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# Conference on Disarmament

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**Letter dated 27 June 2011 from the Permanent Representative of Colombia addressed to the Secretary-General of the Conference on Disarmament transmitting a document entitled “Thoughts on the current state of the Conference on Disarmament and how to strengthen it” as a contribution by Colombia, in its national capacity, concerning the way in which it perceived the reflection exercise carried out on this issue at the Conference on 9 and 14 June 2011**

I am pleased to submit the attached document entitled “Thoughts on the current state of the Conference on Disarmament and how to strengthen it”. It is a contribution by Colombia, in its national capacity, concerning the way in which it perceived the reflection exercise carried out on this issue at the CD on 9 and 14 June 2011.

The purpose is to place on record the range of ideas expressed during the reflection exercise in a systematic and ordered manner, and the outcome of an exercise which is considered valuable and useful for strengthening the Conference.

I would be grateful if the Secretary-General would issue appropriate instructions to the secretariat of the Conference on Disarmament for this document to be processed as an official document of the CD and circulated to member States in advance of the informal meeting scheduled to take place with the Secretary-General’s Advisory Board. An unofficial translation of the document is also available in English.

(Signed) Alicia Arango Olmos  
Ambassador  
Permanent Representative

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\* Reissued for technical reasons on 29 September 2011.

## **Thoughts on the current state of the Conference on Disarmament and how to strengthen it**

### **Introductory note**

1. Colombia, in its national capacity, submits this document, which sets out various views on the current situation facing the Conference on Disarmament and the ideas expressed within the Conference on steps that could be taken to strengthen it. This document brings together the various ideas that were discussed at the CD during the informal reflection meetings that took place on 9 and 14 June 2011. These meetings were held in the run-up to the informal meeting to be held at the end of June between the CD and the United Nations Secretary-General's Advisory Board on Disarmament Matters, as well as the meeting of the General Assembly scheduled on 27 July 2010 as a follow-up to the high-level meeting on revitalizing the work of the Conference on Disarmament and promoting multilateral disarmament negotiations.

2. It should be noted that this document is a national contribution based on how Colombia perceived the discussion. It is not intended to be a final, fixed or exhaustive summary of all the positions. The intention is not to commit the Conference to a position or to supplant the views of the other member States. There were various parties who did not take part in the discussion and whose opinions on these issues are not necessarily reflected in the ideas presented in this document. Likewise, there may have been other views and additional suggestions to those set out here.

3. The purpose is to place on record the range of ideas expressed during the reflection exercise in a systematic and ordered manner, and the outcome of an exercise which is considered valuable and hopefully useful to the various actors and which will contribute to strengthening the Conference on Disarmament and furthering the objective of disarmament and non-proliferation. As with any process of reflection, positions and proposals change with time, and the discussion must continue.

### **Assessment of the current situation of the Conference on Disarmament**

4. Firstly, it is important to note that despite differences, there is agreement on some common points: a commitment to nuclear disarmament and non-proliferation, recognition of the importance of multilateralism in the field of disarmament, a desire for a Conference on Disarmament which is stronger and fulfils its role of sole disarmament negotiating forum, and a shared frustration across the board with the current state of our forum.

5. However, opinions vary greatly on the current state of the Conference, its root causes and the possible courses of action that could be taken to strengthen this body.

6. As regards the current situation of the Conference, the vast majority of members consider it to be in a state of stagnation and paralysis which has prevented it from fulfilling its mandate, so that it performs only a deliberative role, which is neither its function nor its purpose. From this point of view, the deadlock in the CD is unjustified and unsustainable. This echoes the concern that the international community has expressed on several occasions concerning the CD's unwieldiness, inefficiency and lack of productivity. One group of countries go further and question whether the CD is really relevant or even whether it should continue to exist, given its political and moral failure.

7. It is interesting to note that another group of countries take the opposite view. Whilst they understand and to some degree share this disillusionment with the Conference, they do not believe it has failed or is failing. Their reading of the situation is more optimistic. Some

argue that a certain sluggishness is par for the course in multilateral forums and bodies. Some even consider that any work, even if it only involves deliberating, must be considered part of the negotiating process, which requires patience. They therefore reject the argument that the CD is not fulfilling its mandate or that the Conference's work should be measured only in terms of what it produces.

8. This question of the way in which the Conference is perceived is important, because without a doubt, the first step must be to recognize the actual situation in which the CD finds itself. Without an analysis of the current situation, the need will not be felt to take the measures needed to achieve a breakthrough.

9. A variety of explanations are also offered for the causes of the Conference's current situation. Generally, these fall into two categories: procedural problems and political problems. The presentation prepared by UNIDIR as an input to the reflection exercise<sup>1</sup> explains these variables in terms of factors internal and external to the Conference, the latter going beyond mere procedural matters. Both approaches accept that many causes lie behind the CD's current situation.

10. It is important to dwell on this last point, because finding a solution depends upon the right diagnosis of the problem – if it is considered that there is one. In order to come up with a solution, we must begin by identifying the causes that gave rise to that particular problem. Here, views differ.

11. Most member States acknowledge that the Conference's main problem lies in its procedures. They believe that procedural issues limit the CD's ability to reach consensus, and by so doing prevent it from making progress in fulfilling its mandate.

12. It is important to clarify that procedural issues do not relate exclusively to the rule of consensus, but also to other ways of working which, in the opinion of a large number of delegations, also affect the smooth running of the CD's work.

13. On the subject of consensus, the various statements indicated that there is no opposition to the concept in principle. The rule of consensus exists in other multilateral forums and is a key element of the negotiating process. However, the vast majority of speakers believed that it has been abused within the CD and that all countries must use it responsibly. It should not be used as a veto by any country or countries. Some also highlighted the importance of not confusing the nature of consensus, which should be understood as the absence of objections and not unanimity of opinion.

14. Two other aspects of the CD's way of working which also affect its functioning were also singled out: the programme of work and the role of the President.

15. To date, half a dozen meetings on the programme of work have been held during the 2011 session. The positions on this subject are well known and range from an unwavering attachment to what was laid down in the programme of work arrived at in 2009 (document CD/1864), which included a negotiating mandate on the FMCT, to considering it appropriate to give the same weight to the mandates on key issues of the agenda, to suggesting the programme of work be simply a timetable, as specified in the rules of procedure. However, to understand the difficulties of achieving a programme of work, three areas of contention have to be taken into account: the "ripeness" or priority of key issues, the very nature of a programme of work and the methodology used to arrive at a programme of work.<sup>2</sup>

<sup>1</sup> See "The CD: Assessing the causes of its lack of productivity", UNIDIR, June 2011 (annex I).

<sup>2</sup> For more information on the difficulties of adopting a programme of work, see the records of the plenary sessions and the final declarations of the Presidents of the 2011 session on this subject.

16. As for the role of the President, several delegations criticized the current system of rotation and the short terms of office. This was seen as diminishing the possibility of taking action, making it harder to ensure continuity and limiting the incumbent President's ability to act as a facilitator.

17. However, there is another group of countries which do not share this view. In their opinion, the rules of procedure present no obstacle at all, and they point to other international bodies which operate under similar procedures – including the rule of consensus. These countries see external political problems as the biggest difficulty facing the Conference. To this extent, it is necessary to be patient and alert to favourable changes in these external conditions, which do not depend on the Conference but on key States<sup>3</sup> at the regional and global level.

18. A large number of countries acknowledge the existence of external factors on the international stage affecting the Conference on Disarmament, which does not operate in a vacuum removed from the real world. In particular they have in mind global and regional security conditions, legitimate national security considerations and the persistence of security doctrines based on the principle of nuclear deterrence. But for one group of countries these factors are not a justification for the CD's current situation. There are bodies which were not prevented from making progress by other difficult periods in international relations. From this perspective, patience and passivity are not an option, since all member States, big or small, must contribute to strengthening the CD and ensuring it fulfils its negotiating mandate.

19. A third approach can be identified, based on the view put forward by UNIDIR regarding internal problems which are not necessarily related to the rules of procedure. This relates to the issue of priorities and substance, which, as previously mentioned, are inevitably reflected in the difficulties in arriving at a work programme.

20. While almost all member States agree on the need to start negotiations for a fissile material cut-off treaty (FMCT) and consider it a priority, they disagree on the substance of the mandate needed to start this process, with stockpiles being the key issue. However, even for the majority of countries which disagree in this way, this cannot be a reason to prejudge a negotiating process or prevent it from getting under way.

21. Mention should also be made of the fact that most States stress that the priority and ultimate objective of these processes should be general, complete and irreversible nuclear disarmament and that efforts such as the FMCT negotiations should be channelled in this direction.

22. Moreover, it must not be forgotten that others have suggested that there are other priority topics and that they are as ripe for negotiation as the FMCT, such as negative security assurances (NSAs) or the prevention of an arms race in outer space (PAROS). Meanwhile, of course, a few countries reject this opinion outright, as they believe that only the FMCT is ready to be negotiated.

23. Independently of the above, for almost all countries, the divergent views over priorities and substance cannot be an excuse for blocking a negotiating process in which all States are able to defend their national security and other interests.

24. Mention should be made of other elements which were outlined by UNIDIR as possible causes of the CD's current situation, but which were not referred to in the

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<sup>3</sup> The concept of key States is also a source of contention, since it is rejected by some countries which believe all those who participate in the field of disarmament, and even more so in the negotiating process, are equal.

discussions. Members should also give consideration in due course to these elements, which are: the updating of the agenda, the overuse of regional groups, linkages among the core issues on the agenda, the low representation of United Nations Member States and the limited interaction with civil society.

### **Possible courses of action for strengthening the Conference on Disarmament**

25. Before examining the possible courses of action for strengthening the Conference on Disarmament, taking into account the different views of its members, it is important to mention the scenarios in which these could be put forward. The point of departure is UNIDIR's provocative question<sup>4</sup> regarding the CD's ability to come up with solutions itself.

26. There are two positions on this matter. Some countries believe that the discussion on the strengthening of the CD and any consequent decisions should take place only in the Conference – the CD as sole master of its fate. This position is rooted in the belief of some countries that the CD is independent vis-à-vis the United Nations system and the General Assembly.

27. However, other countries believe that the discussion on the Conference on Disarmament and the decisions made on it should take place outside the Conference, in the framework of the United Nations General Assembly.

28. The divergent positions are intertwined with countries' views on the CD's ability to reform itself. Some countries state that the same problems which caused the CD's current paralysis are also preventing it from engaging in self-criticism and self-reform. However, other members firmly believe in the ability of the CD to reform itself.

29. It is important to mention that the majority of countries support the convening of a fourth special session on disarmament (SSOD-IV), as a means of making necessary adjustments not only in the Conference on Disarmament but also in the multilateral disarmament machinery, which in this view is also flawed. Some are sceptical of this initiative, bearing in mind the results of previous special sessions or the time required to convene a fourth special session, as well as the need for urgent action.

30. Independently of the question of scenarios, some delegations have put forward within the Conference concrete options for strengthening it. It should be noted that these are informal propositions which have not been debated and which require greater analysis and discussion.

31. First, there is the idea that thought should be given to rationalizing the Conference's resources with a view to using them more efficiently. Some suggested a link between the allocation of resources and the results that the CD produces. This proposal has been rejected by delegations which disagree with measuring the work of the Conference in terms of productivity and believe that the Conference should continue to work on and discuss items on its agenda.

32. There is also a related proposal to rationalize CD meetings at each annual session. One way to do this would be to make the CD's meetings conditional on the adoption of the programme of work, so that meetings would be held only when necessary and when truly substantive work is being carried out. The way to decide whether a meeting is necessary could be to adopt a periodic evaluation mechanism making it possible to update positions on agenda items and to identify opportunities to put processes into action. Like the previous proposal, this idea is not feasible for those who believe that the CD should remain active.

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<sup>4</sup> See "The CD: Assessing the scope for self-reform", UNIDIR, June 2011 (annex II).

33. Another suggestion was to appoint a special coordinator on the efficiency and working methods of the CD, who would analyse its procedures and make recommendations to its members. However, some are sceptical as to whether this exercise would lead to substantial reforms.

34. There is also a proposal to establish a group of scientific experts to examine technical aspects of an FMCT, so as to build trust and contribute to the start of negotiations. This initiative is similar to the suggestion made by the United Nations Secretary-General in his last statement to the Conference, to create an informal process for building trust.

35. Some believe that the Conference needs to be more open to civil society, with a view to increasing interaction and so that the Conference benefits from its inputs, as is the case for other multilateral forums.

36. The view shared by a large majority on the importance of expanding the membership of the Conference falls within the same area. Universalizing the forum would correspond to the principle of equality among all States and the right to participate in the deliberations on the issue of disarmament, which affects all countries worldwide. The CD could also benefit from inputs from States which have participated in other multilateral disarmament forums, and the CD itself would be strengthened. Not all agree on the need for expansion, more from concerns of efficiency than for reasons of principle. Given the CD's current situation, starting a discussion on this issue would divert the body's attention away from the core issues on its agenda.

37. The above proposals would apply within the Conference on Disarmament. However, action outside the Conference has also been suggested.

38. The first suggestion is based on one of the conclusions reached in the high-level meeting on revitalizing the work of the CD and taking forward multilateral disarmament negotiations, convened by the United Nations Secretary-General on 24 September 2010: that a panel of political figures should be set up outside the CD to make proposals relating to the forum. Some members are wary of this idea because of the lack of clarity regarding its scope and the ability of a panel of experts to reach conclusions on a specialized body, while others see it as another input which could contribute to the debate.

39. Some delegations raised the possibility of holding another high-level meeting of the General Assembly on revitalizing the CD and the disarmament machinery.

40. Finally, it was suggested as part of the courses of action that steps should be taken to identify processes outside the CD which deal with Conference issues, particularly the start of FMCT negotiations. Some countries have already embarked on this initiative. In particular, several members have raised the possibility of submitting this process to the United Nations General Assembly. They believe that the unjustified and insurmountable deadlock in the Conference should not prevent progress towards a common objective. For some it is also a position of principle. The mechanism cannot be more important than the outcome.

41. This idea has been extremely controversial. Some countries believe that it would be harmful to the Conference on Disarmament and the institutional structure of multilateral disarmament. A few consider it unnecessary, in the light of their optimistic interpretation of the Conference's current situation. Although several countries may share the same position of principle, they are unsure how and where a process outside the Conference would be conducted. There are also doubts about the relevance of a process external to the CD, which would exclude participants who are considered vital for the adoption of a truly effective FMCT. Some even question the outcome of a process which has not been accepted by everyone, in view of the differences over the substance and scope of an FMCT, which would only be able to meet the expectations of some parties.

42. Lastly, these considerations are intertwined with another element raised by many delegations: that of political will. Any process or course of action aimed at strengthening the Conference on Disarmament and making progress towards the common objective of nuclear disarmament and non-proliferation should be accompanied by the firm determination of all parties involved. This should be a shared commitment.

## Annex I

[Original: English]

### Colombian Presidency UNIDIR Discussion Paper I The CD: Assessing the causes of its lack of productivity<sup>1</sup>

#### Introduction

1. Has the Conference on Disarmament (CD) become obsolete? If not, what kind of oil should we apply to the CD's machinery? Before embarking on this examination, a prior question needs to be asked. 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?<sup>2</sup> 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?

2. 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”.<sup>3</sup> 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

3. 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

<sup>1</sup> A subsequent paper entitled “The CD: Assessing the scope for self-reform” should be read in conjunction with this paper.

<sup>2</sup> See also John H. King, “transforming the CD”, April 2011, a paper in the current UNIDIR/Geneva Forum CD Discussion Series.

<sup>3</sup> 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; the text is available at <[www.reachingcriticalwill.org/political/1com/1com06/statements/UNIDIRoct18.doc](http://www.reachingcriticalwill.org/political/1com/1com06/statements/UNIDIRoct18.doc)>.



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 a FM(C)T). A further three issues were to be handled by Special Coordinators who would seek views on appropriate ways for dealing with the respective issues. All seven mandates were contained in a single package.

4. Second thoughts, though, by one member on the mandate for a 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 a 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 even to prevent the negotiation from getting underway. Surely, the United Nations General Assembly (UNGA) did not envisage the consensus rule being used to this effect when, during its first Special Session on Disarmament (UNSSOD I) in 1978, it ordained the CD as the world's "single negotiating body".

### Consensus/voting

5. Bodies such as the CD that eschew voting have thereby denied themselves the normal means of breaking an impasse such as this longstanding 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.<sup>4</sup>

6. 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.

7. 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 which has become associated with the consensus rule. As Mr. 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 Mr. Goldblat, Professor, "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

<sup>4</sup> See "Getting the Conference on Disarmament back to substantive work: food for thought", UNIDIR, 2009, <[www.unidir.org/pdf/activites/pdf2-act433.pdf](http://www.unidir.org/pdf/activites/pdf2-act433.pdf)>, para. 31.

voting”.<sup>5</sup> Whatever treaty the CD may negotiate, it remains a sovereign decision by states to accept it or not.

8. It is clear from this perspective that the CD’s rule of procedure 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.

9. This does not mean that efforts to *interpret* — as opposed to change — the rules should not be attempted, at least in respect of decisions that are precursors to negotiations getting underway. Treating the work programme as an “administrative and procedural decision” as suggested by the Blix Commission<sup>6</sup> 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**

10. 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 recognise the important matters of substance that are at stake. 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 a fissile material (cut-off) treaty. This problem has proven to be deeply resistant to attempted drafting solutions for an agreed mandate for beginning work on a FM(C)T. 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.

11. 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.

<sup>5</sup> Mr. Jozef Goldblat, “The Conference on Disarmament at the Crossroads: To Revitalize or Dissolve?”, *Nonproliferation Review*, vol. 7, no. 2, 2000, pp. 106–107.

<sup>6</sup> *Weapons of Terror: Freeing the World of Nuclear, Biological and Chemical Arms, Weapons of Mass Destruction Commission*, 2006, recommendation 58, p. 180.

12. 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 Secretary-General of the United Nations 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”.<sup>7</sup> 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.

13. 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 it a nation 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 actual 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 UNGA to avoid its being blocked in the CD.<sup>8</sup> 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

14. 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 of them. Nonetheless, after such a fallow period in the CD, a breakthrough — unlikely though it may be — on a 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.

15. The problem of linkages among the core issues is a complex one. The cynical tactic of making its acquiescence to a mandate of lesser interest to it conditional upon its securing consensus on the mandate that that member is pursuing, has dogged the CD since 1995.<sup>9</sup> 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 to the application of the

<sup>7</sup> “Dysfunctional Disarmament”, Mr. Ban Ki-moon, Secretary-General of the United Nations, 18 May 2011, <http://www.project-syndicate.org/commentary/kimoon18/English>.

<sup>8</sup> Paragraph 31, UNIDIR paper, 2009, Getting the Conference on Disarmament back to substantive work: food for thought. <http://www.unidir.org/pdf/activities/pdf2-act433.pdf>.

<sup>9</sup> Mr. John H. King, op cit, p.3, 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.

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 prioritised, 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

16. 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,<sup>10</sup> 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.<sup>11</sup> 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).<sup>12</sup>

17. 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”.<sup>13</sup>

18. 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.<sup>14</sup> 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?

19. 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

<sup>10</sup> Beginning with the Amorim proposal (CD/1624) of 24 August 2000, through the latest draft of CD/1889 (6 July 2010).

<sup>11</sup> For further discussion, see <[disarmamentinsight.blogspot.com/2010/02/shannon-mandate-aged-15.html](http://disarmamentinsight.blogspot.com/2010/02/shannon-mandate-aged-15.html)>.

<sup>12</sup> See also Mr. Jerzy Zaleski, paragraph 4, “Nuclear Disarmament in the Conference on Disarmament”, January 2011, paper for the UNIDIR/Geneva Forum CD Discussion Series: Breaking the Ice, <http://www.unidir.org/pdf/ouvrages/pdf-1-92-9045-010-J-en.pdf>.

<sup>13</sup> Rule 23.

<sup>14</sup> Idem.

core issues, fissile materials and negative security assurances,<sup>15</sup> although unfortunately that agreement was not carried over into the following year.

20. 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.

21. 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 become 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 Z 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**

22. Efforts to try 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 Secretary-General of the United Nations has suggested<sup>16</sup> 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.<sup>17</sup>

23. 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 utilised 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 an informal discussion of the fissile material issue to invoke that rule to oppose a work programme. Slavish application of rule on the programme of work and continued misapplication of the consensus rule regrettably would also mean that a

<sup>15</sup> Paragraph 9, UNIDIR paper on Fissile Material Negotiations in the CD: a Briefing Book <http://www.unidir.org/pdf/activites/pdf2-act477.pdf>.

<sup>16</sup> Mr. Ban Ki-moon, Secretary-General of the United Nations, remarks to the CD Plenary on 26 January 2011.

<sup>17</sup> 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 FMCT in order to build momentum towards negotiations and serve the objectives put forward by the Secretary-General of the United Nations.

single delegation could block a work programme that sought only to *schedule* such discussions.

24. 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 (GSE), as was used to prepare the way on matters of substance for negotiation of the CTBT.<sup>18</sup> Interesting in this regard is the statement on nuclear disarmament and non-proliferation in Berlin on 30 April 2011 of 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”.

## Conclusions

25. Expressed in broad terms, these 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, modernising the agenda to weed out its cold war roots<sup>19</sup> and providing for real engagement with civil society all warrant urgent attention;

(b) In the current security environment, gaining agreement for re-tooling 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.

<sup>18</sup> 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, CD/1423, dated 4 September 1996. See also <http://disarmamentinsight.blogspot.com/2010/11/cd-breaking-ice.html>.

<sup>19</sup> Mr. John H. King, *op cit*, p. 9.

## Annex II

[Original: English]

### Colombian Presidency UNIDIR Discussion Paper II The CD: Assessing the Scope for self-reform?<sup>1</sup>

#### Introduction

1. 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 Secretary-General of the United Nations' recent actions including the convening of a "High Level Meeting on revitalising the work of the CD and taking forward multilateral disarmament negotiations".<sup>2</sup> As efforts to revitalise 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.
2. 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 root and branch 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",<sup>3</sup> examining the increasingly outmoded agenda, working methods and rules, has not yet gathered a head of steam.
3. 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 General Assembly of the United Nations?
4. 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.
5. If the outcome of any review was that the CD should be mothballed or convened only on an "as needed" basis, should existing bodies of the United Nations (the Security

<sup>1</sup> An earlier UNIDIR discussion paper entitled "The CD: Assessing the causes of its lack of productivity" should be read in conjunction with this paper.

<sup>2</sup> See the actions proposed by the Secretary-General of the United Nations in the Chairman's Summary, High Level Meeting, New York, 24 September 2010.

<sup>3</sup> See the report of the Special Coordinator presented in the CD Plenary of 22 August 2002 (CD/PV.911).

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 Charter of the United Nations<sup>4</sup> 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?

6. 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 of the United Nations and the proposals presented by its members. The expression “take into account”,<sup>5</sup> just quoted, is capable of several interpretations. Its plain English meaning is that members are required to be sensitive to General Assembly of the United Nations recommendations. And it can be interpreted as a reflection of some inherent superiority of the Conference over the General Assembly of the United Nations in the sense that, though obliged to take such recommendations into account, it is not bound to implement them.

7. 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 body of the United Nations 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* UNSSOD I created the CD in its modern form. It would seem to be a case of the proverbial “he who giveth can surely taketh away”.

8. 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 of the United Nations 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 General Assembly of the United Nations 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 of the United Nations might mandate an extraordinary, timebound self-review, directed towards producing a justification for its continued existence.

### **New institutions; *ad hoc* processes**

9. 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

<sup>4</sup> Particularly Article 11.1 under which the General Assembly considers and makes recommendations on the principles governing disarmament and the regulation of armaments.

<sup>5</sup> Rule 27, CD’s rules of procedure, CD/8/Rev.9.



the import, export and transfer of conventional arms”.<sup>6</sup> 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.<sup>7</sup> 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”.<sup>8</sup> 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.

10. *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.

11. Stigmatization of landmines and cluster munitions has had an impact beyond the boundaries of the states parties to the Ottawa and Oslo Conventions.<sup>9</sup> 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.

12. 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.

<sup>6</sup> General Assembly, Towards an arms trade treaty, paragraph 1, A/RES/61/89, 18 December 2006.

<sup>7</sup> General Assembly, The arms trade treaty, A/RES/64/48, 12 January 2010.

<sup>8</sup> Ibid.

<sup>9</sup> Allegations and counter-allegations by the Russian Federation 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.

13. 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.<sup>10</sup> 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.

14. 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 weapons-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.<sup>11</sup>

15. In the absence of any strong impetus for internal review of the CD, possible issues-based approaches outside the CD could take several forms and involve several of the core issues. On a FM(C)T, the possibility that a group of fissile material producing nations (presumably without participation by the member state opposing negotiations 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 amongst France, United Kingdom of Great Britain and Northern Ireland and the United States of America.<sup>12</sup> 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

<sup>10</sup> 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.”

<sup>11</sup> NPT/CONF.2010/50 (Vol. I), Conclusions and recommendations for follow-on actions, I. Nuclear disarmament, A. Principles and objectives, v.

See also the report of the Australia-Japanese-led International Commission on nuclear disarmament and non-proliferation (ICNND) 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”. Note also the concern of UN Secretary-General Ban Ki-moon whose five point proposal for revitalising 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).

<sup>12</sup> See Mr. Tom Donilon, National Security Advisor to the President, speech to the Carnegie International Nuclear Policy Conference, Washington, DC, 29 March 2011.

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 General Assembly of the United Nations, 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.”

16. Interest has also been shown in reviving an idea floated informally by six countries at the General Assembly of the United Nations 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.<sup>13</sup> 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 General Assembly of the United Nations devoted to disarmament**

17. 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 revitalisation by the CD of itself, it is difficult not to conclude that systemic change must be initiated by the General Assembly of the United Nations 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.

18. 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, Mr. Alfredo Labbé, Ambassador, chair of the initial open-ended working group (OEWG) established by the General Assembly of the United Nations to consider the case for a fourth special session, has observed that, to command comparable political authority to the 1978 first special session devoted to disarmament, “the final document of a fourth special session should be a coalescing vehicle for all the Member States of the United Nations. 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”<sup>14</sup>.

19. The General Assembly of the United Nations decided in 2010 to convene a further OEWG to consider, “working on the basis of consensus”, the objectives and agenda for a fourth UNSSOD, including the possible need for establishing a preparatory committee.<sup>15</sup> The Working Group is required to report to General Assembly of the United Nations before the end of the 2012 General Assembly session. Clearly, a Special Session is not going to happen any time soon. Moreover, France, United Kingdom of Great Britain and Northern Ireland and the United States of America abstained from voting on the resolution that gave

<sup>13</sup> “Draft Elements of an UNGA60 First Committee Resolution “Initiating work on priority disarmament and non-proliferation issues” Brazil, Canada, Kenya, Mexico, New Zealand, Sweden.”

<sup>14</sup> General Assembly, Report of the Open-ended Working Group, A/AC.268/2007/2, 31 August 2007, annex I; see also Mr. J. Langmore, “The possibility and potential value of holding a Fourth Special Session on the General Assembly of the United Nations on Disarmament”, International Commission on Nuclear Non-proliferation and Disarmament.

<sup>15</sup> A/RES/65/66.

rise to the new OEWG, explaining that they believed its establishment prejudged the work being undertaken by the Secretary-General of the United Nations' 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.)

20. In these unpropitious circumstances, is it inevitable that a fourth UNSSOD would be unable to “add value” in the manner envisaged by Mr. 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 UNDC? What is to be lost by convening a well-prepared UNSSOD IV 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 issues-based concerns will continue to mount. The more often that the CD is by-passed, the more its days will seem to be numbered.

21. 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”<sup>16</sup> may choose to base their arguments on factors *broad*er 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 UNSSOD I, a list of ten issues (the “Decalogue”) for its future work on the cessation of the arms race and disarmament. That list includes disarmament and development. This notion is not universally accepted, but it is indisputable that Article 26 of the Charter of the United Nations 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”.

22. 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 increasingly seen as another unfortunate stain on its dwindling stature.

## Conclusions

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

(a) 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 General Assembly of the United Nations, including the possibility of convening a fourth special session devoted to disarmament, or they may be the result of initiatives by the Secretary-General of the United Nations following receipt of the report of his Advisory Board for Disarmament Matters later in 2011. The Advisory Board has been charged by the Secretary-General with advising him, amongst other things,

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<sup>16</sup> Op cit.

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on the possible appointment of a “High Level Panel of Eminent Persons with a special focus on the functioning of the Conference”;<sup>17</sup>

(b) 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;

(c) 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.

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<sup>17</sup> See the actions proposed by the Secretary-General of the United Nations in the Chairman’s Summary, High Level Meeting, New York, 24 September 2010.

## Annex III

[Original: English]

### List of questions

These questions are based on discussion papers prepared by UNIDIR to stimulate debate.

#### The CD: Assessing the causes of its lack of productivity

1. Is the status quo sustainable? If the CD cannot agree a work programme, are the resources needed for its continued existence justifiable? If so, why?
2. If the CD did succeed in agreeing a work programme, could it get down to sustained negotiations, or has it become too rule-bound or even obsolete? [The main problem areas are identified below.]
3. If we are optimistic and believe that the CD has a sustainable future, doesn't it need to be acknowledged that its chronic lack of productivity is threatening its credibility and therefore its existence?
4. Is the current deadlock in the disarmament machinery a procedural or a political problem?
5. If the "blame" for the lack of productivity is attributable to external considerations (e.g., the current security environment), would it not be best to acknowledge this and put the CD into "mothballs" sine die?
6. If, however, the CD were to acknowledge that there are also internal considerations that are paralysing it or reducing its effectiveness, what factors would be identified? For example,
  - (a) Profound differences on substance (e.g., stocks of fissile material, need for negotiations on nuclear disarmament, etc.)?
  - (b) Profound differences on priorities (i.e., which issues to take up, in what order, whether to negotiate or discuss, and with what objective – legally binding outcome or open outcome)?
  - (c) Use of linkages among the core issues as a deliberate means of blocking progress on any one or more of them?
  - (d) Inclusion of mandates in the work programme, that is, the unwarranted overloading of the schedule of activities?
  - (e) The unnecessary interpretation of the consensus rule as an ever-available, right of veto as opposed to a reflection of "general agreement" or the absence of vital objection?
  - (f) Inadequate representation of UN member states in the CD?
  - (g) Inadequate interaction with civil society?
  - (h) Outmoded agenda?

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- (i) Inefficient frequency of rotation of Presidents?
  - (j) Overuse of the regional groups?
  - (k) Other factors?

## Annex IV

[Original: English]

### List of questions

These questions are based on discussion papers prepared by UNIDIR to stimulate debate and with contributions of some delegations.

#### The CD: Assessing the scope for self-reform?

1. In the face of overwhelming near-consensus on issues as “ripe for negotiation”, how can the procedural block of one or two members be overcome?
2. In the absence of any internal self-review mechanism, should the CD undertake some form of review?
3. If so, is there any prospect that agreement could be reached on reforms that would improve the prospects of engagement in substantive work? How many of the issues identified in the first part of this paper need to be addressed?
4. Is it even possible that the CD could agree on a mandate for a self-review? (Irrespective of the CD’s willingness to conduct some form of review, the UN Secretary-General’s Advisory Board for Disarmament Matters may make recommendations on the CD’s future.)
5. In the absence of agreement in the CD to any mechanism for self-review, what other options are open to members and observers?
6. Should the annual report to (and the annual resolution in) the General Assembly of the United Nations draw attention to disagreement over the need for review? (The General Assembly of the United Nations could decide to seek members’ views on how to advance multilateral disarmament negotiations; or to appoint a panel of eminent persons on how to revitalize and restructure the disarmament machinery (in the light of the Advisory Board recommendations); or agree on a mandate for expert level conferences (via a Group of Governmental Experts, or Open-ended Working Groups); or to the convening of another HLM or a Special Session on Disarmament. Or ad hoc processes could be used separate from the General Assembly of the United Nations.)
7. What might a High-Level Panel of Eminent Persons focus on in order to try and move the debate forward?
8. Should the CD continue to meet for 24 weeks a year when it is not producing results?
9. Should the CD acknowledge that in the absence of agreement on a work programme this year, the Conference would be convened only for a month in 2012 to ascertain whether any break-through is possible? (In other words, resourcing of the CD for the remaining 5 months of 2012 would be contingent on decisions taken during the first month.)



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10. What about linking funding for the CD and other mechanisms of the machinery to the results it produces? (i.e. no PoW – no 24 week's worth of funding!)
  11. Which path offers the most realistic way to accelerate progress towards global zero?
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