

# The Conference on Disarmament

## *Breaking the Ice*

December 2010

### 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.

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**Comments by Tim Caughley, Resident Senior Fellow, UNIDIR  
at the seminar “The Role of the Conference on Disarmament in History and  
Practice”, 3 December 2010**

In the first of this series on the Conference on Disarmament, my aim is to try to shed some light on the CD as an institution, as well as on why it is in its current frozen state. Beginning with the institution, I will touch on some aspects of the history of the CD that are relevant to the current situation in this body and the way it operates under its rules of procedure.

### Origins of the Conference on Disarmament

The key historical points to note are that the CD (in more or less its current form) stems from a decision of the UN General Assembly in 1978 during the Special Session devoted to disarmament. It was a minor breakthrough in multilateral diplomacy that the Session could be convened at all. It occurred at the time of the limited détente of that era after a particularly frosty period of the Cold War. It was also due to an initiative by the Non-Aligned Movement stemming from concerns that global military expenditures remained larger than expenditures on health, education and economic development.

The General Assembly has held three special sessions devoted to disarmament, in 1978, 1982 and 1988. Only the first succeeded in producing a final document. Through that document, the General Assembly established the immediate precursor of the Conference on Disarmament, replacing its smaller predecessors, one of which curiously enough was chaired jointly by the United States and the Soviet Union. That joint-chairing arrangement gives an insight into the stranglehold of the Cold War on the matters of high security that characterize multilateral disarmament, non-proliferation and arms control then and now.

Initially, the body was open to the nuclear weapon states, and thirty-two to thirty-five other states representing all geographical regions and political groupings. Since then, the membership has almost doubled.

The final document of the first Special Session contained a Programme of Action (not to be confused with programme of work) on the multilateral disarmament machinery in which the CD was described as the “single multilateral disarmament negotiating

forum". This quality was regarded at the time—and is still widely regarded—as a valuable role, because in theory if the CD did not exist, we would need to convene a negotiating forum every time a negotiation was envisaged. As an aside, this characteristic has come under challenge with the emergence, for instance, of successful stand-alone negotiations on anti-personnel landmines and cluster munitions. It is not a big deal to convene a negotiating forum every time a negotiation is envisaged.

Other features of the final document that are relevant to the CD's current situation are these:

First and foremost, the Special Session of the General Assembly prescribed that the CD would conduct its work by consensus.

Secondly, the CD was to adopt its own rules of procedure. It follows from these two stipulations by the General Assembly that the CD would adopt its rules of procedure by consensus. In other words, the rules would need to be sufficiently acceptable to all members that none of them would feel the need to stand in the way of consensus in the decision adopting them.

The General Assembly was not saying that voting could not take place at all. It was simply saying that if the rules were to contemplate voting on any aspect of business, for instance on procedural issues, there would need to be a consensus on the inclusion of such a provision in the rules of procedure. As we know, there is no such provision in the rules, but it is open to the Conference in settling the rules for any subsidiary body of the CD to provide—by consensus, of course—for voting in the subsidiary body (see rule 24).

The General Assembly stipulated that chairing the CD should be rotated on a monthly basis, and that plenary meetings should be open to the public unless otherwise decided.

The General Assembly also specifically laid down several entitlements for states that were not actual members. Non-member states were to be able to submit written proposals or working documents and to participate in any discussion of them. Non-members were also to be entitled to request the opportunity to express their views when the particular concerns of those states were under discussion. Non-members (sometimes described as observers) are increasingly active in the Conference these days, notwithstanding—or perhaps because of their concerns over—the absence of any substantive negotiations.

All these stipulations just outlined have been reflected faithfully in the rules of procedure.

I want now to turn to several other stipulations of the General Assembly that provide insights into the relationship of the CD with the United Nations. There is a reason for this upon which I will touch later, given that it is relevant to the CD's current situation.

The CD is not a UN body as such, but it has developed a close working relationship with the United Nations. The nature of the relationship can be seen from several significant stipulations made by the General Assembly in the final document of the first Special Session.

These include:

- the General Assembly's request to the UN Secretary-General to appoint as his personal representative the Secretary-General of the Conference;
- the competence of the Conference to adopt its own agenda and rules of procedure, taking into account recommendations made to it by the General Assembly and proposals tabled by members. In other words, the Conference was given a considerable degree of independence from the General Assembly and was not bound by General Assembly resolutions; and

- the General Assembly did, however, require the CD to report to it at least annually. This stipulation can be likened at the least to an audit requirement. As the budget of the CD is included in the UN budget and as the United Nations services its meetings, the General Assembly rightfully wants to have the means of checking whether UN funds and resources are being appropriately utilized. In the Conference's current situation, several states have openly begun to express doubts in the General Assembly as to whether the budget and other resources dedicated to the CD is money well spent. What the General Assembly has given, the General Assembly can take away.

## Current problems in the CD

I have alluded several times to matters of the CD's history that are relevant to the CD's current situation. What do I mean by the CD's current situation?

In the next segment of this presentation I am going to touch on issues that are regarded by some as the root cause of the CD's inability to engage in substantive work since 1998 when two subsidiary bodies of the CD met—for three weeks in the case of the ad hoc committee negotiating on fissile materials, and for a total of nine meetings in the case of the ad hoc committee negotiating on negative security assurances.

In other words, there have been no negotiations in the CD on matters of substance for a total of 12 years. So much for the General Assembly's hopes in 1978 as expressed in these words: "The Assembly is deeply aware of the continuing requirement for a single multilateral disarmament negotiating forum of limited size taking decisions on the basis of consensus."

### The consensus rule

This leads me directly on to the issue of consensus—often cited as being at the centre of the CD's current problems. It is a legitimate matter for discussion, but in my own view, we may be collectively wasting our breath by attacking the rule of consensus in the CD. It is here to stay. This is what the General Assembly ordained.

We may not like the manner in which it has been used to frustrate some essentially procedural matters, and we may like to think that certain understandings or protocols or conventions could be developed to confine its use to matters of substance. But the reality is that very few procedural issues are devoid of substantive implications. And, moreover, at the end of the day, members want to have the ability to protect their national security interests.

However, that is not the end of the story. Unless there is a more enlightened approach to the use of the consensus rule, the CD will lose—and arguably has already done so—its characteristic as the "single multilateral disarmament negotiating forum". Rather than railing at this rule, it would be better to see an approach taken to the use of the rule that would be more appropriate to the international standing and mission of the CD than currently exists.

For instance, we would in effect seek to interpret—as opposed to change—the consensus rule. Could, for example, an understanding be developed that the use of the consensus rule would be confined to occasions of demonstrable national interest?

In other words, rather than make changes to the rules of procedure, is there scope for embodying, for example in a Presidential statement, that, in relation to certain prescribed rules such as that on the programme of work, members will not oppose a decision unless they can manifestly demonstrate that the decision in question will compromise their national interest?

Such an interpretative statement might draw on the analogy of article X of the Treaty on the Non-Proliferation of Nuclear Weapons, which permits a state party to withdraw from that treaty if it “decides that extraordinary events, related to the subject matter [of the treaty], have jeopardised the supreme interests of its country”.

## **Programme of work**

The words “programme of work” which I have just mentioned are heard just as often in the CD as the jaded mantra about the Conference being the “single multilateral negotiating forum”. If the roadblock to negotiations in the CD is to be found anywhere in the rules of procedure, it is in respect of the rule that on “the basis of its agenda, the Conference, at the beginning of its annual session, shall establish its programme of work, which will include a schedule of its activities for that session”—the notorious rule 28.

But let us put rule 28 under the microscope. “Programme of work” is not a term of art. The rules of procedure prescribe no format except that the work programme must contain a schedule of activities. It should also take into account recommendations of the General Assembly, proposals presented by member states of the CD, and decisions of the Conference.<sup>1</sup>

In the 1990s, the CD viewed the programme of work as consisting mainly of a schedule of activities quite separate from the question of the mandates of any subsidiary bodies that it might create to take forward its work in a more informal manner than in plenary meetings. Indeed, in 1990, the agenda of the Conference<sup>2</sup> encompassed a programme of work that constituted simply a schedule of activities and an outline of items on which it proposed to focus.

The approach adopted in 1990, of equating the notion of a programme of work with a straightforward planning mechanism setting out the activities for the year based on fulfilling the CD’s agenda, had the advantages of reducing the number of decisions to one and simply allowing work to flow as circumstances allowed. The Conference needs to ask itself whether it has consciously abandoned its former approach and, if so, why.

The assumption that the CD’s programme of work must contain mandates of the kind found in proposals tabled in the last 12 fallow years is entirely questionable. Rule 28 requires the CD to establish its programme of work “which will include a schedule of its activities” on the “basis of its agenda”. Nothing about mandates is mentioned.

One of the activities identified in the schedule of activities is the “establishment of subsidiary bodies”. Given that subsidiary bodies in the CD have traditionally been the vehicles for conducting intense negotiations, the establishment of subsidiary bodies and their mandates is a deliberate act on which a decision has to be expressly taken by the Conference, by consensus of course. Mandates, however, are creatures not of the programme of work, but of subsidiary bodies.

Is a “programme of work”, in the form that it has taken in recent years, serving a useful purpose? What is the value of a programme of work of the kind that has preoccupied the CD fruitlessly for over a decade? Would reversion to single-issue mandates such as those utilized in 1998 for fissile materials and negative security assurances respectively facilitate the CD’s efforts to agree a work programme?<sup>3</sup>

To repeat, members are not obliged to develop a programme of work that embodies mandates. A programme of work need be nothing more than a list of projected activities accompanied by a timetable or “schedule of activities” for forward planning purposes, listing the order and timing in which those activities will be addressed. Mandates setting out the objectives of the negotiation (or substantive discussion—the code for treatment of an issue not amounting to

a negotiation), and the mechanisms by which those objectives would be pursued, might be developed separately.

The timetable would be the programme of work. Or to put that the other way round, the programme of work should be the timetable. It would simply allocate time to the subsidiary bodies to carry out their mandates. Adopting mandates is the first, and not inconsiderable or inconsequential, task.<sup>4</sup> Establishing the CD's work programme or time allocation, although not a purely mechanical task should follow somewhat more readily thereafter.

Those who were present in the CD on 29 May 2009 when work programme CD/1864 was adopted may say that a multi-mandate programme of work can succeed, contrary to the assertion I have just made. But, the implementation of that proposal was blocked so deliberately, that it would be a mistake to claim that it still has the potential—or something like it—to bring about the breakthrough.

Even if I am wrong, the energies absorbed by the CD in trying to find a solution through a programme of work like CD/1864 have unquestionably been enormous. Are there other ways forward? I believe that there are.

### **Plenary meetings**

Let us bring back into its rightful place rule 19 according to which the “work of the Conference shall be conducted in plenary meetings”. Once any additional arrangements are needed, for example subsidiary bodies, they can be agreed by the Conference (rule 19 also).

What will the Plenary meetings do? They will provide a focused engagement, intensifying—if engagement is sustained—into negotiations. If engagement on a given topic cannot be sustained, then no subsidiary body will be warranted and equally no new instrument, binding or otherwise, will emerge from the CD.

Is not this really what members want—to get down to substance rather than just talking about how to engage on substance? If so, common sense will prevail, and the CD will apply the various rules of procedure to which I have referred<sup>5</sup> in a manner that is conducive to serious engagement.

### **Concluding comments**

It has to be recognized, however, that concrete progress on any of the issues on the CD's agenda depends on the flexibility of a small minority who may be quite content with a stalled process.

But there comes a point where a negotiating forum that has been stalled for 12 years should, one would think, be held to closer account by the General Assembly.

Regrettably, as I have already implied, the second and third Special Sessions devoted to disarmament were largely failures. And efforts to convene a fourth Session have been stymied ostensibly because the large powers believe that such a meeting would be fruitless in the current troubled international security environment.

Holding the CD to account in the absence of a Special Session will require a concerted initiative of Member States in an annual session of the General Assembly, perhaps in both the First Committee as well as the Fifth Committee (on UN budgetary matters).

The CD has been successful in the past. It has been successful despite its rules of procedure. And as the saying goes, good workers never blame their tools.

Can the Conference therefore be brought back into productivity or should it be closed down as failing to discharge its role as a multilateral negotiating forum since the Comprehensive Nuclear-Test-Ban Treaty was negotiated in 1996? I hope that it does not come to this, and that an early thaw is imminent.

## Annex

### Extracts from the Rules of Procedure of the Conference on Disarmament

see CD/8/Rev.9 of 19 December 2003  
(emphasis added)

#### VI. Conduct of work and adoption of decisions

18. The Conference shall conduct its work and adopt its decisions by **consensus**.

#### VII. Organization of work

19. The work of the Conference shall be conducted in **plenary meetings**, as well as under any additional arrangements agreed by the Conference, such as informal meetings with or without experts.

22. The Conference may hold informal meetings, with or without experts, to consider as appropriate substantive matters as well as questions concerning its organization of work.

23. Whenever the Conference deems it advisable for the effective performance of its functions, including when it appears that there is a basis to negotiate a draft treaty or other draft texts, the Conference may establish **subsidiary bodies**, such as ad hoc sub committees, working groups, technical groups or groups of governmental experts, open to all member States of the Conference unless the Conference decides otherwise. The Conference shall define the **mandate** for each of such subsidiary bodies and provide appropriate support for their work.

24. The Conference shall decide if its own rules of procedure may be adapted to the specific requirements of its subsidiary bodies. The meetings of the subsidiary bodies shall be informal unless the Conference decides otherwise.

#### VIII. Agenda and programme of work

27. At the beginning of each annual session, the Conference shall adopt its **agenda** for the year. In doing so, the Conference shall take into account the recommendations made to it by the General Assembly, the proposals presented by member States of the Conference and the decisions of the Conference.

28. On the basis of its agenda, the Conference, at the beginning of its annual session, shall establish its **programme of work**, which will include a schedule of its activities for that session, taking also into account the recommendations, proposals and decisions referred to in rule 27.

29. The provisional agenda and the programme of work shall be drawn up by the President of the Conference with the assistance of the Secretary-General and presented to the Conference for consideration and adoption.

## Notes

- 1 Examples of such decisions taken in the past are CD/1547 (fissile material) and CD/1380 (nuclear test ban under mandate CD/1238).
- 2 See CD/963.
- 3 By way of another example, from 1980 the CD began discussing the topic of negative security assurances annually, and from 1983 to 1994 it did so in an ad hoc committee. The committee stopped meeting during the negotiations of the Comprehensive Nuclear-Test-Ban Treaty. In 1998, it was reconvened with a mandate to negotiate “effective international arrangements to assure non-nuclear-weapon States against the use or threat of use on nuclear weapons”, but it made no progress.
- 4 Witness the complex formula of the “Shannon” mandate for the negotiation of a fissile material treaty.
- 5 See the annex to this paper

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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.