

The Conference in Disarmament: Realistic Remedies to End the Deadlock?

Transcript of remarks as delivered by Ambassador Laura E. Kennedy, former US Permanent Representative to the Conference on Disarmament, at the US-Russia Dialogue on Nuclear Issues meeting, Vienna, June 23, 2017

It's a pleasure to be back in Vienna with many old friends and colleagues, including Sergey Batsanov, my co-presenter and friend from my own days in Geneva as the US Ambassador to the Conference on Disarmament [CD], 2010 to 2013.

I must admit I groaned a bit when presented with my assigned topic of the CD. After all, in September it will be twenty-one years since the CD produced any concrete outcome. In my three years in Geneva, I participated in innumerable sessions devoted to the future of the CD in that body itself, at a high-level meeting in New York, at United Nations General Assembly (UNGA) First Committee debates, UNIDIR [UN Institute of Disarmament Research] dialogues, P-5 conferences [of the five permanent members of the UN Security Council—United States, Russia, China, France, and the United Kingdom], and so on.

So here's my (hardly needed) spoiler alert: there are no easy answers or brilliant solutions. I will address the five questions set out to me by the organizers and provide additional comments and suggestions.

Let me start with the five questions posed in our agenda:

The CD, its procedures, and its agenda were created four decades ago. Do they need an update? Is there a possibility for US-Russian collaboration toward that end?

Yes, they need an update and yes, US-Russian collaboration could certainly facilitate positive reform, but the two countries alone are incapable of producing a solution. The bipolar world that created today's now dysfunctional disarmament machinery is long gone. Additionally, it could be argued that it was no accident that the achievement of the CD in negotiating the CWC [1993 Chemical Weapons Convention] and the CTBT [1997 Comprehensive Nuclear-Test-Ban Treaty] took place in a period when US-Russian relations were immeasurably more positive; that comity has long since faded. Moreover, many in the disarmament community view both the US and Russia in their P-5 identities and see us as status quo players against whom many are in revolt. The nuclear-ban negotiations are clear testimony to that.

The CD agenda (the Decalogue) that emerged from the first Special Session on Disarmament, the SSOD I in 1978, is certainly outmoded, and many argue that the CD is a Cold War construct that needs changing. Among the common complaints

is its membership. Although it contains the relevant states, I think at sixty-five members, it's already unwieldy if a real negotiation were to begin. On the other hand, there are regular complaints that it is too restrictive and that membership should be universal (i.e. the "democracy deficit" argument.) I would propose a new structure, similar to the International Atomic Energy Agency [IAEA] governance model: open to all states while a smaller, rotating, partly elected body (akin to the IAEA Board of Governors) took on key tasks.

The consensus rule arouses perhaps the most debate. Much as the P-5 shared the objection that one state could prevent the otherwise overwhelming agreement to begin negotiation on an FMCT [Fissile Material Cut-off Treaty], I doubt that any of the P-5 would give up the consensus principle in a reconfigured body. Perhaps procedures could be modified to prevent the recurrent procedural hostage-taking in the CD: the incessant debate over programs of work and the linkages among the four core issues of disarmament—FMCT, Prevention of an Arms Race in Outer Space (PAROS), and Negative Security Assurances.

Given that *any* modification requires consensus, I would say the outlook remains bleak for the CD to rescue itself. A new SSOD might hold the key to unlocking the CD stalemate, since CD theologians believe only an SSOD would have the authority to chart a new course for the CD. In fact, the 2010 NPT [Treaty on the Non-Proliferation of Nuclear Weapons] Review Conference called for an Open-Ended Working Group, an OEWG, on a fourth SSOD, but subsequent sessions got nowhere—until, that is, June 12, 2017, when the OEWG actually reached consensus on objectives and an agenda for an SSOD IV. These are to be sent to the UNGA for further consideration, including establishment of a possible SSOD Preparatory Commission.

Of course, even if a fourth SSOD were to be held, it could come to naught as did SSODs II and III. But since thirty years have passed since the last SSOD, there might be a real prospect for change given that the OEWG agreed that the disarmament machinery should be reviewed to make it more effective. Perhaps only a straw in the wind, but I note that the Disarmament Committee in New York, long considered by some to be even more feckless than the CD, was able to reach consensus on conventional arms measures this spring. Maybe, just maybe, the multilateral disarmament machinery is getting some of the rust out of its system.

I suspect that the nuclear-ban talks will be shaping the broader disarmament environment here. Supporters of the nuclear ban can point to an ongoing UN-blessed negotiation that is likely to yield a text that would be approved by a UN majority as evidence that action is possible outside the stultifying, consensus-bound CD. Detractors of the ban movement, faced with the unpalatable prospect of a ban moving toward realization outside the CD, have more incentive than ever to

provide countervailing evidence that the CD can be made to produce real outcomes. That motivation may help account for the recent bout of activism at the CD that is currently working on a new examination of the agenda in an effort called "The Way Ahead" (I personally doubt, however, that it will serve to break the deadlock).

What role can Russian-US cooperation play in re-energizing the CD and how that could play out diplomatically?

The current lack of progress in US-Russian bilateral disarmament, exacerbated by US charges of Russian noncompliance with the INF [1987 Intermediate-range Nuclear Forces Treaty], is unlikely in my view to yield to any brighter prospects in the near future. Of course, the envisaged US-Russian strategic stability talks (if a date is ever agreed) may prove me unduly pessimistic. But the domestic political context in the United States is so charged and the new (and barely staffed at the policy level) US administration so distracted, that Congress might be highly unlikely to embrace any near-term US-Russian disarmament agreements should they emerge. Given the odds against bilateral advances in disarmament, I would argue that progress in the multilateral field supported by both countries could be more likely and worthy of attention. Of course, Trump himself has not shown to be a fan of multilateral arrangements, but that by no means rules out the US government pursuing them.

The United States and Russia regularly consult in Geneva in the P-5 configuration as well as within the capital-based P-5 conference process with its annual meetings, which I understand Russia may next host. The P-5 process has stagnated in recent years since it began in London in 2009 but has the potential to be rejuvenated by the parties if they wish to pursue a wide-ranging and substantive agenda, such as discussing military doctrine. As noted previously, the group certainly has a powerful incentive to take the spotlight off the nuclear ban talks by showing real activity within their ranks, especially with the NPT Review Conference cycle starting in earnest. I do not know if the agenda of the aforementioned US-Russia stability talks (if they occur) will include discussion of the CD. But the just concluded nuclear ban talks, as well as the prospect of an SSOD IV, argue for increased high-level attention to multilateral disarmament.

Is there a possibility of joint US-Russian action to re-energize deliberations on an FMCT or other deadlocked issues, like PAROS?

The United States and Russia have long consulted and worked together to further an FMCT in the CD; in recent years, however, Russia has increasingly downplayed that goal in favor of its long-standing proposal, supported by China, on "The Prevention on Placing Weapons in Outer Space" (PPWT), as well as its more recent CD initiative on chemical and biological terrorism.

Harking back to my earlier comments—that the US and Russia no longer have the power to run the CD—I don't see any prospect that the two alone or in combination with the P-5 can move the CD on FMCT. Although China disclaims its ability to move Pakistan to lift the latter's blockage of the FMCT in the CD, it certainly has far more sway on this issue than either the US or Russia. In any event, Pakistan remains obdurate on FMCT. The US moved beyond the long-standing "Shannon mandate" covering prospective FMCT talks, to support a CD proposal that should have addressed up-front Pakistan's concerns about also including fissile material stocks in a negotiation rather than a simple cut-off of fissile material production. That compromise effort accomplished nothing more than forcing Pakistan to show clearly yet again that it won't take yes for an answer. My own suspicion is that Pakistan will not join the fold until it judges that it has separated enough plutonium. And despite China's public stance in favor of an FMCT, some might question its real interest in negotiating an FMCT for a variety of strategic reasons (increased nuclear capabilities, a hedge against future US missile defense?). In terms of the new US administration's position on an FMCT, I have not yet seen any signs of its abandonment. However, the new US administration is formally reviewing this policy in tandem with the ongoing Nuclear Posture Review (NPR), and there may be parties in the new administration who might argue for jettisoning this long-standing goal.

Turning to space, the Russian-Chinese proposal for a Treaty on the Prevention of the Placement of Weapons in Outer Space (PPWT) has long been judged by the US to be unverifiable and unbalanced (such as its silence on terrestrial-based systems). Critics have also argued that its real purpose is to provide a cover for Russian and Chinese ASAT [antisatellite weapon] programs and undermine US ballistic missile defense (BMD). It is not my intention here to get into a discussion of these arguments, but suffice it to say that Congress is both concerned by ASAT threats and strongly in favor of BMD. It would therefore react strongly to any suggestion the US was willing to negotiate a PPWT.

There are other aspects of space security that ought to be palatable in the CD, such as the dormant (many say dead) EU Space Code of Conduct, later rebranded by the EU as the International Space Code of Conduct. This could address the real problems of congestion in the increasingly crowded and vital space arena. Russia was a leading critic of the EU's Code effort, however, and some would argue that many aspects of the Code are more effectively addressed in Vienna, at the Committee on the Peaceful Uses of Outer Space (COPUOS), not the CD.

There may be some areas where progress could be made. In principle, the UN Disarmament Commission has agreed to take up transparency- and confidence-building measures (TCBMs) in space as an agenda item. And perhaps the progress

made on bilateral US-China space TCBMs in last year's Xi-Obama summit could portend broader cooperation in this area.

Can the work on measures against chemical and biological terrorism and their international codification play a catalyzing role in the CD context?

No. While the US was willing to discuss this initial proposal bilaterally, there appears to be *no* enthusiasm for importing this issue in the CD. Many other states share this lack of receptivity, given the existence of the OPCW [Organisation for the Prevention of Chemical Weapons], the BWC ISU [Biological Weapons Convention International Support Unit], as well as organizations such as the 1540 Committee [of the UN Security Council]. With reference specifically to the CW [chemical weapon] portion of the proposal, it was also criticized as a means to deflect attention from the documented use of CW by the [Bashar al] Assad regime [in Syria].

Is there a possibility of joint work on technical and/or conceptual aspects of nuclear disarmament (e.g., leveraging ongoing studies on dismantlement of nuclear weapons or promoting understanding of how to ensure strategic stability and sustainability of nuclear reductions) within the CD context?

I personally would be delighted to see this occur in future but I suspect it would be a very hard sell with the P-5, which would likely see it as opening the way to importing the nuclear weapons ban/convention into the CD, since the final ban document clearly needs fleshing out on disarmament verification. I have been a fan of the International Partnership on Nuclear Disarmament Verification initiative (IPNDV) since it was first conceived. It bridges the divide between nuclear-weapon states and non-nuclear-weapon states, reflects a solid commitment to NPT Article VI, and is doing real substantive work in addition to the positive message it sends on commitment to nuclear disarmament. I recall Russia's lack of enthusiasm for the earlier UK-Norway disarmament verification initiative, and understand that Russia has been willing to participate in IPNDV meetings only as an observer. But perhaps if this work were to be transformed into a multilateral endeavor, either in the CD or linked to it, with no suggestion of a US stamp on it, Russia might be more amenable.

Such work could be a powerful counterweight to the (in my view) naïve assumptions that signing an unverified nuclear-weapons ban would lead to a safer, more secure world. It could play a salient educational role about the enormous complexities that are inherent in real progress toward multilateral disarmament. I have found in countless discussions at the CD, the First Committee, and in NPT preparatory committees and review conferences, a widespread lack of understanding of how vastly expensive and complicated this work is and how the

stakes would grow exponentially the closer the world got to zero [nuclear weapons]. The US and Russia have unparalleled experience in nuclear disarmament verification; why not partner in the CD to share it while helping to shape the disarmament agenda in a real and lasting way?

Perhaps the feasibility of such an idea will be illuminated by member state responses to the UN SYG [Secretary-General]'s request (as set out in UNGA Resolution 71/67) for "Views on the development and strengthening of practical and effective nuclear disarmament verification measures and on the importance of such measures in achieving and maintaining a world without nuclear weapons and to report back to the GA at its 72nd session." I suspect the response has been laggardly since the original reporting date of May 12, 2017, has been postponed to July 31.

I continue to believe that an FM(C)T ought to be (as distinct from whether it *will* be) the priority negotiation for the CD. Those who dismiss its utility in view of the long-standing moratoria of four of the P-5 should not forget that a moratorium is just that, which new governments could set aside and that China has yet to adopt formally.

But let me mention another possibility to consider as a possible future negotiation that could command consensus in the CD: banning the use of radiological weapons. It is not among the current four core issues that have unhealthily circumscribed the CD for years but it is covered in the agenda that was blessed by the first SSOD in 1978. Of course, the counterargument is that there are codes of conduct governing radiological material, that the IAEA has done solid work in this area, as has the Nuclear Security Summit process and the US-Russia co-chaired Global Initiative on Combatting Nuclear Terrorism (GICNT). It is additionally asserted that states don't have such weapons in their arsenals so why bother with a legal convention prohibiting them?

But the fact remains that there is a legal gap on radiological weapons. It is germane to recall that the CD created an Ad Hoc Committee in 1990 "with a view to reaching agreement on a convention prohibiting the development, production, stockpiling and use of radiological weapons." The work on this area was overtaken by the negotiations on the CTBT. Taking this work up again could be a way to get the CD back into action and relearn how to negotiate actual agreements, rather than simply debate endlessly about what the body *should* do,. Once back on track, the CD could ideally hone its previous negotiating prowess, which could be deployed on other tasks down the road.

Finally, let me thank our US and Russian hosts for organizing this conference. This dialogue among experts drawn from the ranks of government, academia, and think

tanks is more important than ever given today's limited government-to-government interchange and the importance of the issues.