for pursuing ad hoc processes to deal with issue-based concerns will continue to mount. The more often that the CD is by-passed, the more its days will seem to be numbered.

47 Like-minded delegations wishing to press the General Assembly under the agenda item “Convening of the fourth special session of the General Assembly devoted to disarmament”³³ may choose to base their arguments on factors *broader* than that of the dysfunctionality of elements of multilateral disarmament machinery such as the CD. The preamble of the resolutions establishing the OEWGs referred to earlier reminded Member States of the undertaking made by their heads of state and government in the Millennium Declaration. In the Declaration, states had resolved “to strive for the elimination of weapons of mass destruction, particularly nuclear weapons”. The significance of this reminder is that it underscores the link between development and disarmament: at its initial session in 1979, the CD established, on the basis of the results of the first Special Session devoted to Disarmament, a list of ten issues (the “Decalogue”) for its future work on disarmament and the cessation of the arms race. That list includes disarmament and development. This notion is not universally accepted, but it is indisputable that article 26 of the UN Charter explicitly seeks to “promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources”.

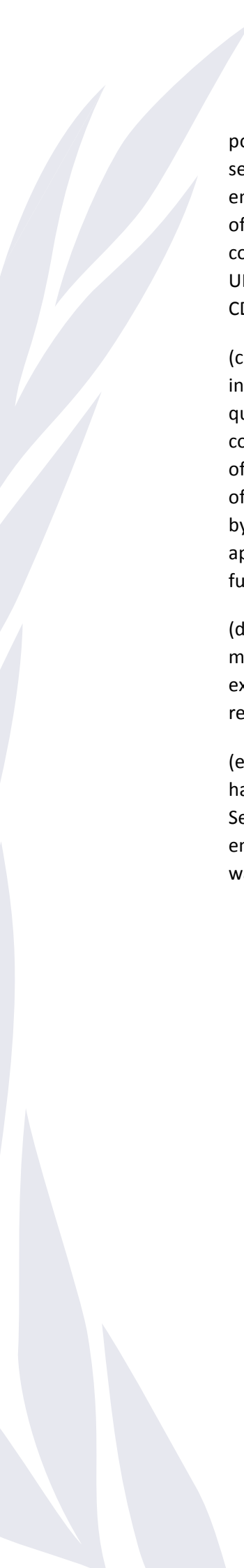
48 Hand-in-hand with such a philosophy is the greater accessibility it has to public appreciation of and engagement in the issues, facilitating the kinds of partnerships with civil society and interested intergovernmental bodies that have been a feature of the Ottawa and Oslo processes. The CD’s failure to engage in a serious, sustained manner with civil society is another unfortunate stain on its dwindling stature.

Conclusions

50 Expressed in terms of future steps and options, the following conclusions are drawn:

(a) If there was the necessary inclination, there is scope for making significant improvements to the way the CD approaches its work. Areas ripest for attention are the need for a more enlightened approach to the application of the consensus rule and to revert to work programmes that do not seek to encompass mandates for subsidiary bodies. Opening up the membership of the Conference to make it more representative of the membership of the United Nations, modernizing the agenda to weed out its Cold War roots³⁴ and providing for real engagement with civil society all warrant urgent attention.

(b) In the current security environment, gaining agreement for retooling these defective mechanisms of the CD will be difficult, however. The degree of disillusionment with the CD, though not universal amongst its members, has increasingly become more widespread as patience with its lack of productivity has been stretched to breaking



point. A common interest in making the existing mechanisms of the CD work thus seems unlikely to be achieved in the near future, if at all. Certainly, the appetite to embark on internal change is limited. The absence of any periodic review mechanism of the CD leads to an unhealthy propensity for drift without real accountability. This is compounded by the tendency of the Conference to mask in its annual reports to the UN General Assembly the extent and causes of dissatisfaction among members over the CD's lack of productivity.

(c) In the absence of an imminent, lasting break-through in the CD, pressure for initiatives for reforming the CD can be expected to build. These may come from several quarters. They may be led by the UN General Assembly, including the possibility of convening a fourth Special Session devoted to Disarmament, or they may be the result of initiatives by the UN Secretary-General following receipt later in 2011 of the report of his Advisory Board for Disarmament Matters. The Advisory Board has been charged by the Secretary-General with advising him, among other things, on the possible appointment of a "High Level Panel of Eminent Persons with a special focus on the functioning of the Conference".³⁵

(d) For the meanwhile, and perhaps for the indefinite future, ad hoc processes may need to be utilized to deal with pressing priorities. Increased usage of mechanisms external to the CD will erode the standing of the Conference and make it harder to resurrect.

(e) Since the emergence of the CTBT from the CD in September 1996, the Conference has sat for a total of almost 350 weeks without producing any concrete outcome. If the Secretary-General were inclined to appoint a Panel of Eminent Persons, he should be entitled to expect that the Conference would be as responsive to the Panel's findings as warrants this prolonged period without productivity.

Notes

- 1 In 1996, the CD completed negotiation of the Comprehensive Nuclear-Test-Ban Treaty; in 1999, the Disarmament Commission adopted guidelines on establishing nuclear-weapon-free zones and on conventional arms control and limitation.
- 2 See also J. King, “Transforming the CD”, April 2011, a paper of this UNIDIR/Geneva Forum CD Discussion Series, <www.unidir.org/pdf/ouvrages/pdf-1-92-9045-011-C-en.pdf>.
- 3 P. Lewis, “If it’s broke—fix it. What to do about the UN disarmament machinery”, comments to the First Committee of the General Assembly, 18 October 2006, <www.reachingcriticalwill.org/political/1com/1com06/statements/UNIDIRoct18.doc>.
- 4 See “Getting the Conference on Disarmament back to substantive work: food for thought”, UNIDIR, 2009, <www.unidir.org/pdf/activites/pdf2-act433.pdf>, para. 31.
- 5 J. Goldblat, “The Conference on Disarmament at the Crossroads: To Revitalize or Dissolve?”, *Nonproliferation Review*, vol. 7, no. 2, 2000, pp. 106–107.
- 6 Weapons of Mass Destruction Commission, “Weapons of Terror: Freeing the World of Nuclear, Biological and Chemical Arms”, 2006, p. 180, recommendation 58.
- 7 Secretary-General Ban Ki-moon, “Dysfunctional Disarmament”, 18 May 2011, <www.project-syndicate.org/commentary/kimoon18/english>.
- 8 “Getting the Conference on Disarmament back to substantive work: food for thought”, UNIDIR, 2009, <www.unidir.org/pdf/activites/pdf2-act433.pdf>, para. 31.
- 9 J. King, J. King, “Transforming the CD”, April 2011, a paper of this UNIDIR/Geneva Forum CD Discussion Series, <www.unidir.org/pdf/ouvrages/pdf-1-92-9045-011-C-en.pdf>, offers useful insights into the origins of the CD’s current paralysis stemming from the use of linkages among mandates to block progress on any of them.
- 10 Beginning with the Amorim proposal (CD/1624) of 24 August 2000, through the latest draft of CD/1889 (6 July 2010).
- 11 For further discussion, see <<http://disarmamentinsight.blogspot.com/2010/02/shannon-mandate-aged-15.html>>.
- 12 See also J. Zaleski, “Nuclear Disarmament in the Conference on Disarmament”, January 2011, a paper of this UNIDIR/Geneva Forum CD Discussion Series, para. 4, <www.unidir.org/pdf/ouvrages/pdf-1-92-9045-010-J-en.pdf>.
- 13 Rule 23.
- 14 Idem.
- 15 See “Fissile Material Negotiations in the Conference on Disarmament”, UNIDIR, ver. 2, February 2001, para. 9, <www.unidir.org/pdf/ouvrages/pdf-1-92-9045-010-H-en.pdf>.
- 16 Remarks by Secretary-General Ban Ki-moon to the CD Plenary, 26 January 2011.
- 17 The Secretary-General has also urged that nuclear disarmament be pursued through the CD in the context of his five point proposal for revitalising the disarmament agenda, which included the need for “agreement on a framework of separate, mutually reinforcing instruments” leading to nuclear disarmament or the negotiation of a “nuclear-weapons convention, backed by a strong system of verification” (address to the East-West Institute, “The United Nations and Security in a Nuclear-Weapon-Free World”, 24 October 2008). It should be recorded that in Geneva, in the margins of the CD, Australia and Japan have co-hosted a series of discussions among experts to examine technical aspects of an FM(C)T in order to build momentum towards negotiations and serve the objectives put forward by the Secretary-General.
- 18 The Group of Scientific Experts was established in 1976 by the UN Conference of the Committee on Disarmament (the CD’s predecessor) with a mandate to conceptualize and test an international seismic data-exchange system. See also General Assembly, *Report of the Ad Hoc Group of Scientific Experts to the Conference on Disarmament on the GSETT-3 experiment and its relevance to the seismic component of the Comprehensive Nuclear-Test-Ban Treaty international monitoring system*, UN document CD/1423, 4 September 1996. See also <<http://disarmamentinsight.blogspot.com/2010/11/cd-breaking-ice.html>>.
- 19 See the actions proposed by the UN Secretary-General in the Chairman’s Summary, High Level Meeting, New York, 24 September 2010
- 20 See the report of the Special Coordinator presented in the CD Plenary of 22 August 2002, CD/PV.911.
- 21 Particularly article 11.1 under which the General Assembly considers and makes recommendations on the principles governing disarmament and the regulation of armaments.

- 22 Rule 27.
- 23 General Assembly, *Towards an arms trade treaty*, UN document A/RES/61/89, 18 December 2006, para. 1.
- 24 General Assembly, *The arms trade treaty*, UN document A/RES/64/48, 12 January 2010.
- 25 Ibid.
- 26 Allegations and counter-allegations by Russia and Georgia about use of cluster munitions during their 2008 conflict illustrate their sensitivity to the public profile of these weapons. Neither as yet has become party to the Convention on Cluster Munitions.
- 27 This formality was conveyed by rule 30 of the rules of procedure of the Dublin Diplomatic Conference, which stated, “The draft Cluster Munitions Convention ... shall constitute the basic proposal for consideration by the Conference”.
- 28 Final Document of the 2010 NPT Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, document NPT/CONF.2010/50 (Vol. I), 4 June 2010, p. 19.
- See also the report of the Australia–Japanese-led International Commission on Nuclear Disarmament and Non-proliferation (ICNND), *Eliminating Nuclear Threats* (2009), which noted “that the best way of achieving [the elimination of nuclear weapons] in practice—motivating like-minded governments and civil society alike—would be negotiations conducted through a humanitarian and human rights-focused process” (pp. 218–19). Note also the concern of UN Secretary-General Ban Ki-moon whose five-point proposal for revitalizing the disarmament agenda included the need for “agreement on a framework of separate, mutually reinforcing instruments” leading to nuclear disarmament or the negotiation of a “nuclear-weapons convention, backed by a strong system of verification” (address to the East-West Institute, “The United Nations and Security in a Nuclear-Weapon-Free World”, 24 October 2008).
- 29 See Tom Donilon, US National Security Advisor to the President, speech to the Carnegie International Nuclear Policy Conference, Washington, 29 March 2011.
- 30 “Draft Elements of an UNGA60 First Committee Resolution: Initiating work on priority disarmament and non-proliferation issues”, Brazil, Canada, Kenya, Mexico, New Zealand and Sweden.
- 31 General Assembly, *Report of the Open-ended Working Group*, UN document A/AC.268/2007/2, 31 August 2007, annex I; see also J. Langmore, “The possibility and potential value of holding a Fourth Special Session on the UN General Assembly on Disarmament”, ICNND, <www.icnnd.org/Documents/Langmore_SSOD.doc>.
- 32 General Assembly, *Convening of the fourth special session of the General Assembly devoted to disarmament*, UN document A/RES/65/66, 13 January 2011.
- 33 Op. cit.
- 34 J. King, “Transforming the CD”, April 2011, a paper of this UNIDIR/Geneva Forum CD Discussion Series,, <www.unidir.org/pdf/ouvrages/pdf-1-92-9045-011-C-en.pdf>, p. 9.
- 35 See the actions proposed by the UN Secretary-General in the Chairman’s Summary, High-Level Meeting, New York, 24 September 2010.

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The United Nations Institute for Disarmament Research (UNIDIR)—an autonomous institute within the United Nations—conducts research on disarmament and security. UNIDIR is based in Geneva, Switzerland, the centre for bilateral and multilateral disarmament and non-proliferation negotiations, and home of the Conference on Disarmament. The Institute explores current issues pertaining to the variety of existing and future armaments, as well as global diplomacy and local tensions and conflicts. Working with researchers, diplomats, government officials, NGOs and other institutions since 1980, UNIDIR acts as a bridge between the research community and governments. UNIDIR's activities are funded by contributions from governments and donor foundations.