



**Statement by H.E. Dell Higgle
Ambassador for Disarmament**

**Open-Ended Working Group on
Taking Forward Multilateral Nuclear
Disarmament Negotiations**

9 May 2016

Thank you Mr Chair.

The veritable explosion of discussion papers coming forward since the first session of the OEWG in February, and the long list of speakers keen to join the discussions underway here, are a clear testament to the importance of the mandate given us last year in UNGA 70/33 and evidence, too, of the extent of the frustration, now very widespread, on the part of the international community at the lack of real progress in recent years on nuclear disarmament.

We're very grateful to Dr Casey-Maslen for having joined us here for our panel discussion today and for his very useful presentation.

Mr Chair, the guiding questions you have set in WP 31 for today's subject matter, and as commented on by Dr Casey-Maslen, are: "what elements should be included in an instrument, or a set of instruments, on nuclear disarmament" and "what lessons could be drawn from other disarmament conventions" with regard to such elements?

Before more specifically addressing these questions however, and in the interests of identifying the *ground* which is, I think, truly *common* to us all, I would first like to make an initial observation in terms of the broad context – the underlying framing – for our exploration of this topic.

On this, New Zealand agrees completely with the authors of WP 9/Rev1 (the Working Paper entitled: "A progressive approach to a world free of nuclear weapons: revisiting the building blocks paradigm") when they stress the need to "leverage the existing global regime, and in particular the NPT" and with their call for "a clear focus on the ongoing importance of the NPT".

In case it is not self-evident, Mr Chair, I can without the shadow of a doubt assure all colleagues that States calling for the full implementation of Article VI of the NPT, as New Zealand and the New Agenda Coalition and many others here have long been doing, are *very much* focused on the importance of the NPT and fully intent on leveraging its global regime and realising its 'object and purpose'.

It is indeed vitally important that we ensure full implementation of *all* the provisions of the NPT. This has been the motivating factor for the papers which New Zealand has commissioned and presented to the UNGA First Committee over the last two years. These papers explore some of the implications of the failure to make meaningful progress on the "effective measures relating to ... nuclear disarmament" called for in Article VI and make it clear how the NPT, including Article VI, would be retained as the foundation for all states working together on necessary legal measures and the prohibition of nuclear weapons.

NZ's First Committee paper last year was entitled: "Strengthening the NPT: International Law and Effective Measures for Nuclear Disarmament". The full text can be found at www.icanw.org.nz but we are making available today at the back of the room a truncated version retaining those sections of the paper which specifically focus on the elements to be included in an instrument, or a set of instruments, on nuclear disarmament. The paper illustrates via a selection of the key elements of a prohibition (or individual "prohibitions", as they are termed in our paper) how the inclusion of these in a new legal instrument or instruments would strengthen, not undermine, the Treaty. This would be the case even in the event that only non-Nuclear Weapons States signed onto the new instrument/s - including by its making clearer the obligations upon non-NWS, a number of which are left implicit in the NPT.

The key prohibitions analysed in the NZ paper are: testing, possession, use, transfer and stationing. Much of that analysis is equally applicable to the *full* range of other prohibitions usually included in such an instrument (such as development, production, acquisition, stockpiling, deployment and threat of use – and as identified in the NAC’s Working Paper 18 which was put forward in the NPT context in 2014). Ancillary prohibitions, such as assisting or aiding and abetting, in connection with the primary obligations would also need to be addressed. I note that useful identification and analysis of the full range of possible elements, or prohibitions, has been provided in the excellent ILPI/UNIDIR paper entitled: “A Prohibition on Nuclear Weapons” and which draws strongly on lessons learned from existing disarmament conventions.

It would seem, Mr Chair that there is, broadly speaking, convergence on the part of most Delegations choosing to address this issue regarding the nature of the elements to be included in a new nuclear disarmament instrument. The most important lesson to be drawn from our experience with a range of other disarmament regimes would seem to be that the elements, or prohibitions, covered in a new instrument must be truly comprehensive and leave no gaps. The full range of prohibitions must be covered explicitly and with sufficient detail to stand the test of time.

In closing Mr Chair, I would like to take the opportunity to comment on a number of interesting Working Papers which have recently been put forward on the subject of whether or not Article VI of the NPT has left open what has been termed a “legal gap”. One of these papers goes to considerable lengths to define a “*true*” legal gap (in contrast with the situation left by Article VI) and comes up with a novel notion that a legal gap can only arise when there is “an *inherently* ‘illegal’ situation”. Of course, Mr Chair, there is no such thing - either at domestic or international law - as “*inherent* illegality”. As one knows (taking for example the analogy of laws relating to drug use) something is either legal or illegal. One may be able to talk about inherent immorality but there has hitherto been no known concept of inherent illegality.

Another Working Paper devoted to the same issue seems to reject any “legal gap” in Article VI because of the very “clear collective obligation” in it “to achieve and maintain a world without nuclear weapons”. Whilst the

paper is explicit in acknowledging “that this objective has not been met at this point”, it insists that the yardstick for efforts on this must be the “**effectiveness** of the measures taken”.

Mr Chair, how can one prove *in advance* that any given measure will be effective? Any such requirement could prove a recipe for never doing *anything*. Whilst we all continue year-in and year-out to call for the implementation of measures from long-past NPT Review Conferences (such as those relating to transparency, de-alerting, entry-into-force of the CTBT, and so on), it is indeed true that it *is* increasingly difficult to have faith that they will prove at all “effective”. Should we not, then, have begun those calls twenty and more years ago because they would not prove “effective”? By the same logic, should we cease them now?

My Delegation believes that, at the same time as we move forward on the legally-effective measures necessary to give effect to Article VI of the NPT, there is no need, nor I think any expectation, not also to continue, in parallel, our long-standing efforts directed at the implementation of *other* measures for a nuclear-free world.