
Conference on Disarmament

26 August 2013

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Note verbale dated 19 August 2013 from the Permanent Mission of Ireland addressed to the Secretary-General of the Conference on Disarmament transmitting the text of an informal paper entitled “work of the Conference on disarmament: challenges and future direction” dated 19 August 2013

The Permanent Mission of Ireland to the United Nations Office and other international organizations based in Geneva presents its compliments to the Secretary-General of the Conference on Disarmament, and has the honour to transmit herewith an informal paper entitled “Work of the Conference on Disarmament: challenges and future direction” dated 19 August 2013.

The Permanent Mission of Ireland would appreciate it if the informal paper could be issued as an official document of the Conference on Disarmament and circulated to all member States and observer States of the Conference.

Informal Paper

Work of the Conference on Disarmament: challenges and future direction

Introduction

1. With the adoption by consensus of CD/1956/Rev.1 on 16th August 2013, the Conference on Disarmament established an informal working group with a mandate "... to produce a programme of work robust in substance and progressive over time in implementation."
2. Over the coming period, the Informal Working Group will consider, consistent with its mandate, how to reach a basis for consensus on a programme of work that could, after many years, enable the Conference to start substantive work.
3. As these discussions commence in the Informal Working Group, it may be helpful to set out informally some wider issues that may not need immediate decision but that are, surely, issues also to be considered in strengthening the effectiveness of the Conference. These are questions that form part of the mosaic of interlocking factors that it may be necessary to assess in moving forward the Conference to a place where it meets the expectations of the international community as the world's multilateral negotiating body on disarmament issues.
4. The Conference on Disarmament and its predecessor fora have been in existence for over fifty years. The legal instruments negotiated in those fora and this Conference have strengthened multilateral disarmament and arms control and enhanced international peace and security. The potential for the Conference to make further significant contributions is real but, increasingly, has been viewed as uncertain due to the stalemate that has existed in the Conference for many years.
5. The Conference has not been able to commence negotiations on any of the several important topics on its agenda for well over a decade, despite the efforts of successive Presidents and members of the Conference on Disarmament over that period. CD/1956/Rev.1 is a clear and encouraging signal of commitment by the Conference to search for ways to end the impasse on the substance of a programme of work. Separately, there will be a need for continuous reflection on whether the working methods currently employed by the Conference are best suited to achieving results in the form of new legally binding instruments.
6. The architecture envisaged in the final outcome document of the Tenth Special Session of the General Assembly, the first devoted to disarmament (SSOD-I) laid out a clear division of tasks between various fora and bodies. The Committee on Disarmament, as this Conference was then known, is the negotiating body to which SSOD-I referred. Since it first met in 1979, the Committee and later Conference have made major contributions to increasing international peace and security through the negotiation of legally binding multilateral disarmament instruments. That impressive list of achievements has not been added to since the conclusion of negotiations on the Comprehensive Nuclear Test Ban Treaty in 1996.
7. Rule 27 of the Conference's rules of procedure specifies that the Conference, in adopting its agenda at the beginning of each year, shall "... take account the recommendations made to it by the General Assembly" as well as "the proposals presented

by member States of the Conference” and the “decisions of the Conference”. The General Assembly, in its resolution on the Conference annual report in 2012 (resolution 67/72) called on the Conference to “... further intensify consultations and explore possibilities for overcoming its ongoing deadlock of well over a decade by adopting and implementing a balanced and comprehensive programme of work at the earliest possible date”. In resolution 66/66, “Revitalizing the work of the Conference on Disarmament and taking forward multilateral disarmament negotiations”, the General Assembly called upon States to “... intensify efforts aimed at creating an environment conducive to multilateral disarmament negotiations”.

8. In his statement to the Conference on 18 June 2013, Secretary-General of the Conference Tokayev made a range of proposals for the consideration of the membership. These included the establishment of an informal working group with a mandate to produce a programme of work, now established following decision CD/1956/Rev.1. Secretary-General Tokayev also suggested the establishment of a subsidiary body to examine and make proposals on the improvement of the working methods of the Conference. Further, he suggested that the membership consider the designation of a special coordinator to examine and make proposals on expansion of the membership of the Conference and on the possible role that civil society may play in its work.

9. This paper sets out some reflections that the membership might wish to consider, including in the context of the proposals made by Secretary General Tokayev.

Working Methods

Presidents

10. To date the burden of achieving an agreement on a programme of work has, in the main, fallen to Presidents and they, in turn have relatively short periods in which to engage in consultations with the membership to gauge views. Clearly, CD/1956/Rev.1 introduces a new dimension to this process. As the system currently operates, the second and fourth Presidents in any year have only 28 days in which to carry out consultations and to draft proposals. Is it worth examining whether a smaller number of Presidencies during each annual session might be more efficient in allowing each President time for consultations in the periods when the Conference is not in session? Would it be worth examining, for example, whether four Presidents in a calendar year, each serving for six weeks, might be more efficient – this would allow each President time between the three parts of the annual session to consult?

11. The absence, in practice, of initiatives from the membership might seem at odds with the function currently envisaged for a programme of work which would run for more than the period of a single Presidency. A more collaborative and collective approach by the Conference membership to assist and support the President in preparing a draft programme of work is the basis underpinning Secretary General Tokayev’s proposal regarding a programme of work that would be “... robust in substance and progressive over time in implementation,” and that has underpinned CD/1956/Rev.1.

Programme of Work

12. Rule 27 specifies that the Conference, in adopting its agenda at the beginning of each year, shall “... take into account the recommendations made to it by the General Assembly” as well as “the proposals presented by member States of the Conference” and the “decisions of the Conference”. The Conference might wish, as a number of delegations have suggested in recent years, to look more closely at the recommendations of the General Assembly to assess whether the Conference has taken them into account. Rule 28 of the

rules of procedure states that a programme of work established at the beginning of the annual session of the Conference “...will include a schedule of activities for that session, taking also into account the recommendations, proposals and decisions” as outlined in rule 27. In turn, rule 29 provides that the “... provisional agenda and the programme of work shall be drawn up by the President of the Conference with the assistance of the Secretary-General and presented to the Conference for consideration and adoption.”

Consensus

13. In a process of assessment, should the Conference look at how the consensus rule is applied and whether this application is expedient and appropriate for the delivery of results by the Conference? This could involve, as Secretary-General Tokayev stated to the Conference on 18th June 2013, examining “... the best ways and means of utilising the rule of consensus in a manner that neither jeopardizes security interests nor retards the progress of the Conference and strengthening political will through consultations at the highest political level of member States.”

Membership

14. SSODI spoke of “... limited membership” for reasons of “convenience” for the negotiating body it envisaged. It also envisaged the membership being reviewed at regular intervals. Since the decision to admit five new members in 1999 there has been no further decision to expand the membership of the Conference. As has been observed on many occasions in the Conference, there are States who have expressed interest in participating as members of the Conference for over thirty years who have yet to be admitted as members.

15. Rule 3 of the rules of procedure provides that “(a)ll member States of the Conference shall take part in its work in conditions of full equality as independent States, in accordance with the principle of sovereign equality enshrined in the Charter of the United Nations”. The current reality is that membership of the Conference is not open to all States wishing to join and many States not members of the Conference have consistently made clear their wish to join as full members.

16. The instruments which the Conference has negotiated, through their multilateral nature, impact on the security of all States. Can it still be asserted that a limited membership body charged with negotiating instruments which have the potential to impact on the citizens of all States remains convenient? It is noted that a variety of views have been expressed by the membership of the Conference on the issue of expanding it. Rule 2 of the rules of procedure specifies that “(t)he membership of the Conference will be reviewed at regular intervals.” Is it now timely to agree on the appointment of a special coordinator to gather views of the members as a matter of strong priority?

Civil Society

17. The negotiation of multilateral legally binding instruments is, and will remain, the responsibility of States. Policy ideas and advocacy for such instruments need not, however, rest solely with representatives of States. In the field of disarmament, a considerable body of knowledge has been developed in the past decades in both academia and civil society. This body of knowledge has, as many delegations have pointed out, played a part in the wider development of policy and positions by States. Is it now worth considering in more detail how the Conference might harness/leverage this body of knowledge and experience in an effective way?

18. The General Assembly, in successive resolutions on the Conference’s annual report, has welcomed the continued engagement between civil society and the Conference. Members of the Conference on Disarmament have frequently expressed their support for

enhanced engagement between the Conference and civil society. Given this strong level of support, the Conference might wish to explore how to further enhance this engagement.

Questions for consideration

19. The search for consensus agreement on a programme of work has become, certainly since the adoption of CD/1864, a frozen impasse. The establishment of the Informal Working Group in Decision CD/1956/Rev.1 offers an opportunity to change this dynamic. To date, the reality is that, on a procedural level (a) as things currently stand, consensus agreement within the Conference on Disarmament on a programme of work, especially in the context of a negotiating mandate in respect of a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices (in accordance with the Shannon mandate) has proven to be elusive and (b) in the absence of agreement on a mandate to start negotiations on this issue, the Conference has been unable to move forward in agreeing modalities to make substantive progress on the other core issues outlined in CD/1864 (nuclear disarmament; prevention of an arms race in outer space; effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons).

20. Something has got to give if this conundrum that has paralysed the Conference on Disarmament is to be resolved. This unfreezing, by definition, has got to be at the level of either policy “substance”, which the Informal Working Group now established may well address, and/or on the processes/procedures of the Conference on Disarmament which might lead to agreement on a programme of work and its implementation.

21. So, there are a number of questions that can be asked even if they do remain questions at this stage. These are hypothetical questions asked in the clear context that negotiations in a multilateral disarmament body surely require, and this appears to be a strongly held view in the Conference, mandates to shape such negotiations:

22. Without prejudice in any way to current strongly held views within the Conference on the four core issues or to the work to be undertaken by the new Informal Working Group established by CD/1956/Rev.1, should a greater focus be placed on a framework addressing its agenda by more substantively reflecting the provisions of rule 27 of the rules of procedure? This could involve, inter alia, addressing the current agenda items within the ambit of the “... the Conference shall take into account the recommendations made to it by the General Assembly, the proposals presented by member States of the Conference and the decisions of the Conference”.

23. Having adopted the agenda for the annual session under rule 27, should the Conference, therefore, establish its programme of work for the annual session, including a “schedule of activities for that session” under rule 28 so as to more thoroughly also take “account of recommendations, proposals and decisions referred to in rule 27”?

24. In drafting a programme of work, including a schedule of activities, for the annual session, should the Conference consider adopting language allowing for elasticity, rather than precision, in how items may be approached and as to their handling evolving during a session?

25. Rule 30 provides a wide ambit in that “... it is the right of any member State of the Conference to raise any subject relevant to the work of the Conference at a plenary meeting and to have full opportunity of presenting its views on any subject which it may consider to merit attention”. There appears no reason why detailed proposals, substantive or process or procedural or draft mandates should not be put forward in plenary on any agenda item if the programme of work encapsulates the totality of the agenda agreed under rule 27.

26. Must an agreed programme of work involve a mandate for at least one (or more) core item *ab initio*? It is a question. Could it be that mandates could emerge as discussion on proposals put forward by members of the Conference emerged and evolved, in substance and in procedure? Would avoidance of mandates *ab initio*, in reality, preclude substantive negotiations on core issues?

27. Should the Conference move to early establishment of a subsidiary body under rule 23 of the rules of procedure to examine and make proposals on improving the working methods of the Conference? The arguments in favour of this appear compelling even if on the merits of the question “how do we avoid the impasse of recent years happening again”?

28. The question of expansion of the Conference membership remains an issue of real and continuing urgency. Would establishing a special coordinatorship to examine the issue and make proposals be of value at this stage? In the meantime, how do we more substantially involve Member States of the United Nations not members of the Conference but wishing to become more engaged, in the work of the Conference? Should observers be briefed by the President on a more systematic basis? How do we better involve civil society?

Conclusion

29. Successive Resolutions of the General Assembly on the Conference’s annual report have defined the Conference “... as the sole multilateral disarmament negotiating forum of the international community”, with “... the primary role in substantive negotiations on priority questions of disarmament.” The failure of the Conference to engage in negotiations on any disarmament issue over recent years has meant that the focus has, in many instances, moved to other fora.

30. Is there still a need for a central disarmament negotiating forum? The overwhelming view in the system of the United Nations rests in the affirmative. Without a doubt, achieving a functioning Conference on Disarmament will require thinking outside the box and, surely, not allowing the best to become the enemy of the good in looking at how we can break out of a paralysis that is unworthy of a body meant to be the sole multilateral disarmament negotiating forum of the international community.

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