Does the Conference of Disarmament Have a Future?

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ABSTRACT
The Conference on Disarmament (CD) has been in a prolonged state of paralysis. Since its negotiation of the Comprehensive Test Ban Treaty (CTBT) in 1996, it has not produced any other agreement and has been unable even to agree on a Programme of Work. The dysfunction of the CD has been a product of its extreme version of the consensus rule for decision-making and a counter-productive dynamic among its 65 member states that privileges national preference over the collective good that compromise could yield. The bankruptcy of the CD erodes the credibility of the multilateral disarmament enterprise as does the complicity of its members in perpetuating a diplomatic charade. Moving its core issues out of the CD and into negotiating forums not vulnerable to a de facto “veto” provides an escape route for those states genuinely interested in making progress. Without the political will to engage in creative diplomacy to break out of the CD’s straitjacket, the outlook for the future of the UN’s “single multilateral disarmament negotiating forum” looks bleak.

The august surroundings of the Council Chamber, a grand assembly room in the Art Deco Palais de Nations, the UN’s Geneva base, seem appropriate for a body designated as the UN’s “single multilateral disarmament negotiating forum” for arms control and disarmament agreements. Its walls decorated with the massive gold and black murals of the Catalan artist José Maria Sert depicting human progress and the “swords into ploughshares” theme, this is the elegant venue in which the 65 nation Conference on Disarmament (CD) has operated since its creation by the UN’s First Special Session on Disarmament (UNSSOD I) in 1978.

For some years, the CD had a record of productivity commensurate with its splendid setting. Its predecessor body (the Eighteen Nation Committee on Disarmament) had produced the Nuclear Non-proliferation Treaty (NPT) and the Biological Weapons Convention (BWC). The Convention on Certain Conventional Weapons (CCW), arguably the first humanitarian disarmament accord with its prohibitions on blinding lasers and incendiary devices, followed suit in 1980. The end of the Cold War laid the ground for even more ambitious undertakings – the Chemical Weapons Convention (CWC)

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with its comprehensive prohibition on chemical weapons was negotiated in 1993 and the Comprehensive (Nuclear) Test-Ban Treaty (CTBT), stipulating the end of nuclear testing in all places for all times, was concluded in 1996.

The CTBT, however, represented the high-water mark of the CD’s productivity and the one that required a diplomatic ruse to bring it before the UN General Assembly for adoption as India had denied consensus agreement on the final text. That text, with its unprecedented requirement for entry into force of ratification by 44 named states, to some a “poisoned pill” introduced in the end game of the negotiation, has prevented the CTBT from fully coming into effect for its states parties (eight of these named “Annex II” states, including China and the United States, have failed to sign and/or ratify the treaty). Thus, a quarter of a century after it was concluded, the CTBT still is not legally in force and major provisions, such as its Executive Council governance regime and on-site inspection protocols, are not functioning.

The fact that the CD has not produced any agreement for twenty-five years is a shocking state of affairs, perhaps only surpassed by the shameful acceptance of this institutional failure by its member states. This commentary will examine the reasons for the CD’s protracted dysfunction, explore some of the past attempts to get it back on track, and conclude with reflections on the implications of the CD’s impasse for the credibility of the existing multilateral arms control and disarmament machinery and what might be done to reform it.

The Roots of the Problem

The roots of the CD’s dysfunctionality appear to reside chiefly in its extreme application of the consensus decision-making principle alongside an increase in the selfish pursuit of national aims at the expense of the cooperation necessary to yield progress in a multilateral context. Both these factors have been exacerbated by a lack of transparency that has enabled “spoilers” to largely avoid accountability. Finally, an awkward frequent rotation of the Presidents of the conference coupled to a requirement for annual reconfirmation of existing mandates has hobbled efforts to provide coherence and continuity to the CD’s proceedings.

The CD’s rules of procedures enshrine a stringent application of the consensus principle whereby all decisions, be they procedural or substantive, require unanimity to be adopted. This arrangement provides each and every CD member state with a de facto veto over the body’s decisions. As a direct result of this requirement for unanimity, the CD has not been able to agree on a Programme of Work to guide its official work for the half-year period (January to September) that it is in session. It is the responsibility of the state that holds the Presidency at its initial annual session each January to seek consensus agreement on the CD’s Agenda and its Programme of Work. Whereas acceptance of the agenda (reflecting the so-called decalogue of objectives for multilateral arms control and disarmament set by UNSSOD I in 1978) has been routine, the outline of what official work should be undertaken on its items that are embodied in the Programme of Work has eluded agreement (with a sole exception to be discussed later) since 1996. As a result, whilst the CD still holds a weekly plenary session during which members can make statements on a variety of issues related to the forum’s agenda, it is unable to establish the subsidiary bodies required to begin sustained work on any of the agreed agenda items.
Over the years, the CD has refined its agenda to seven items: i) nuclear disarmament, ii) a Fissile Material (Cut-off) Treaty (under the rubric of the prevention of nuclear war), iii) negative security assurances (i.e. the provision by nuclear-armed states of guarantees that they will never threaten or use nuclear weapons against non-nuclear states), iv) the prevention of an arms race in outer space (PAROS), v) new types of WMD, radiological weapons, vi) comprehensive program of disarmament and vii) transparency on armaments. The first four of these items have long been seen as the “core issues” of the CD and the focus of numerous efforts to develop a Programme of Work acceptable to all.

An underlying factor in the inability of the CD members to agree on a Programme of Work is the differing priority attributed to each of the four core issues by various states. Whilst it is not surprising that priorities vary amongst the CD member states, a certain rigidity in the positions of states has resulted in negative “linkage” being applied that has effectively precluded progress. Western states, for example, have long considered a Fissile Material (Cut-off) Treaty the issue that is the “ripest” for initiation of negotiations. Indeed, the negotiation of this treaty has been an agreed priority of the Nuclear Non-proliferation Treaty (NPT) states parties since the 1995 Review and Extension Conference placed it in the second position only after the CTBT in the “Principles and Objectives for Nuclear Non-proliferation and Disarmament” decision that formed a key part of the package that enabled the indefinite extension of the treaty to be accepted.\(^1\) The “immediate” commencement of negotiations for such a treaty has been reiterated at subsequent NPT Review Conference outcomes to an embarrassing extent as the specified negotiation has never even been initiated, let alone concluded. Despite the existence of an agreed negotiating mandate for the treaty, opposition to it has been manifested by various states at different times, most consistently by Pakistan that bluntly states that it does not view such a treaty as being in its national security interest.

The CD members are organized in groupings reflecting earlier Cold War era divisions, which, however, have been maintained all the same in line with the forum’s general conservatism. The Western group, the Eastern group and the G-21/NAM states are the three main groupings with China wanting to be considered a group on its own. Whereas the Western group has espoused the FMCT as its priority for negotiation, the Eastern group has championed PAROS and the G-21 tends to ascribe priority status to nuclear disarmament and negative security assurances. No group is prepared to see its favourite issue treated differently from the others, which impedes efforts to distinguish between a negotiation and a discussion mandate in establishing subsidiary groups to undertake work although some delegations argue that it would not be feasible for the CD to negotiate more than one agreement at a time. A further complication is that the mandate for any subsidiary body that has been established needs to be renewed each year. Work underway would simply be terminated if the CD failed to agree on a renewed mandate.

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\(^1\)Principles and Objective for Nuclear Non-proliferation and Disarmament” Decision 2, NPT Review and Extension Conference, 1995.
The 2020 Session and the P6 Proposal

This linkage among the core issues results in a situation whereby work cannot begin on any one issue unless equivalent work is undertaken on all the others. As a result, the proposed Programmes of Work have tended to downplay reference to “negotiation” (although this is the explicit purpose of the CD) and have set out general, if inclusive sounding formulas. For example, the initial draft text for a Programme of Work put forward at the 2020 session provided a two-paragraph description of what work would be undertaken by the Subsidiary Bodies (SB):

(1) To establish, in accordance with Paragraph 23 of its rules of procedure, Four Subsidiary Bodies on agenda items 1 (one) to 4 (four) and One on agenda items 5 (five), 6 (six) and 7 (seven), with a particular focus on substantial elements of legally binding instruments and additional measures, and options for negotiations.

(2) The aim of the Subsidiary Bodies established under this Decision will be to consider and recommend effective measures, in line with the Final Document of SSOD-I. To this end, the Subsidiary Bodies may deepen technical discussions and broaden areas of agreement, including through the participation, in accordance with the rules of procedure, of relevant experts and reach understandings on areas of commonalities as set out in paragraph 1, taking into consideration all relevant views and proposals past, present and future.²

An exemplar of clarity it is not, but this convoluted formula reflected much behind the scenes effort by the responsible CD Presidents to reconcile various positions of member states. Efforts to no avail as this proposal circulated to the CD on February 13 was followed by another variant on February 24 and a third on March 2, all of them failing to gain consensus approval. As if agreement on a Programme of Work was not already an intractable problem, the proposal was only the central element of a three-part package of decisions. The first decision concerned the holding of informal consultations by a coordinator relating to the “improved and effective functioning of the Conference” (an exercise that was initiated in 1990 and has limped along ever since with scant results). The third decision enumerated the appointment of the co-ordinators who would preside over the five Subsidiary Bodies and outlined the timetable to be followed that would ensure exactly the same amount of time for the deliberations of each of these bodies. Given the half year overall extent of the three CD sessions, plus the opening weeks dedicated to general debate and the lengthy break periods (e.g. eight weeks between the first and second sessions), the working time available for each of the Subsidiary Bodies amounted to five half-day sessions. Needless to say, not a great deal can be accomplished even by the most active delegations in such a truncated time frame.

A further impediment to concerted action at the CD is its policy of rotating its President to six different member states by alphabetical order in the course of its half-yearly session. In 2020, the six Presidents were Algeria, Argentina, Australia, Austria,

²CD/2187/Add.1 conveying text of Note Verbale of 13 February 2020; 8 April 2020.
Bangladesh and Belarus. Each of these presidents preside only for a few weeks in any given year. At times, an effort is made to co-ordinate activity amongst the six Presidents in what is referred to as the P6 format, but this requires a fair degree of cooperation amongst the six states and as the above listing suggests, the policies and preferences of these states may not readily be harmonized.

Even if a President or the P6 as a leadership group is able to elaborate a proposed Programme of Work, the consultations with the groups regarding its acceptability are conducted behind closed doors. The lack of transparency is such that which group is responsible for opposing a proposed Programme of work let alone which state or states within the group rejected the proposal is not revealed. The rejectionist states are not obliged to be identified as such and can escape accountability if they so choose. Thus, the annual reports of the CD carry brief “thumbs down” accounts in the following fashion: “Throughout the 2020 session, Presidents of the Conference conducted intensive consultations with a view to reaching consensus on a Programme of Work . . . However despite these efforts, the Conference did not succeed in reaching consensus on a Programme of Work”.

An Iranian Critique

The 2020 session did provide some insight into which states objected to the P6 proposal and the grounds for this objection. On April 27 (almost two months after the final March 2 attempt to obtain agreement on the Programme of Work), the Iranian delegation submitted a Note Verbale with suggested amendments to the text set out in the P6 tripartite proposal. The chief objections that Iran had with the P6 proposal concerned the issues of nuclear disarmament and the FMCT, the subject of the first and second Subsidiary Bodies. For the nuclear disarmament body, Iran wanted to modify the description of the aim “to negotiate elements of legally binding instruments and their scope” and specify that the focus should be “on the prohibition and verifiable, irreversible and transparent elimination of all nuclear weapons”. These changes, which would reflect the views of several CD states, are, however, opposed by others.

A similar situation pertained with respect to the body dealing with the FMCT. Iran sought to amend the proposed focus “on the ban of the production of fissile material for nuclear weapons” so it would read “on the ban of the past and present production of fissile material for nuclear weapons”. This amendment aligns with the preference of some CD members that a fissile material production ban also addresses past stocks and not just future production, a position that other CD members reject. This debate over whether past production should be included in the scope of any fissile material production ban has been the source of a major divide among CD members ever since the conference agreed on a negotiating mandate (CD/1299) back in 1995 that had finessed the issue but did not resolve the dispute.

Although Iran by submitting its proposed amendments as a document of the Conference has made its views a matter of the public record, this should not be construed as indicating that it alone was responsible for the rejection of the P6 proposal. The lack of transparency at the Conference and its mode of operations allow for any number of

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3Report of the CD to the UN General Assembly, A/75/27, 30 September 2020, 7.
4CD/2189 conveying text of a Note Verbale of 27 April 2020; 7 May 2020.
“rejectionists” member states to scuttle potential agreements without exposing themselves. In this secretive and consensus dependent context, there are infinite opportunities for those who wish to sabotage possible progress to do so. As noted earlier, there has been a continuous failure by the CD over the last two decades to agree on a Programme of Work. Thus, it came as something of a shock when the Sri Lankan President of the 2018 session gaveled a decision at the February 16 plenary accepting a proposed Programme of Work, featuring the same five Subsidiary Bodies as per the 2020 session.\(^5\) For a brief period, there was a flicker of hope that the CD might actually get back to work. However, this was not to be as those who in the diplomatic equivalent of being asleep at the switch had allowed the Programme of Work to be adopted now quickly engaged under the subsequent Swedish Presidency in a rear-guard action to block the operationalization of the Programme. This work was readily accomplished as all the issues that needed to be defined to activate the Programme of Work, notably the appointment of coordinators on the basis of equitable geographical representation and the establishment of schedules for the Subsidiary Bodies with equal allocations of time, were subject to unanimous approval, which unsurprisingly was not forthcoming, and the historic February 16 decision was revealed as no more than a flash in the pan.

Reactions to the CD’s Gridlock

If the CD was a business, it would have gone bankrupt years ago. Its consistent track record of failure would have sidelined any other organization, but the CD appears to enjoy unfathomable support by its member states and even has an outstanding request since 1982 for membership by 27 states, despite the fact that the CD has not been able to agree on this issue either. This abysmal state of affairs has been criticized on many occasions. A typical rebuke is that which the UN Secretary General delivered in his message to the opening session of the CD in 2020. "Our world entered 2020 with uncertainty and insecurity all around. One of the most significant drivers of this unease is – to put it bluntly – the atrophying state of our disarmament instruments, institutions and aspirations".\(^6\)

In an earlier 2017 speech to the CD by Izumi Nakamitsu, the UN High Representative for Disarmament Affairs, she lamented that CD actions on its agenda rather than prioritizing progress “have come to represent stopping points – where the status quo can safely thrive”.\(^7\) She also warned that “Regardless of the ability of the CD to break its stalemate, it seems clear that the work of the UN in the field of disarmament will and must go on, through all prudent but effective pathways available”.\(^8\) She explicitly points to the growing involvement of the UN General Assembly in multilateral disarmament work including negotiations on treaties on both conventional and nuclear weapons. Finally, she challenges the CD members –

\(^{5}\)CD/2119 of 16 February 2018. It has been pointed out to the author that this Programme of Work while delayed was eventually implemented in part in the summer of 2018 (CD/2126). The Programme of Work adopted on 29 May 2009 (CD/1864) the implementation of which was blocked by Pakistan is the better example of obstruction.

\(^{6}\)Message of Secretary General Guterres to the CD 20 January 2020, CD/PV 1525.

\(^{7}\)Statement to the Conference on Disarmament by Ms. Izumi Nakamitsu, High Representative for Disarmament Affairs, 12 September 2017, 5.

\(^{8}\)Statement to the Conference on Disarmament by Ms. Izumi Nakamitsu, High Representative for Disarmament Affairs, 12 September 2017, 6.
“Do you want to protect the decision-making process called ‘consensus’ ... or do you wish to follow the current path of increasing innovation and the use of other types of mechanisms and processes to tackle priority disarmament issues?”

Whilst the manifest dysfunctionality of the CD is apparent to all, its member states bear a special responsibility for the forum’s continuation and whether CD members will take up the existential challenge that the High Representative has put before them. Some states, which are not keen in seeing any progress on disarmament files they dislike, shed copious crocodile tears over the CD’s impasse. Others invest in new expert groups to further study certain core issues, whilst concluding that eventual negotiation must be entrusted to the CD despite its reputation as the forum where good disarmament issues go to die. Others simply scale down their presence at the CD, quietly reallocating personnel to more productive forums. Overall, the credibility of the multilateral disarmament enterprise is eroded and the tolerance of the CD’s dysfunctionality by its members adds to the cynicism that many observers have as to the sincerity of state action to realize oft-proclaimed arms control and disarmament objectives.

What Can Be Done to Liberate the Core Issues?

Given the CD’s protracted paralysis, it is not surprising that the only multilateral arms control and disarmament agreements to be concluded in recent times have been a product of UN General Assembly authorized negotiations. Both the 2013 Arms Trade Treaty (ATT) and the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW) are examples of this route. The subject matter of these agreements could readily have been part of the CD’s agenda, but their chief sponsors were well aware that relying on the CD to negotiate the accords would have been the “kiss of death” for these undertakings.

There is a precedent for a diplomatic initiative that attempted to employ the General Assembly route in order to circumvent the consensus straitjacket of the CD. In the leadup to the fall 2005 session of the General Assembly’s First Committee, the CD delegations of Canada along with Brazil, Kenya, Mexico, New Zealand and Sweden developed an initiative aimed at obtaining a General Assembly authorization to begin work on the CD’s four core issues via Ad Hoc Committees that would meet in Geneva. A draft resolution was prepared that paid due deference to the CD by indicating that if the CD was able to agree a Programme of Work whatever had been achieved in the Ad Hoc Committees would be transferred to the CD for further development.10

Interest was high amongst First Committee delegations as to this innovative approach to overcome the impasse at the CD. The initiative also, however, attracted the interest of some powerful states, which were not keen to have the protracted gridlock of the CD resolved and work actually commence on all four issues. Representations were made at a senior level in Ottawa and the Canadian delegation was instructed soon after not to

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9Statement to the Conference on Disarmament by Ms. Izumi Nakamitsu, High Representative for Disarmament Affairs, 12 September 2017, 7.

10“Initiating work on priority disarmament and non-proliferation issues,” Draft resolution for 60th session of UNGA, https://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com05/documents/draftelementsinitiating.pdf, and associated Explanatory Note, https://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com05/documents/explanatorynoteinitiating.pdf. Commentary on the initiative appears in the First Committee Monitor, First Edition, 3–7 October 2005, 4–5.
proceed to table the draft resolution at the First Committee. With Canada ending its support, the other states involved also backed away from the initiative, which became just a footnote in accounts of the First Committee session that year.

The need to escape the paralysis of the CD is evident for those who would genuinely wish to see progress on its core issues. The linkage problem and extreme applications of the consensus rule have precluded progress in any of the issues on the CD’s agenda. Suggestions have been made in the past for reform of the CD’s procedures that would restrict use of the “veto” and decouple the Programme of Work from the schedule of activities undertaken by the Conference and the establishment of subsidiary bodies (Caughley 2010). The Delegation of the Netherlands, for example, presented in 2019 a working paper entitled “Back to Basics—the Programme of Work”, which argued for reverting to the use of the Programme of Work as a “planning tool” separate from decisions on the creation of subsidiary bodies. The working paper noted that “…linking the organization of work with the establishment of subsidiary bodies and their mandates has created a situation whereby disagreement on the mandate of a single subsidiary body prevents substantive work on all agenda items”.11 Regrettably, such constructive ideas for overcoming the gridlock have not been embraced by member states at the CD. Many appear more comfortable with the status quo rather than exerting themselves in the pursuit of reform and solutions to the CD’s stalemate.

Nothing, however, would prevent a state or group of states to decide to take one or more of the issues before the CD and transfer it to some other diplomatic forum. This could take the form of a General Assembly-mandated negotiation as per the ATT and TPNW examples or via an ad hoc diplomatic conference, which generated the Ottawa anti-personnel landmines ban and the Convention on Cluster Munitions. The problem does not reside in an absence of diplomatic alternatives, but rather in a lack of will to utilize them. Until that occurs, the charade that passes for disarmament diplomacy at the CD is likely to continue indefinitely.

Disclosure Statement

No potential conflict of interest was reported by the author(s).

Notes on Contributor

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11“Back to Basics – the Programme of Work” working paper submitted by the Delegation of the Netherlands, CD/2165, 8 August 2019.