

Speech to Symposium Marking the 20th Anniversary of the 8 July 1996 Advisory Opinion of the International Court of Justice

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The International Court of Justice's Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons was truly a landmark event: NZ and many of our likeminded countries continue to position ourselves on the basis of the Court's Opinion and continue to reap benefit from what the Court had to say (including quoting repeatedly from it!) I'm therefore very grateful to the organisers of this event – and that means Dr Kate Dewes – for having ensured that there is an appropriate celebration of this, its twentieth anniversary.

Kate has been kind enough to give me free rein in terms of my topic for today – though she is keen that I *do* cover what we can expect to happen, internationally, in the period ahead. So I will certainly be discussing where things might be going now on nuclear disarmament. But before doing that, I'd like to clear up some - as I see it - misunderstanding about exactly where it is that we're coming from on this. And by "we" I mean the New Zealand Government (even although it is my personal view I'm sharing with you).

Where have we been?

There seems to be a view on the part of some members of civil society that in recent years the NZ Government has *not* done all it could have to push for nuclear disarmament. Some of this sense of dissatisfaction coalesces, I think, around a perception that the Government could – but has chosen not to – use its current term on the United Nations Security Council to advance nuclear disarmament.

I don't think that there is anyone here who might actually think that a Council member's scope for action is *limitless*. But I do suspect that there are many New Zealanders who do not realise quite how constrained a Council member's ability is to move forward on *any issue* - if there is no groundswell of support from the other elected members of the Council and the Five Permanent Members are opposed.

So let me take this opportunity to lay out some of the realities of life on the Council for a country like New Zealand.

The avenues for forward movement on any issue (including disarmament) in the Council are two-fold: via a resolution or a Presidential statement. A resolution – which would obviously be the first-best vehicle for advancing anything at all - must be supported by a majority of Security Council members and not be vetoed by any of the P5. The likelihood of agreement, particularly by the P5 (who are, after all, the five Nuclear Weapon States), to anything like the sort of resolution NZ would want to see on nuclear disarmament is absolutely zero.

The fall-back, then, might seem to be a Presidential statement. But it's not as if you get a free hand on those either: because they are able to be blocked by any Council member they effectively convey the *consensus* view of the Council on a particular issue. Inevitably, then, they are always 'lowest common denominator' stuff – and certainly not an avenue for what we, as NZ, would want said on nuclear disarmament.

What are we left with, then? Well, we could convene a debate on the issue during the month when we're the Council's President and at which we would at least get to say *exactly* what we, as NZ, wanted. But so, too, would others – and it would not only be the P5 who would say things on the record with which we would strongly disagree. So you'd have to ask yourself whether even having a debate in the Council - likely to be very divisive if not actually counter-productive – gives us anything of value since it clearly cannot anchor in a new initiative or forge any real forward movement on nuclear disarmament.

I'm not for one minute saying that a term on the Council is valueless. But I *am* saying that anyone who thinks that NZ's term on the Council could be used to advance *nuclear disarmament* is under an illusion.

The last time a non-Nuclear Weapon State tried to give it a go was in 2008 when Costa Rica was on the Council. Costa Rica's attempt to get a disarmament process underway fell entirely flat - not only because of predictable P5 opposition but because Costa Rica's efforts weren't supported by their colleagues in the G77, nor by the NAM, nor indeed by other countries which are generally our like-minded on such issues. Why? Because under the UN Charter disarmament is a responsibility of the *General Assembly* – a place where everyone is at least given a vote – and very few UNGA members seem minded to see decisions on issues of such fundamental importance as nuclear disarmament being made for them in the Security Council by a mere 15 countries (one third of them being nuclear weapon possessors).

This practical political reality - the need to defer to wider sensitivities regarding the mandate for disarmament among the membership of the UN as a whole - is virtually as much a stumbling block to action in the Council by disarmament advocates like NZ as is opposition on the part of the P5.

I'm going to return to this issue of the division of power, or competencies, as between the General Assembly and the Security Council shortly. But before I do so there's another misperception I would like to touch on - one I became aware of from a recent Question Time in Parliament. There was an assertion there that the Government has not maintained the strong stance on nuclear disarmament taken by NZ in earlier times because it has failed to support UNGA resolutions calling for nuclear disarmament.

This is an easy one to clear away just by taking a look at NZ's actual voting record. If you do look at the UNGA record, you'll see that NZ's voting position on long-standing nuclear disarmament resolutions has remained virtually *unchanged* over the years. And, as regards our vote on *new* resolutions, you'll see that we have in fact voted 'yes' on almost all of them – and certainly on *every one* with any significance whatsoever for nuclear disarmament (I'd instance in particular our 'yes' vote on the four new texts last year from Mexico, Austria and South Africa, our 'yes' vote on the Indonesian resolution in 2013 (entitled "Follow-up to the 2013 High Level Meeting of the UNGA on Nuclear Disarmament") as well as on its successor resolutions, and our 'yes' in 2012 on the Mexican resolution which set up the first Open-Ended Working Group regarding multilateral nuclear disarmament negotiations).

Overall, NZ's voting record continues to align us most closely with Ireland (our fellow member of the New Agenda Coalition) as well as with Austria and Sweden. Conversely, it continues to display a very considerable divergence of approach with the position of *any* of the Five Permanent Members. For that matter, most of the P5 vote against almost all the

resolutions which NZ typically puts forward as a lead sponsor in the First Committee (to wit, the New Agenda Coalition (NAC) text, the De-alerting resolution, and the Nuclear Weapon-Free Southern Hemisphere one).

In sum, I think that New Zealand's strong support for nuclear disarmament - for the position that we conveyed to the International Court in the mid-1990s - continues unabated. This is apparent not just from what NZ says and does at UNGA (including the range of side-events we organise there) but also from our engagement in the three Conferences held to date on the Humanitarian Consequences of Nuclear Weapons and from our leadership, over two years, of the Humanitarian Consequences Joint Statement process. I would also draw your attention to what NZ, together with our NAC colleagues, has been doing at recent Nuclear Weapon Non-Proliferation Treaty (NPT) meetings: it is indeed the Working Papers which NAC has tabled at the two last NPT meetings which have given new impetus to the call for compliance with Article VI of the Treaty and laid the groundwork for the legal measures necessary to prohibit nuclear weapons.

Where now?

Although I've been at pains to defend NZ's record in continuing to push strongly for nuclear disarmament in the period since the Court's landmark Advisory Opinion, I would be the first to concede that - in terms of *results* - there's been little enough to show for our efforts and those of all the other proponents of nuclear disarmament. As everyone here will know, nothing at all along the lines of the multilateral negotiations the ICJ called for has been launched (let alone brought to the good faith conclusion which the Court references).

You'd have to say that the Nuclear Weapon States have proved remarkably adroit in keeping at bay the calls on them to implement Article VI in any terms other than by a *reduction* of their warhead numbers - when, and if, it has suited them. Equally, whilst maintaining their determination to remain outside the NPT, the other nuclear weapon possessors also give no serious sign of intending to initiate, or join, any multilateral process for the prohibition of nuclear weapons.

That's the situation we've been facing for some decades. But now, for the first time in a long while, there is a real possibility of change. Most of you will know why this is so. One factor has certainly been dissatisfaction with what the NPT's 'Grand Bargain' has delivered in terms of *horizontal* non-proliferation - which is to say, dissatisfaction with the NWS's implementation of Article VI. Frustration levels at the lack of progress on nuclear disarmament - often, indeed, things seems to be going backwards rather than forward - have been at an all-time high since last year's NPT Review Conference. It was made fairly clear at that Conference in May last year that the Nuclear Weapon States have no present intention of relinquishing nuclear weapons and none of the Five gave any indication of a willingness to embark on any process for any foreseeable period ahead that would prohibit their right to possess them. In these circumstances it became very apparent to many non-NWS - I think, really, for the first time - that the Non-Proliferation Treaty was unlikely to provide the forum for moving beyond the status quo and delivering satisfactory disarmament outcomes.

A further factor heralding the prospect of change to the nuclear status quo, has been the new momentum for disarmament which has come from the Humanitarian Initiative on Nuclear Weapons (working together with civil society groupings such as International Campaign Against Nuclear Weapons - ICAN). Norway launched this Initiative in 2013 and

a core group of 16 countries, including NZ, carried it forward through three Conferences and a sequence of Joint Statements (the latter of which I've already referred to). This Initiative puts the spotlight on exactly why it is that nuclear disarmament really matters: it focuses on *human* security and the risks and consequences (especially of a health and environmental nature) to us all of any nuclear detonation. It has been followed, most recently, by something called the Humanitarian Pledge – many of you will have known it by its original title of “the Austrian Pledge” – which includes a rather unspecific undertaking to “fill the legal gap” in the NPT and which NZ has not joined.

The Humanitarian Initiative is supported by something like 160 countries – in other words by the overwhelming majority of the NPT membership (equally, for that matter, the vast majority of the UNGA membership). Yet the views of this grouping - united in their call for real progress and reinforced by the Court's Advisory Opinion - continue to be overlooked, if not rejected, by the Five and their lead supporters as well as the other nuclear weapon possessors.

In such circumstances, and picking up on my earlier point about the competence given the General Assembly for disarmament, it is not surprising that Mexico and Austria, as leaders of the Humanitarian Initiative as well as the Pledge Group, came to the conclusion last year that any effort to advance nuclear disarmament along ambitious lines would need to be in the General Assembly - utilising the leverage of numbers that exists there (but which does not in the Security Council - nor for that matter in the Conference on Disarmament where consensus is always the name of the game).

The resolution which Mexico and Austria went ahead and tabled at UNGA last October established a Working Group (or, giving it its full title, the Open-Ended Working Group Taking Forward Multilateral Nuclear Disarmament Negotiations) to meet this year in Geneva and to operate under the UNGA Rules of Procedure (and thereby giving it the option of voting). 138 countries (including, of course, NZ) voted in favour of the Mexican/Austrian resolution. Twelve countries opposed it (mainly EU Eastern Europeans, plus all P5) and 34 abstained (including the rest of NATO, Australia, Japan, ROK, India and Pakistan).

Some of you will probably have found the primary mandate given by this resolution to the OEWG to be rather less than inspiring. The resolution sets it as being “to substantively address concrete legal measures ... that will need to be concluded to attain and maintain a world without nuclear weapons”. Nonetheless I can assure you that this *is* pretty visionary stuff if you compare it with what has typically been under discussion in the NPT context – and if you consider, as well, who it is that this time around is actually in the driving seat: it's not the nuclear weapon *haves* – it is the *have-nots*. And you also have to bear in mind that a full-scale multilateral *negotiation*, on any issue at all, never begins without some sort of preparatory process.

Do I think that that is where we're headed now? Could I park that question for the moment and provide first a quick report on the meetings to date of the OEWG. The Working Group has now had the bulk of its meetings: they took place in February and then again in May. None of the P5 or the other nuclear weapon possessors attended at all but most of those who had abstained on the resolution did attend and engaged actively – though I won't suggest that there was much in the way of a meeting of minds between the 'abstainers' and those who had voted yes on the resolution. This is very evident if you read the various statements – all of which are online – and in which the 'great divide' between those

who want to proceed now with a process for the prohibition of nuclear weapons and those who do not (largely the abstainers on the resolution) is very apparent.

Next up is the final (August) meeting of the OEWG at which the Group's report is to be adopted. This is unlikely to be straightforward given the binary nature of the attendees' views and there is certainly considerable potential for procedural manoeuvring and disagreement. But in whatever form the report's recommendations may be couched – and we don't get to see even the first draft of the report until the beginning of August - I do think it's pretty definite that there will be a follow-up resolution at this year's UNGA. What will it do – and will it indeed embark us on the preparatory process for the multilateral negotiations the ICJ called for?

That is the million dollar question to which many would like the answer! Mexico and Austria – who remain in the driving seat for the GA resolution – will not, of course, be settling their intentions until after the OEWG's report comes out and is adopted. Even then, I think they will be keen not to make the text available and open up discussion of it in advance of the First Committee getting underway this coming October. They will be only too well aware that while the numbers are on their side (with group-wide endorsements of a nuclear weapon prohibition e.g. by all CELAC (the Community of Latin American and Caribbean States) members, all members of the Africa Group and, closer to home, by a Pacific Island grouping) the P5 and their supporters are powerfully motivated against any such process taking place.

All that said, and whilst acknowledging that I certainly don't have a crystal ball, I am cautiously optimistic that this year's UNGA really will anchor in real forward movement in terms of establishing a forum and a pathway for nuclear disarmament: the very real beginnings to a process to give life to the Court's Opinion of twenty years ago.