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# Breaking the Deadlock: The Conference on Disarmament between Continuation, Dissolution and Renewal\*\*

## *Abstract*

The author explores the origins, development and structure of the Conference on Disarmament. He also discusses the challenges and problems this body faces, which have brought it from being a successful negotiating mechanism, which had produced texts of a number of important disarmament treaties, to remaining deadlocked for more than two decades. The author outlines the possible options for reviving the Conference, ranging from modest changes, to imposing more substantive transformation, but also referring to possible consequences of disbanding the body, which some studies argue for. The author also offers his opinion on the feasibility of some of these proposals.

## *Key words*

disarmament, arms control, non-proliferation, security, United Nations, General Assembly

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## INTRODUCTION

Disarmament is one of the pillars of the post-World War II international order. As such, it was incorporated into the United Nations (UN) Charter, which was drafted and adopted at the very end of WWII. From the very start, the UN sought to pursue its disarmament agenda. Indeed, the very first resolution of the UN General Assembly (UNGA) was dedicated to establishing the Atomic Energy Commission, tasked with drafting proposals on controlling atomic energy. This was the basis for the establishment of a multilateral disarmament system, which would further grow and evolve in accordance with the decisions of the UNGA, as well as other UN bodies.

A central position within this “Disarmament Machinery” belongs to the Conference of Disarmament (CD). Even though this body, prior to 1983, was known by other names, it was always designated as the international community’s unique negotiating body for disarmament (and arms control and non-proliferation) matters. Over the course of past decades, the CD was successful in producing disarmament treaty texts, some of which were instrumental in safeguarding strategic stability and global security, and which prevented the outbreak of new arms races. However, since the mid 1990s the CD has been stuck in deadlock, and has been unable to resume its work and perform its primary tasks (negotiating treaties), mostly due to the uniform application of the consensus principle, which grants all of the (currently) 65 member states a virtual veto power. Additionally, geopolitical changes and altering of power-relations have also influenced the work of the CD, often by making agreements on certain disarmament or arms control issues impossible to reach.

Despite its incapacity to execute its primary task, the CD has retained its prestige in the international community. Also, notwithstanding the stalemate, it has come to be appreciated as a forum for discussion of various disarmament and arms control issues, which come up from time to time. Therefore, instead of scrapping it, voices have been raised for reforming the CD, so that it could be brought back to the position it once held, or, on the other hand, to adjust the CD’s goals and objectives to the new global reality.

## CREATION, STRUCTURE AND EVOLUTION

The origins of the CD are to be found in a 1959 agreement between the United States (US), the Soviet Union (USSR), the United Kingdom (UK) and France regarding the establishment of an international disarmament forum – named the Ten Nations Committee on Disarmament. It comprised an equal number of Western and Eastern Block countries, and was chaired by the US and USSR.<sup>1</sup> Despite the Committee assuming a broad and ambitious agenda, with the view of achieving general and complete disarmament, its 1960 session met an early suspension, and, due to heightened international tension, was soon afterwards dissolved.<sup>2</sup> In 1961 the Ten Nations Committee was replaced with a new disarmament body – the Eighteen Nations Committee on Disarmament, again presided over by the two super-powers and composed out of an equal number of Western and Eastern Block countries, with an addition of eight non-aligned states. Unlike its predecessor, the Eighteen Nations Committee proved to be successful, with its most noteworthy achievement being the 1963 negotiations of the Partial Test Ban Treaty (PTBT), which prohibited the testing of nuclear weapons in the atmosphere, Outer-Space and under water.<sup>3</sup> The PTBT helped improve US-USSR relations, which were strained because of the 1962 Cuban Crisis, and also to alleviate overall international tension. It proved to be a step in the right direction as it was quickly accepted by many governments – it was signed in August 1963, and already entered into force in October the same year.<sup>4</sup>

By the end of the 1960s the Eighteen Nations Committee was transformed into the Conference of the Committee on Disarmament. The change in name was followed with the expansion of membership from 18 to 30.<sup>5</sup> The late 1960s and early 1970s were fruitful decades, as negotiations were concluded on the texts of the 1968 Treaty on the Non-Proliferation of Nuclear

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<sup>1</sup> “Reaching Critical Will’s Guide to the Conference on Disarmament”, Women’s International League for Peace and Freedom, Geneva, 2012, p. 4.

<sup>2</sup> Coit D. Blacker and Gloria Duffy (Eds.), *International Arms Control: Issues and Agreements*, Stanford University Press, Stanford, p. 109.

<sup>3</sup> “Reaching Critical Will’s Guide to the Conference on Disarmament”, Women’s International League for Peace and Freedom, Geneva, 2012, p. 4.

<sup>4</sup> Jozef Goldblat, *Arms Control: The New Guide to Negotiations and Agreements*, SAGE Publications, London, 2002, p. 48.

<sup>5</sup> “Reaching Critical Will’s Guide to the Conference on Disarmament”, Women’s International League for Peace and Freedom, Geneva, 2012, p. 4.

Weapons (NPT)<sup>6</sup>, the 1972 Biological Weapons Convention (BWC)<sup>7</sup>, and the 1977 Environmental Modification Convention (ENMOD).<sup>8</sup>

In 1979, and in accordance with the decisions of the first Special Session of the UNGA dedicated to Disarmament (SSOD), held in 1978, the Committee on Disarmament was formed, which is since 1983 known as the Conference on Disarmament. This body was established following paragraph 120 of the SSOD Final Document, where the need for the establishment of a “single multilateral disarmament negotiating forum” is stipulated, with reference being made to considerable and urgent work that remains to be conducted in the field of disarmament.<sup>9</sup> Even though the UNGA held subsequently another two special sessions on disarmament (in 1982 and 1988), they failed to produce final documents. Because of this the outcomes of the first SSOD, as

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<sup>6</sup> The NPT was originally concluded for the period of 25 years, but was extended indefinitely during its 1995 Review Conference. It is based on a great bargain, whereby states which do not possess nuclear weapons committed not to acquire them (the non-proliferation pillar), while nuclear powers were obliged to pursue nuclear disarmament. Additionally, the NPT promotes international cooperation in the peaceful uses of nuclear energy.

<sup>7</sup> The negotiations on the BWC in the Conference of the Committee on Disarmament were initiated by President Nixon’s 1969 proposal for the US to abandon its offensive biological weapons program. Nevertheless, a considerable number of states opposed the idea of a separate convention on biological weapons and argued for an instrument which would cover both chemical and biological weapons. On the other hand, several Western states wanted a convention banning biological weapons, as they believed that, unlike chemical weapons, a biological weapons convention would not require complex verification mechanisms. The deadlock in the negotiations was broken in 1971 when the USSR, on behalf of the Eastern Block, submitted a text proposal covering only biological weapons. “The Biological Weapons Convention: An Introduction”, United Nations Office for Disarmament, Geneva, 2017, pp. 4. and 6; Jozef Goldblat, *Arms Control: The New Guide to Negotiations and Agreements*, op. cit., p. 137.

<sup>8</sup> After being negotiated within the CD, the ENMOD was approved by the UNGA in 1976. The Convention prohibits military or any other hostile use of environmental modification techniques, which have widespread, long-lasting or severe effects. “Factsheet Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques (ENMOD)”, United Nations Office for Disarmament, 2020, p. 1.

<sup>9</sup> “Factsheet Conference on Disarmament”, United Nations Office for Disarmament, 2020, p. 1.

well as the disarmament machinery that was created by it, continues to be in force.<sup>10</sup>

As was the case with all of its predecessors, the CD was introduced as a means of easing international pressure, especially between the two super-powers, through holding and concluding negotiations on a range of arms control and disarmament issues.<sup>11</sup> This was spelled out in the SSOD's Final Document, which recommended a speedy and substantial reduction of arms and armed forces by international agreements.<sup>12</sup> In addition to this "bilateral aspect", there was also a multilateral dimension to the CD's work, since a number of new states were allowed in. Despite the claim that multilateralism was not meant to be in the foreground of its work, but was of secondary value, nevertheless the Rules of Procedure (RoP) of the CD did make it possible even for smaller states to defend and promote their interests and to increase their influence in the field of disarmament and arms control.<sup>13</sup>

## RELATIONSHIP WITH THE UNITED NATIONS

The CD is not a separate international institution, nor a full-fledged international organization. Rather, it is a part of the "UN Disarmament Machinery", alongside the UNGA's First Committee, the Disarmament Commission, and the UN Security Council (UNSC). Within the framework of the UN it is not a specialized agency, but a semi-autonomous body (i.e. a *negotiating forum*, a more precise designation, which is in accordance with the language of the SSOD Final Document), which, on one hand, is established pursuant to UNGA decisions, and, on the other, has its own RoP and agenda. As such, it retains a special relationship with the UN: it is administratively supported by

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<sup>10</sup> Despite the failure of the second and third Special Session of the UNGA to produce comprehensive outcome documents, the Second Special Session did launch the World Disarmament Campaign, which enhanced the role of the UN in disarmament information and education.

Melissa Gillis, *Disarmament: A Basic Guide*, Office for Disarmament Affairs, New York, 2017, p. 135.

<sup>11</sup> John H. King, *Transforming the Conference on Disarmament: Multilateral Arms Control and Disarmament for a Pluralistic World*, United Nations Institute for Disarmament Research, 2011, p. 2.

<sup>12</sup> Stuart Casey-Maslen and Tobias Vestner, *A Guide to International Disarmament Law*, Routledge Taylor and Francis Group, London and New York, 2019, pp. 13–14.

<sup>13</sup> John H. King, *Transforming the Conference on Disarmament: Multilateral Arms Control and Disarmament for a Pluralistic World*, op. cit., 2.

the UN, its meetings (and the meetings of its subsidiary bodies) are held at the premises of UN Headquarters in Geneva (*Palais des Nations*), they are serviced by the staff of the UN Office for Disarmament (UNODA), and its activities are funded through the regular UN budget. Moreover, the Director General of the UN Office in Geneva acts as the Secretary General of the CD and Personal Representative of the UN Secretary General to the CD. There is also an obligation on the part of the CD to report annually (or more frequently, if needed) to the UNGA, and to take into account relevant UNGA recommendation.<sup>14</sup>

Apart from the RoP, the CD also adopts its agenda at the beginning of every annual session. It does this on the basis of UNGA recommendations, and proposals made by member states.<sup>15</sup> Apart from this “annual agenda”, there is likewise the “permanent broad agenda” of the CD, called the “Decalogue”, which was agreed during the first SSOD.<sup>16</sup> This agenda covers almost all multilateral arms control and disarmament problems, most prominently cessation of nuclear arms race, nuclear disarmament, prevention of nuclear war, prevention of an arms race in Outer Space (PAROS), etc.<sup>17</sup> A yearly “narrower” agenda is adopted due to the broad and extensively ambitious scope of the “Decalogue” and the need of specifying urgent issues which need to be addressed.<sup>18</sup> Still, only those items which are enumerated in the Program of Work, another document the CD adopts (rather, should adopt) at the beginning of each session, are actually discussed, and usually only one is negotiated.<sup>19</sup> In any case, the work of the CD in the latest period has been focused on

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<sup>14</sup> John H. King, *Transforming the Conference on Disarmament: Multilateral Arms Control and Disarmament for a Pluralistic World*, op. cit., 2; Stuart Casey-Maslen and Tobias Vestner, *A Guide to International Disarmament Law*, op. cit., 52; “Conference on Disarmament (CD)”, Nuclear Threat Initiative, Available from: <https://www.nti.org/learn/treaties-and-regimes/conference-on-disarmament/>; “An Introduction to the Conference”, United Nations Office in Geneva, Available from: [https://www.unog.ch/80256EE600585943/\(httpPages\)/BF18ABFEFE5D344DC1256F3100311CE9?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/BF18ABFEFE5D344DC1256F3100311CE9?OpenDocument)

<sup>15</sup> “Rules of Procedure of the Conference on Disarmament”, Conference on Disarmament, 2003, p. 4.

<sup>16</sup> Stuart Casey-Maslen and Tobias Vestner, *A Guide to International Disarmament Law*, op. cit., p. 52.

<sup>17</sup> “An Introduction to the Conference”, United Nations Office in Geneva, Available from: [https://www.unog.ch/80256EE600585943/\(httpPages\)/BF18ABFEFE5D344DC1256F3100311CE9?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/BF18ABFEFE5D344DC1256F3100311CE9?OpenDocument)

<sup>18</sup> “Conference on Disarmament (CD)”, Nuclear Threat Initiative, Available from: <https://www.nti.org/learn/treaties-and-regimes/conference-on-disarmament/>

<sup>19</sup> Jozef Goldblat, “The Conference on Disarmament at the Crossroads: To Revitalize or Dissolve”, *Nonproliferation Review*, Vol. 7, No. 2, p. 105.

four main topics, referred to as “core issues”: nuclear disarmament<sup>20</sup>, fissile material, negative security assurances, PAROS<sup>21</sup>, and comprehensive disarmament, new types of weapons and transparency in armaments.<sup>22</sup>

## FUNCTIONING AND DECISION-MAKING

The CD, as a body rooted in Cold War politics and mentality, operates on the basis of consensus. This means that any member state can block any decision of the CD, which ultimately suggests that every member state has a de facto veto power. Over the years this rule has led to many important issues being

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<sup>20</sup> Nuclear disarmament was not only the subject of the first UNGA resolution, but was also addressed by the SSOD I, and it topped the “Decalogue” (which mentions as the very first agenda item the issue of nuclear weapons in all of its aspects). This single item expanded later on to three – nuclear test ban, cessation of nuclear arms race and nuclear disarmament, and effective international arrangements to ensure non-nuclear weapon states against the use or threat of use of nuclear weapons (negative security assurances). During the early 1990s negotiations on the Comprehensive Test Ban Treaty (CTBT) dominated discussions within the nuclear disarmament agenda item, while efforts were made to segregate the issue of fissile material (cut-off treaty) as an independent agenda item. In late 1990s a number of groups and countries pushed for establishing special coordinators and/or ad-hoc committees devoted to issues of nuclear disarmament, cessation of the nuclear arms race and negative security assurances.

“The Conference on Disarmament: Issues and Insights”, United Nations Institute of Disarmament Research, 2012, pp. 1–3.

<sup>21</sup> PAROS was born out of diverging approaches between the Western and the Eastern block members in tackling the issue of Outer Space security issues, something which has, to a large extent, prevailed until this day between the US and the Russian Federation. This agenda item has been kept afloat in the CD mostly due to efforts of the Russian Federation and China, which have submitted papers on negotiating an international treaty for prohibiting the “weaponization” (i.e. weapons deployment, use, testing, etc.) of Outer Space, including possible elements of such a treaty.

“The Conference on Disarmament: Issues and Insights”, United Nations Institute of Disarmament Research, 2012, pp. 7–9.

<sup>22</sup> “Documents on Core Issues”, United Nations Office in Geneva, Available from: [https://www.unog.ch/80256EE600585943/\(httpPages\)/08EAD78C95795CD-EC12579AD0057E183?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/08EAD78C95795CD-EC12579AD0057E183?OpenDocument)

deflected from the work of the CD, as it was evident that reaching consensus would be impossible.<sup>23</sup>

The primary method of conducting work in the CD is holding plenary meetings (which are public, unless otherwise decided, with the possibility of organizing private and informal meetings, as well). The CD can also establish subsidiary bodies, such as ad-hoc sub-committees, working groups, technical groups, and groups of governmental experts.<sup>24</sup> The plenary meetings of the CD are presided over by its member states, each in duration of four weeks, on a rotational basis, and in accordance with their alphabetical order. In 2006 an informal mechanism, called the P6, was formed, to enable a more coherent approach among the presiding member states during a given year, as well as to provide for more continuity between presidencies of different annual sessions. This mechanism usually entails informal meetings of presidents, and meetings with regional group coordinators.<sup>25</sup> Additionally, an informal group “Friends of Presidents” was introduced to assist the P6 and to help garner support for the Agenda and the Program of Work.<sup>26</sup> The most important factor that influences the P6 performance is its composition, i.e. whether there is convergence of interests and views on different aspects of arms control and disarmament (or foreign policy in general) between different presiding states. If this is not the case, every presidency would try to further its own agenda, with little, or no regard to its predecessor’s plans and accomplishments, and with little or no coordination with its successor. A very good example is the CD presidency in 2019, when the P6 consisted of Ukraine, UK, US, Venezuela, Vietnam and Zimbabwe, during which the US questioned the legitimacy of President Maduro’s Government in Venezuela, and supported opposition groups, something which created friction within the members of the Group.

## MEMBERSHIP

With each transformation from one disarmament body to another, during the 1960s and 1970s, membership grew (from 10 members of the Ten-Nations

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<sup>23</sup> Jozef Goldblat, “The Conference on Disarmament at the Crossroads: To Revitalize or Dissolve”, *Nonproliferation Review*, Vol. 7, No. 2, p. 106.

<sup>24</sup> “Rules of Procedure of the Conference on Disarmament”, Conference on Disarmament, 2003, p. 3.

<sup>25</sup> “An Introduction to the Conference”, United Nations Office in Geneva, Available from: [https://www.unog.ch/80256EE600585943/\(httpPages\)/BF18AB-FEFE5D344DC1256F3100311CE9?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/BF18AB-FEFE5D344DC1256F3100311CE9?OpenDocument)

<sup>26</sup> “Reaching Critical Will’s Guide to the Conference on Disarmament”, Women’s International League for Peace and Freedom, Geneva, 2012, p. 6.

Committee, 18 members of the Eighteen-Nations Committee, and 30 members of the Conference of the Committee on Disarmament). At the same time, the CD remained a “negotiating forum of limited size”, as envisaged by the SSOD Final Document<sup>27</sup>, as it was thought that negotiating ought to be conducted among the least possible number of actors, which included the five nuclear weapon states (which are simultaneously the five permanent members of the UNSC) and other military significant states<sup>28</sup> (originally there was an addition of 35 countries to the five nuclear weapon states, which came from all regions and political groups<sup>29</sup>).

In the early 1990s CD membership shrunk to 38, with the unification of Germany and the dissolution of Czechoslovakia. A new wave of enlargement occurred in 1996 when 23 member states applied for membership. However, as one of the applicant countries was Iraq, at the time under UN sanctions, it was decided that all countries aspiring to join the CD on this occasion should submit a solemn commitment that they would not obstruct the functioning of the CD by misusing the consensus rule. This requirement was in force in relations to Iraq until the UN sanctions were lifted, while for all other acceding countries this restriction expired two years after joining the CD.<sup>30</sup> These developments created worries among some states that a “lower tier” of membership would be created, as the new members had, at least on a provisional basis, no voting right.<sup>31</sup>

CD membership expanded again in 1999, when 5 new countries were admitted. Even though these states joined without additional conditioning, nevertheless it is important to note that another 15 countries (which means 20 in total) applied for joining, but were denied. The number of members, which rose to 66 in 1999, soon went down to 65, as an agreement was reached that the Federal Republic of Yugoslavia would not occupy the chair of the former Socialist Federal Republic of Yugoslavia.<sup>32</sup>

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<sup>27</sup> “Factsheet Conference on Disarmament”, United Nations Office for Disarmament, 2020, p. 1.

<sup>28</sup> “The Conference on Disarmament: History, Role and Methods of Work”, Rappresentanza Permanente d’Italia ONU-Ginevra, Available from: <https://italiarappginevra.esteri.it/rappginevra/en/il-disarmo/la-conferenza-del-disarmo>

<sup>29</sup> Jozef Goldblat, *Arms Control: The New Guide to Negotiations and Agreements*, op. cit., p. 14.

<sup>30</sup> Jozef Goldblat, “The Conference on Disarmament at the Crossroads: To Revitalize or Dissolve”, op. cit., pp. 104–105; Jozef Goldblat, *Arms Control: The New Guide to Negotiations and Agreements*, op. cit., p. 14.

<sup>31</sup> Jozef Goldblat, *Arms Control: The New Guide to Negotiations and Agreements*, op. cit., p. 14

<sup>32</sup> *Ibid.*

Despite the global changes that occurred in early 1990s, such as the dissolution of the USSR, the collapse of the Eastern Block, and the end of the Cold War, the characteristics of the Cold War-like structures remained within the CD, especially when it comes to the endurance of the division of members into three regional groups (Western, Eastern and the Non-Aligned Movement), which applies even to member that have acceded to the CD after the Cold War ended.<sup>33</sup>

Since the last enlargement in 1999, there have been no further expansions of the CD membership, despite many countries having interest in becoming part of this unique disarmament body.<sup>34</sup> As the membership door remains closed, at least for the time being, the RoP make it possible for all other countries to participate in the work of the CD as “non-member states” (or “states-not-members”).<sup>35</sup> Apart from participating in discussions, non-member states are allowed to submit written proposals or working documents to the Conference, and they can also be invited to participate in the work of subsidiary bodies.<sup>36</sup> During the CD 2019 and 2020 sessions a total of 44 and 41 countries, respectively were granted participation rights as “non-member states”.<sup>37</sup> This testifies to the great significance still attributed to the CD and its work. Even though “non-member states” were always admitted “in packages”, this practice was undermined most recently, as the US and Israel objected to the participation of Palestine in 2019<sup>38</sup>, while Turkey blocked Cyprus’ application in 2020.<sup>39</sup>

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<sup>33</sup> *Ibid.*

<sup>34</sup> The list of member states of CD is available at: [https://www.unog.ch/80256EE600585943/\(httpPages\)/6286395D9F8DABA-380256EF70073A846?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/6286395D9F8DABA-380256EF70073A846?OpenDocument)

<sup>35</sup> “An Introduction to the Conference”, United Nations Office in Geneva, Available from: [https://www.unog.ch/80256EE600585943/\(httpPages\)/BF18ABFEFE-5D344DC1256F3100311CE9?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/BF18ABFEFE-5D344DC1256F3100311CE9?OpenDocument)

<sup>36</sup> “Rules of Procedure of the Conference on Disarmament”, Conference on Disarmament, 2003, pp. 4–5.

<sup>37</sup> “List of Participants 2019 Session”, Conference on Disarmament, Available from: <https://undocs.org/cd/INF.77>; “Revised List of Participants 2020 Session”, Conference on Disarmament, Available from: <https://undocs.org/cd/INF.77>

<sup>38</sup> “Final Record of the one thousand four hundred and seventy-fifth plenary meeting held at the Palais des Nations, on Monday, 21 January 2019, at 10.10 a.m.”, Conference on Disarmament, pp. 9–13, available from: <https://undocs.org/cd/PV.1475>

<sup>39</sup> “Final Record of the one thousand five hundred and twenty-third plenary meeting held at the Palais des Nations, Geneva, on Tuesday, 21 January 2020, at

## BLOCKADE OF WORK: STAGNATION AND DECLINE

As was the case with its predecessors, the CD was quite successful in negotiating landmark disarmament and non-proliferation treaty texts, such as the 1993 Chemical Weapons Convention (CWC)<sup>40</sup> and the 1996 Comprehensive Test-Ban Treaty (CTBT)<sup>41</sup>. However, since the conclusion of the negotiations on the CTBT, the Conference has been in deadlock, as it was unable to reach agreement on most important topics, which resulted in no substantive advancement in the work of the CD. What is more, only on two occasions did the CD manage to pass through a Program of Work (during the 1998 and 2009 sessions).<sup>42</sup> Because of this, the CD has come to be regarded as an international disappointment and has, allegedly, lost its importance and prestige. Due to the failure of the CD to discharge its functions, the most recent disarmament treaties (those since the CTBT: the 1997 Anti-Personnel Mine Ban Treaty (APLC), the 2008 Cluster Munitions Convention (CCM), the 2013 Arms Trade Treaty (ATT), and 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW)) were negotiated and adopted outside the CD. This has sparked discussions on how to revitalize the CD, or whether to abandon it all together.<sup>43</sup>

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10.20 a.m.”, Conference on Disarmament, Available from: <https://undocs.org/cd/PV.1523>

<sup>40</sup> The CWC prohibits chemical weapons and requires states parties to destroy their existing stockpiles of chemical weapons in a time frame specified by the Convention. The CWC entered into force in 1997, and is implemented by the Organization for the Prohibition of Chemical Weapons (OPCW), situated in the Hague.

*The Chemical Weapons Convention (CWC) at a Glance*, Arms Control Association, April 2020, Available from: <https://www.armscontrol.org/factsheets/cwglance>

<sup>41</sup> Unlike the 1963 PTBT, the CTBT bans nuclear weapons tests (and any other nuclear explosions) everywhere. As the Treaty was negotiated, but not agreed in the CD, the text was adopted by the UNGA in 1996. Even though it has gained almost universal acceptance, the CTBT is yet to enter into force, as this requires that all 44 countries listed in Annex 2 to sign and ratify the Treaty (currently, eight countries have failed to do so).

“Factsheet Comprehensive Nuclear Test Ban Treaty”, United Nations Office for Disarmament, 2020, p. 1.

<sup>42</sup> “Conference on Disarmament (CD)”, Nuclear Threat Initiative, Available from: <https://www.nti.org/learn/treaties-and-regimes/conference-on-disarmament/>

<sup>43</sup> John H. King, *Transforming the Conference on Disarmament: Multilateral Arms Control and Disarmament for a Pluralistic World*, op. cit., p. 5; “Reaching Critical Will’s Guide to the Conference on Disarmament”, Women’s International League for Peace and Freedom, Geneva, 2012, p. 13.

However, before venturing even further into ways forward, it is important to explore in more detail the reasons why the CD is in stalemate, and how it had ended up there, especially having in mind successful periods which marked its previous existence.

*Prima facie*, there is an institutional reason for the downturn in CD's work, which is to be found in applying the principle of consensus to absolutely every decision the CD takes, without exception, and without prejudice to its nature and status (i.e. no matter whether the decisions is of administrative or substantive essence). The consensual principle emerged out of Cold War politics, based on the division between the Western and Eastern Block, and consensus within the CD indicates that the US and USSR needed to agree in order for any decision to be adopted. With the end of the Cold War, and the emergence of new powers, which set into motion the transformation of the World into a multipolar order, the negotiations process within the CD became more complex, with a multitude of new interests and positions in play. This meant that consensus went from a tool of achieving bilateral deals during the Cold War to a hurdle which has transformed the negotiation process into a search for the lowest common denominator.<sup>44</sup> The best example for this is the failure of most sessions during the last two decades to adopt a Program of Work, which acts as a pre-requisite for agreeing which topics should be discussed and negotiated during the particular CD session. In this new situation, there is slim chance that the consensual principle could be replaced by one of the majority decision-making methods, as no member would want to give up its "veto power".<sup>45</sup> However, the necessity of reaching decisions by consensus cannot alone explain the decline in CD's work, as many other disarmament bodies also employ consensus as their primary decisions-making method. And yet are not faced with such problems.

Another institutional obstacle to furthering the mandate of the CD was introduced later on (in the mid 1990s), with the emergence of many disarmament issues that were to be tackled by the CD. Every single item was to be negotiated by a specific ad-hoc committee. In turn, each ad-hoc committee acted independently one from another, with separately-defined mandates and terms of references. Because of this, some delegations insisted that negotiations in a specific committee could not commence, unless agreements were reached in another committee. This concept of linkage, which entailed the fusing of mandates of subsidiary bodies, also known as the "comprehensive

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<sup>44</sup> John H. King, *Transforming the Conference on Disarmament: Multilateral Arms Control and Disarmament for a Pluralistic World*, op. cit., p. 3.

<sup>45</sup> *Ibid.*

and balanced program of work”<sup>46</sup>, “was toxic to the CD’s functioning”, as it was impossible for any single committee to discharge its mandate, without a comprehensive agreement on all committees being reached.<sup>47</sup>

Secondly, developments in the CD have, naturally, reflected the dynamics of global politics.<sup>48</sup> Antagonism and confrontations between certain states were present in the CD, when attempts were made to further negotiations on some of the priorities of the Agenda. These divisions are best visible with regard to the negotiations on the Fissile Material Cut-Off Treaty (FMCT), aimed at prohibiting the production of fissile material, with the view of disabling further development of nuclear weapons.<sup>49</sup> Opposing views on the FMCT went along the lines of division between “older” nuclear power states, with large stockpiles of nuclear weapons, such as the US, UK and France, on one hand, and countries that either only recently (i.e. in the 1990s) joined the “nuclear club”, such as Pakistan, or had ambition to develop own nuclear programs, such as Iran. Despite the breakthrough in the negotiations in 1998, achieved on the basis of the “Shannon Mandate”<sup>50</sup>, which led to the establishment of an ad-hoc committee on the FMCT, however no progress has been recorded since.<sup>51</sup> Another attempt on advancing the negotiations on the FMCT occurred in 1999 with linking this issue with other important negotiations – those on the PAROS and nuclear disarmament. However, this only caused new cleavages to appear in CD’s work, as the US, which vigorously supported the FMCT, opposed the discussion of the PAROS and nuclear disarmament, while China, on the other hand, declared that it would not support the FMCT, without a committee being established with a mandate to negotiate

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<sup>46</sup> “The Conference on Disarmament: Issues and Insights”, United Nations Institute of Disarmament Research, 2012, p. 3.

<sup>47</sup> *Ibid.*

<sup>48</sup> Jozef Goldblat, “The Conference on Disarmament at the Crossroads: To Revitalize or Dissolve”, *op. cit.*, p. 106.

<sup>49</sup> “Securing our Common Future: An Agenda for Disarmament”, Office for Disarmament Affairs, New York, 2018, p. 24.

<sup>50</sup> The “Shannon Mandate” was developed on the basis of the 1995 Report drafted by Ambassador Gerald Shannon of Canada, where a proposal was put forward to establish an ad-hoc committee tasked with conducting negotiations on a FMCT. “Reaching Critical Will’s Guide to the Conference on Disarmament”, Women’s International League for Peace and Freedom, Geneva, 2012, p. 9.

<sup>51</sup> “Conference on Disarmament (CD)”, Nuclear Threat Initiative, Available from: <https://www.nti.org/learn/treaties-and-regimes/conference-on-disarmament/>

the PAROS.<sup>52</sup> Since then, there have been constant failures in promoting the negotiations on the FMCT, and that includes the occasion when the Program of Work was successfully adopted in 2008. Even though this document included, as an agenda item, negotiations on the FMCT, as one of the CD's priority issues, nevertheless it ultimately failed, because of Pakistan's objections to the adoption of an implementation framework of the Program of Work.<sup>53</sup> Pakistan has remained ever since the chief opponent of the FMCT, at least in its current conception, as an instrument which would only tackle future production of fissile material, and not already existing stockpiles.

### WAYS FORWARD – REVIVAL, TRANSFORMATION OR DISSOLUTION

As Tim Caughley pondered in 2011 of what kind of “oil” ought to be applied to this machinery (and the CD in particular), or whether the disarmament machinery had become completely obsolete, in reference to former UN Secretary General Kofi Annan's warnings of accumulating “rust” in the multilateral disarmament machinery,<sup>54</sup> this questions continues to hold the same (or even greater) weight almost ten years after. This matter deserves continuous efforts, as disarmament remains in the forefront of maintaining international peace and security through preventing misunderstanding, escalation, crisis, and armed conflict.<sup>55</sup>

Despite the stalemate, the inaction and frequent criticism, the CD has nevertheless remained a quintessential body of the international disarmament community. This can be best seen in the fact that no country has left the membership of the CD (unlike some other multilateral bodies and treaties, such as the Human Rights Council). Moreover, at the beginning of every annual session there is a queue of states not-members waiting in line for being approved for participation. Furthermore, even though the CD has not been successful in negotiating new disarmament agreements, it has always found ways in enabling and fostering discussion on substantive issues (some would even argue that this deliberative function has become the CD's most promi-

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<sup>52</sup> “Reaching Critical Will's Guide to the Conference on Disarmament”, Women's International League for Peace and Freedom, Geneva, 2012, p. 5.

<sup>53</sup> *Ibid.*, p. 6.

<sup>54</sup> Tim Caughley, *Breaking the Ice in the Conference on Disarmament: A Wrap-up*, United Nations Institute for Disarmament Research, 2011, p. 1.

<sup>55</sup> “Securing our Common Future: An Agenda for Disarmament”, UN Office for Disarmament Affairs, New York, 2018.

ment role in the recent period).<sup>56</sup> The bottom line is that it's clear that there are more inquiries on the ways in which the CD can be improved and made more efficient, rather on how to dissolve or replace it.

In time, various proposals and suggestions have been brought forth concerning the CD's future. They stretch from those which imply modest tweaks, to more substantive ones which urge for discarding the existing process altogether. Joseph Goldblat argues that, even though arms control ought to be pursued through an institutional mechanism, there is no predestined reason why it should be the CD. Moreover, there is no legitimate rationale why arms control and disarmament should be dealt with by only one body, while other global issues are debated and discussed in various settings. In exposing the "illegitimacy of the CD's claim to monopoly in discussing disarmament issues", he also turns to the "membership argument", raising the question of why a limited group of countries, members of the CD, should be privileged in participating in negotiations, and also deciding which items of the disarmament agenda should be negotiated at all.<sup>57</sup>

If the international community would stick to the CD, an option would be to review the decision-making process. In other words, instead of the consensus principle, which has been one of the dominant reasons for the current impasse, other decision-making methods could be implemented, in order to enable the work of the CD to proceed unhindered. In case of concerns for the safeguard of national interests, majority voting could be used only for administrative issues. However, theoretically speaking, even if extended to substantive items as well, this would pose no danger to national interests of individual states, because no country would be forced to comply with treaty obligations, which the state in question has not agreed to.<sup>58</sup>

Another proposal goes along the lines of verifying the changes that have occurred during the last two decades through transforming the CD into a "deliberative body". These claims point to the fact that the CD has become more similar to the UNGA's First Committee, and the Disarmament Commission, and that it is no longer a "negotiating body". This transformation would not be a confession of failure, but a confirmation of the utility of holding permanent discussions on the most urgent disarmament issues. At the same time, negotiations on new disarmament treaties would need to be taken elsewhere,

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<sup>56</sup> John H. King, *Transforming the Conference on Disarmament: Multilateral Arms Control and Disarmament for a Pluralistic World*, op. cit., p. 6.

<sup>57</sup> Jozef Goldblat, "The Conference on Disarmament at the Crossroads: To Revitalize or Dissolve", op. cit., p. 106.

<sup>58</sup> *Ibid.*, pp. 106–107.

something which has already been done with many recent disarmament treaties which were drafted and concluded at ad-hoc diplomatic conferences.<sup>59</sup>

If there is no chance of implementing decision-making changes, nor altering the nature of the CD, there would be a possibility of introducing certain structural changes which would not touch upon these mentioned features, but would attempt at re-invigorating the CD's work in other ways. One such proposal draws parallels with the transformation of the Human Rights Committee into the Human Rights Council. This would not only mean changing the name of the body (the Disarmament Council, for example), but also adapting the structure to new needs and conditions. It would, above all, mean extending the membership of the CD. Changes such as these would be regarded as an important psychological momentum for energizing the work of the CD. This is what happened with all previous modifications of the name and structure of this body.<sup>60</sup>

A broader avenue for improving the work of the CD could be convening a new UNGA SSOD. Actually, in 1994 the UNGA agreed, in principle, to organize a fourth SSOD. Even though this did not happen, the issue of the fourth SSOD is still on the UNGA agenda, with multiple resolutions adopted on the matter. On three occasions the UNGA even established open-ended working groups to consider the preparatory process, agenda, and the possible objectives and outcomes of the fourth SSOD. In the case that a new SSOD would be organized, this would create the possibility of completely altering not only the CD, but the entire "Disarmament Machinery", in line with experience acquired during the past few decades. There are claims that this would be a pointless mission, as the SSODs have, allegedly, proven to be unsuccessful methods of solving disarmament issues. Instead of turning immediately to the convening of an SSOD, it is argued that the transformation of the CD should start from the members of the CD themselves, with consultations and meetings organized on the subject how to make the CD more effective.<sup>61</sup> However, this might be the wrong way of thinking about the problem. Considering that issues discussed by the CD are of universal importance and consequences, and do not affect only CD member states, it is important to acknowledge whether in the wider international community there is a sense of necessity to reform and transform the CD. As it is true, generally speaking, that international bodies do not reinvent themselves in the absence of international support for do-

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<sup>59</sup> John H. King, *Transforming the Conference on Disarmament: Multilateral Arms Control and Disarmament for a Pluralistic World*, op. cit., pp. 6–7.

<sup>60</sup> *Ibid.*, p. 10.

<sup>61</sup> *Ibid.*

ing so<sup>62</sup>, the statement which goes the other way around is also correct – that international bodies are metamorphosized when there is international willingness for doing so. If such a claim were to be accepted, the convocation of a new SSOD would be a method for mobilizing support towards reforming the “Disarmament Machinery”, and the CD above all. In this kind of setting, it would be possible to identify problems, clarify proposals and suggestions, and negotiate solutions which would be put forward. Even in cases when no consensus would be reached, there would always be a possibility of reverting the solutions agreed by most of the participants to the UNGA, which would verify them at a regular session, through a resolution. This is in line with the provisions of the UN Charter, which states that the UNGA can consider “the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments”.<sup>63</sup> A similar scenario happened with the adoption of the ATT, as the text of the Treaty was first negotiated at an ad-hoc conference but later on adopted by the UNGA, as three countries opposed it. Admittedly, such a pathway would involve significant meanderings, but it only goes to show that there are numerous options for the international community to address the issue of weaknesses or problems in the “Disarmament Machinery”.

It is worth noting that most proposals put forward so far by member states on breaking the stalemate and reinvigorating the work of the CD were never “revolutionary”, in the sense of initiating radical changes to the CD, its decision-making rules and mandate, or establishing a new negotiating body. Actually, these initiatives were usually centered on moderate adjustments, such as abandoning the “linkage” rule in the work of subsidiary bodies and the de-coupling of the establishment of subsidiary bodies and their mandates, on one hand, and the adoption of the program of work, on the other.<sup>64</sup> This is understandable, as member states would likely submit only those proposals which would be acceptable to all or most of other states, with more ambitious plans likely to be rejected from the outset. This puts the potential of reforming the CD into realistic perspective, as it weighs in political will for transformation and against this backdrop it is possible to render the feasibility of the proposals put forward in more “academic” settings. Under the current state of international politics and relations between great powers, it is not likely that thorough structural changes could be put into place, as well

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<sup>62</sup> “Review of Multilateral Disarmament Machinery”, UNIDIR, p. 3, Available from: <https://ext.d-nsbp-p.admin.ch/NSBExterneStudien/externestudien/586/fr/2381.pdf>

<sup>63</sup> “Charter of the United Nations”, Art. 11.

<sup>64</sup> ‘Back to Basics – the Programme of Work’ Working Paper submitted by the Netherlands, Conference on Disarmament, 2019.

as those that relate to tweaking the RoP and the decision-making process.<sup>65</sup> Therefore, in the existing climate, one could barely hope for anything more than the acknowledgment of the CD's "new role and mandate" as a deliberative disarmament body, stripped from the burden of having to create new international agreements. On the other hand, provided significant changes in World politics occur, which would give rise to more fertile ground for advancing disarmament efforts, the chances for commencing changes that would go beyond the more "esthetic" ones would certainly increase. Additionally, dramatic international changes could also set in motion broad consensus in the international community for convening of a new UNGA SSOD.

## CONCLUSION

Disarmament will remain at the top of the international agenda. Therefore, it is only normal that an appropriate institutional mechanism for addressing these issues were developed. As was acknowledged, this mechanism does not necessarily have to be the CD. In other words, the CD's existence is not set in stone, and there is no reason why it should be kept "alive", if there is no international support. However, the CD remains to be as popular and important as ever, despite its malfunctioning. The argument that the CD is obsolete simply because it is a body embedded in a Cold War mindset does not have to be valid, as this is the case with many other international institutions. On the other hand, it is well founded to argue that disarmament issues and furthering of the disarmament agenda are of concern for the entire international community, and therefore that there needs to be an opportunity for every single country to participate and have its voice heard in the negotiations of new treaties. This was exactly the case with the negotiations processes that led to the adoption of the APLC, CCM, ATT and the TPNW.

If the road of transformation and change of the CD is taken, it depends of what the ultimate aim is, whether to enable the negotiation process again within the CD, or to formalize the changes that have *de facto* occurred and recognize the CD as a deliberative body. In the case of the former, such changes would most certainly require the substitution of the consensus principle with another decision-making method, which would be almost impossible in the current international climate. Reforming the entire "Disarmament Machinery", with the CD being at the centre for such efforts, through a new SSOD, would be considered extremely interesting, but such efforts would be

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<sup>65</sup> A prime example can be found in the latest session of the CD (in 2020) when many countries expressed their reservations towards Australia's proposals of amending the RoP in order to introduce gender neutral language, as it was feared that it could be a "slippery slope" towards other, more substantive, changes.

futile without broader consensus, which would involve virtually the whole of the UN and its member states.

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## TRAŽEĆI IZLAZ IZ ČORSOKAKA: KONFERENCIJA O RAZORUŽANJU IZMEĐU NASTAVKA, PREKIDA I OBNOVE

*Apstrakt*

Autor istražuje poreklo, razvoj i strukturu Konferencije o razoružanju. On takođe raspravlja o izazovima i problemima sa kojima se ovo, nekada veoma uspešno, telo suočava, a koji su prouzrokovali višedecenijski zastoj u radu. Autor ocenjuje mogućnosti oživljavanja Konferencije, u rasponu od

skromnih promena do nametanja supstantivne transformacije, uz osvrt i na moguće posledice raspuštanja Konferencije, što predlažu neke studije. Autor takođe nudi svoje mišljenje o izvodljivosti nekih od navedenih predloga.

*Ključne reči*

razoružanje, kontrola naoružanja, neproliferacija, bezbednost, Ujedinjene nacije, Generalna skupština.