

The Conference on Disarmament: How to Overcome the Current Deadlock?

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In slightly more than two weeks, the Conference on Disarmament will conclude its 2003 Session in Geneva. In all likelihood, unless a miracle takes place, this year's Session too will end on a note of disappointment. Delegations will express regret about the CD's inactivity. The incoming President (H.E. Ambassador Nourlan Danenov of Kazakhstan) and the outgoing President (H.E. Ambassador Kuniko Inoguchi of Japan) will be urged to intensify consultations to ensure a breakthrough for the 2004 Session.

2. How have we reached this impasse? Why is it that when the world is no longer constrained by the Cold War, we find the CD deadlocked? It would be useful to examine the historical background in which the CD came into being and the environment that shaped its activities. Secondly, we need to look at the present day environment and explore what needs to be done in order to make the CD work effectively.

3. In its present form, the CD came into being in 1978. The First Special Session of the UN General Assembly (SSOD-I) devoted to disarmament adopted a far-reaching Final Document containing a Programme of Action on the multilateral disarmament machinery in which the CD was described as the 'single multilateral disarmament negotiating forum.' 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 been expanded through two decisions during the past decade to 66 (now stands at 65).

4. The CD is not a UN body but, over time, has developed a close working relationship with the UN. The reason is that the CD originated in 1959 as a 10- nation Committee on Disarmament (5 NATO and 5 Warsaw Pact countries). It was expanded to an 18-nation Committee by including 8 neutral and Non-Aligned countries (1962-69) and subsequently became a Conference of the Committee on Disarmament (1969-78) with the addition of another 13 members. This has enabled the CD to adopt its own Agenda and Rules of Procedure, though linkages with the UN have become closer since 1978. It submits its Report to the UN General Assembly (UNGA) and takes into consideration, though is not bound by, the UNGA Resolutions. The budget of the CD is included in the UN budget and its meetings are serviced by the UN. The Secretary-General of the CD is appointed by the UN Secretary-General and is described as his 'Personal Representative.'

5. Substantive work in the CD mostly takes place in subsidiary bodies called Ad-Hoc Committees. All decisions, whether in subsidiary bodies or the Plenary, are taken by consensus.

6. In 1979, the CD developed a comprehensive Decalogue by taking into account the relevant provisions of the Final Document of SSOD-I that remains valid: (a) Nuclear weapons in all aspects; (b) Chemical weapons; (c) Other weapons of mass destruction; (d) Conventional weapons; (e) Reduction of military budgets; (f) Reduction of armed forces; (g) Disarmament and Development; (h) Disarmament and International Security; (i) Collateral measures – CBMs and effective verification methods in relation to appropriate disarmament measures, acceptable to all parties concerned; and (j) Comprehensive programme of disarmament leading to general and complete disarmament under effective international control. Based on the Decalogue, the CD adopts its annual Agenda. This has remained

relatively unchanged. Of course, Chemical Weapons and Nuclear Test Ban no longer figure on the Agenda and items like Prevention of an Arms Race in Outer Space (PAROS) and Transparency in Armaments were added during 1980's and 1990's respectively.

7. The template of disarmament treaties has evolved over time. Before 1978, the treaties concluded in this forum include the Partial Test Ban Treaty (PTBT), the Nuclear Non-Proliferation Treaty (NNPT), the Seabed Treaty, the Biological Weapons Convention and the Environmental Modification Convention. After 1978, the Chemical Weapons Convention (CWC) and the Comprehensive Test Ban Treaty (CTBT) were negotiated in the CD though the CD was unable to formally adopt the CTBT in 1996.

8. The pre-1978 treaties are comparatively simpler. These treaties do not contain elaborate verification provisions but rely upon 'National Technical Means.' Post-1978, treaties contain elaborate verification provisions. Naturally, this is consistent with the prevailing idiom in arms control negotiations on the bilateral track i.e. between US and former USSR where detailed verification provisions were first included in the INF Treaty (1987). However, both pre-1978 and post-1978 multilateral treaties have one thing in common – these are legally binding instruments. It is important to highlight this because today there is a debate about whether all disarmament undertakings need to be cast in this mould.

9. An examination of the CD's history reveals that progress was only possible when USA and the former USSR had reached a mutual understanding on an issue. Though described as the 'single multilateral negotiating forum,' the CD functioned in an age of bi-polarity. (It can be said that the CTBT negotiations took place from 1994 to 1996 after the Cold War was over, but the item itself was a legacy of the Cold War and, in the final stages, both USA and former USSR had adopted national decisions to suspend underground nuclear tests). NAM initiatives helped develop public opinion but were never enough to commence or sustain a negotiation.

10. Today, the political environment has changed. There are no joint US- Russia initiatives. In any event, forward movement requires a more broad-based agreement. In order to be adopted, a proposal would need support from the US, Russia, EU countries, China and a number of key NAM countries. This makes the task of consensus building more difficult.

11. The content of disarmament negotiations is also undergoing a change. A pointer was the US decision on the BWC Protocol negotiations where, after six years, US claimed in 2001 that legally-binding verification provisions were not the solution, and "the traditional approach that has worked well for many other types of weapons is not a workable structure for biological weapons." The focus, therefore, is more on best practices, codes of conduct and national implementation.

12. Such outcomes, though requiring a multilateral negotiating forum, are not designed to be legally binding instruments but are better characterized as politically binding.

13. The dilemma of 'legally binding' lies at the heart of the present deadlock reflected in debates over 'negotiating' versus 'non-negotiating' mandates. Since 1995, there has been agreement in the CD to establish an Ad-Hoc Committee to negotiate a Fissile Materials Cut-Off Treaty (FMCT) . However, it has not been possible to do so because of insistence by China on the need for establishment of an Ad Hoc Committee on PAROS to negotiate a treaty preventing weaponization of outer space. Subsequently, China has modified its position, indicating that the Ad Hoc Committee could deal with relevant issues, with the objective of leading to eventual negotiations. The US, given its current position on National Missile Defence, is only willing to examine issues and is opposed to any suggestion that would pre-judge the outcome in the direction of negotiations.

14. Looking back, we find that CD has also set up Ad Hoc Committees with non-negotiating

mandates. For example, on chemical weapons, initially the CD set up Ad Hoc Committees in 1982 and 1983 but only in 1984 did it begin the full and complete process of negotiations. On the other hand, on certain items like PAROS, the CD continued to have Ad Hoc Committees with non-negotiating mandate for nearly 10 years, a decision preceded by informal Plenary meetings. Further, the CD's history also shows that a negotiating mandate only provides for commencing negotiations; it does not guarantee for its successful conclusion. Mandates for negotiating universal 'negative security assurances,' a convention on Radiological Weapons and a Comprehensive Programme on Disarmament were renewed regularly during the 1980s, but have not led to a treaty text.

15. From a legalistic point of view, one can claim that since the CD is a negotiating forum, consideration of any item is part of an overall negotiating process and simultaneously, it can also be claimed that moving from a stage of consideration and identification to negotiations would require a specific decision by the CD which, as mentioned earlier, works by consensus. However, political differences have grown in recent years and have prevented understanding on the basis of Rules of Procedure and past practice.

16. Many former Presidents of the CD have tried to find language to bridge the political gap. Proposals by Ambassador Dembri (Algeria, June 1999), Ambassador Lint (Belgium, June 2000), Ambassador Amorim (Brazil, August 2000) and now a joint proposal put forward by the Ambassadors of Algeria, Belgium, Colombia, Chile and Sweden are some of the recent initiatives. All of these proposals have the same basis – beginning negotiations on an FMCT in an Ad-Hoc Committee, and simultaneously beginning substantive consideration/examination/identification/deliberation (but not negotiations) on Nuclear Disarmament and on PAROS in two other Ad-Hoc Committees. On Nuclear Disarmament, the language broadly conforms to the 2000 NPT Review Conference language, ".....establishing in the CD an appropriate subsidiary body with a mandate to deal with nuclear disarmament." The problem lies with the formulation on PAROS. For example, the proposal by Ambassador Amorim tasks the PAROS Ad-Hoc Committee to "examine and identify specific topics or proposals which could include confidence building or transparency measures, general principles, treaty commitments and the elaboration of a regime capable of preventing an arms race in outer space."

The proposal of the five Ambassadors tasks the Ad-Hoc Committee to "identify and examine, without limitation and without prejudice, any specific topics or proposals, which could include confidence building....". However, none of these efforts have succeeded in bridging the gap though the proposal of the Group of Five Ambassadors enjoys the support of nearly 50 countries, including Australia, Canada, India, Indonesia, Iran, Japan, Mexico, South Africa. Two weeks ago, prospects for an agreement brightened, with a Chinese statement accepting a slightly amended formulation of the proposal of the five Ambassadors – "...identify and examine, without limitation, any specific topics or proposals which could include confidence building or transparency measures, general principles, treaty commitments and the elaboration of a regime capable of preventing an arms in outer space, including the possibility of negotiating relevant international legal instrument." It remains to be seen whether this move will succeed in breaking the deadlock.

17. Especially regrettable is the fact that the impasse in the CD comes at a time when new threat perceptions and uncertainties cloud the horizon. In brain-storming sessions within the CD and on its margins, the nexus between 'terrorism' and 'weapons of mass destruction' figures prominently. Evidently, such an issue cannot be addressed by a treaty modeled on the CTBT or the CWC because there already exists a body of international law dealing with both 'terrorism' and 'weapons of mass destruction.' Addressing the two together requires a different approach – akin more to a declaration or a covenant that would be consistent with existing international law.

18. Another issue considered important is the issue of 'compliance' of States Parties with

their international treaty obligations. Not all treaties have equivalent compliance and enforcement mechanisms. However, non-compliance by States Parties in certain cases can have wide-ranging implications. Therefore, judgements about non-compliance become a sensitive matter and need to be reached through transparent and legitimate means involving all States Parties as they have a stake in the health of the treaty. Can a generic approach to compliance be elaborated, particularly when concerns about effective national implementation are rising because of emergence of non-State actors and global terrorism? Once again, traditional approaches do not offer a feasible model.

19. At the same time, traditional models remain relevant for negotiating an FMCT or an international instrument on marking and tracing of SALW on which a decision will be taken by the forthcoming UNGA session. Radiological weapons are receiving renewed attention under the label of 'dirty bomb' today because of the likelihood of non-State actors acquiring radioactive materials. An understanding on this would need to be implemented in terms of finding the ground between nuclear safety and nuclear security. Many countries have suggested that the CD look at 'missiles.' Preliminary multilateral efforts in this area, outside the CD, have led to the development of an 'International Code of Conduct.' In other words, new threat perceptions demand new solutions. We are also seeing it in the case of the multilateral processes underway following the last BWC Review Conference and in the negotiations on an ERW Protocol in the framework of the CCW. Yet, these approaches are also being developed through a process of multilateral negotiations.

20. This brings me back to my starting point that the CD is the 'single multilateral negotiating forum' in the field of disarmament. It is a valuable resource because if it did not exist, we would need to convene one every time a negotiation was envisaged. In recent years, we have tried to find a way out of the deadlock by looking at the Agenda of the CD or its Rules of Procedure but that is not where the source of the problem lies. The source lies in the absence of adequate political will, reflected in debates over 'negotiating' and 'non-negotiating' mandates. Overcoming the deadlock requires a political realization on the part of the international community and key member States that without multilateral negotiations it is not possible to address today's security concerns because multilateral approaches offer the only legitimate and lasting solutions.