



Conference on Disarmament: 2013 session

Farewell Statement by Dell Higgle,
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to the Conference on Disarmament

Like a number of others who arrived at the Conference on Disarmament when I did – I'll call us the Class of 2009 - I am completing my Geneva posting in the next few days and so I would like to join some of the Class of '09 in making a few personal reflections today on the CD. I would also like to touch on disarmament issues more generally.

Although I am departing Geneva, I am not in fact leaving the CD since I am fortunate enough to be continuing on as New Zealand's Ambassador for Disarmament and therefore, as a part of that portfolio, I will continue to be NZ's Permanent Representative to the CD. But certainly my 'commute' – now from Wellington - will be somewhat longer than it has been over the four years that I have been based here at the New Zealand Mission!

I am delighted to be speaking today under the chairmanship of Ambassador Wibowo from New Zealand's near and very good neighbour, Indonesia. I recall, Ambassador Wibowo, the farewell remarks given last June by your predecessor, Ambassador Djani. He reported that within a matter of almost days after his arrival the Indonesian Foreign Minister regarded him as the most successful Ambassador in the history of the Indonesian Permanent Mission in Geneva since he seemed to have managed to get the CD up and running in such very short order!

Of course, as we all know, the triumph of CD/1864, adopted in May 2009, proved very short-lived and the CD's sorry record of having no Programme of Work move forward since 1996 continues to this day.

That is certainly not the fault of CD chairmanship and I would wish to congratulate you in particular, Ambassador Wibowo, for the committed and engaged manner in which you have carried out your role as our chair. *Terima kasih atas semua kerja Anda.* If extensive consultation and linguistic dexterity were sufficient to coax the CD down the path toward meeting its mandate of negotiating legally-binding commitments then it would certainly have happened during your stewardship.

The fact that it has not must surely suggest to any realist that there is no elixir that can be found under the status quo. Unless the CD were to have its rules of procedure changed (so that the interests of the few cannot continue to prevail

over the interests of the many) or unless there were to be some considerable evolution in certain key national positions so that, in the spirit of multilateralism, they were prepared to take greater account of the security interests of the broader global community, it is hard to see that we will ever be able to get down to work.

If we cannot, what is it that is left for the CD to do?

I fear that theological debates may continue to be the order of the day. We can continue to debate the relative prioritisation of the issues on our agenda and in particular the hierarchy as between negotiations on fissile material, or on nuclear disarmament more broadly.

We can continue to debate about the best means to reach the end goal of nuclear disarmament - and it is indeed this issue which currently seems to fuel the most lively debate here in Geneva. Those entering the debate usually suggest that we are *all* agreed on the desirability of the end state (the elimination of nuclear weapons) and that the differences between us are simply over the choice of the most sensible or realistic route to get there. Should we be pushing for a 'big bang' approach to nuclear disarmament, or should we seek forward movement step-by-step, or building block upon building block?

As a firm supporter of the Nuclear Non-Proliferation Treaty and the Comprehensive Nuclear Test Ban Treaty, a country committed to nuclear disarmament and to our membership of the Treaty of Rarotonga (the South Pacific Nuclear-Free-Zone Treaty), New Zealand has pushed for a long time now for the implementation of practical steps such as a reduction in the operational readiness of nuclear weapons systems and increased transparency regarding nuclear weapon holdings. We do so both individually and in concert with others, most notably the New Agenda Coalition.

But it can be difficult to point to significant, measurable progress towards realisation of Article VI of the NPT and to remain confident that there is indeed a master plan, backed up with a sense of urgency, to get us to the end goal of nuclear disarmament. Are our citizens persuaded that the NPT's 2010 Action Plan – even if all its steps *are* met – is part of such a master plan?

There seems to be little preparedness to identify even a broad timeframe for the end goal. Nor does there seem to be much willingness - at least here in the CD - to discuss the point at which we will negotiate a multilateral legal regime (whether a treaty or a framework of instruments) going beyond the NPT in order to complete the abolition of nuclear weapons.

Absent a Programme of Work, the CD can continue to watch what happens on security and disarmament issues elsewhere.

Most recently, the UN General Assembly has adopted the Arms Trade Treaty. I was honoured to lead the New Zealand Delegation to all the meetings (initially of the Open-Ended Working Group, then the Prepcoms, and finally the two Diplomatic Conferences) which put this Treaty in place. I think when I look back on my time in Geneva it is this issue – this Treaty – which gives me the greatest sense of satisfaction and the best justification for my pay packet.

The Treaty continues the recent focus on human, rather than state-centric, security. Its negotiation in a universal forum to which all Member States had access is undeniably a success story.

Arms may not yet be regulated *quite* as much as are bananas (this point was something of a catch-cry throughout the period of the ATT's negotiation) but the obligation in the Treaty to assess in advance the risk of negative consequences to any potential transfer, and the standards which have been set in the Treaty including to prevent the diversion of arms to the illicit market, will certainly ensure that the global trade in conventional arms is conducted in a much more responsible manner than hitherto. As, increasingly, it turns off the tap for those transfers - particularly of small arms and light weapons - which have helped fuel conflict and undermine security in so many parts of the globe, I am confident that the Treaty's adoption will ultimately be cause for greater celebration even than was the case when the last banana trade dispute was finally settled in the World Trade Organisation (WTO).

As to other conventional arms issues, useful work has continued to go forward on the implementation of the legal regimes applicable, via the Ottawa and Oslo processes, to landmines and to cluster munitions. Many states here are indeed party to these important Treaty regimes; New Zealand is pleased currently to be a member of the bureau for both.

Very recently, there have been interesting new developments in the nuclear disarmament context. The meeting held in March this year in Oslo – now to be followed up by one hosted next February by Mexico - has provided the opportunity for serious consideration of the humanitarian consequences of nuclear weapons and heralds an important and necessary shift in the way the international community approaches nuclear-weapons issues.

And in the last several weeks here in Geneva, the Open-Ended Working Group to take forward multilateral nuclear disarmament negotiations has been the venue for some very interesting and interactive debates on a wide range of issues (including ones not normally canvassed in the CD) relating to nuclear disarmament.

Forgive me if, as a lover of international law, I cannot ignore the opportunity to reference in particular a panel which I moderated on behalf of our chair, Ambassador Dengo, and which canvassed the international law relevant to any use of nuclear weapons. The panel focused in particular on the ICJ's Advisory Opinion of 1996 - and I hope it may have served to dispel a few of the myths which have come to surround what it was the Court actually said.

We all remember that the Court *did* say that there is an obligation to conduct negotiations in good faith on nuclear disarmament. But sometimes we can forget that the Court immediately went on to add the important rider that the obligation was not just to *conduct* negotiations, *ad infinitum* as it were, but to achieve a precise result – to bring them to a conclusion.

We know, too, that when the Court addressed the situation in which it *might* perhaps be possible to use nuclear weapons, it outlined a very high threshold: the context would need to be “an extreme circumstance of self-defence in which [the state's] very survival would be at stake”. But it is sometimes overlooked that even in the context of such a very high bar as this, the Court went on to observe that it could not in fact decide whether or not it would be lawful to use nuclear weapons in such circumstances. In other words the Court did not decide that it *would* be lawful to use nuclear weapons even in a most extreme situation of self-defence.

That opinion was given, now, over 15 years ago. I very much enjoyed the opportunity to hear reflections as well as responses to questioning on it from some very eminent professors of international law. New Zealand will look

forward with much interest to the further sessions of the OEWG in coming weeks: it is stimulating indeed to have a forum for real engagement on these important issues.

As I said at the outset, Mr Chair, I will continue on as NZ's Permanent Representative to the CD. I have, therefore, a direct and personal interest in the fate of the CD and in its becoming again something other than a venue for theological debate and an audience for what happens in more dynamic bodies elsewhere.

Given what is *not* happening in the CD, it may seem a little bizarre to express the hope that participation in the CD and its processes can change to reflect twenty-first century realities both by encompassing broader membership and – consistent with other UN fora including the nuclear disarmament OEWG just referenced – by opening up its meetings to the full participation of *all* stakeholders.

I have very much enjoyed the friendship and interaction with other colleagues here. May I take this opportunity to thank the Secretary-General of the CD, all the Secretariat staff and the interpreters, as well as UNIDIR, and – most certainly - the civil society representatives who regularly sit in the gods above.

Thank you.