Introductory Remarks for: A Conversation on International Law Relevant to the Use of Nuclear Weapons

Welcome to this afternoon’s session.

As you all know, our Chair in his letter of 6 May to us all set the main purpose of this May session of the OEWG as being to promote better knowledge and understanding of the different aspects of nuclear disarmament and of the challenges faced by multilateral nuclear disarmament negotiations.

I am confident that it is not just the lawyers among us who would agree that a very important aspect of this May stocktake must be a consideration of the international legal framework applicable to nuclear weapons. After all, it is international law which continues to set the overall context for our nuclear disarmament discussions and negotiations.

Many of us, confronted with a topic such as ours today (“a conversation on international law relevant to the use of nuclear weapons”), would think pretty swiftly about International Humanitarian Law and its requirements – and then, I think, almost inevitably most of us would go on to recall the ICJ’s Advisory Opinion of 1996.

We have all heard some of the better-known phrases drawn from the ICJ’s Opinion repeated many times. So much so, that it can be easy to gloss over, or indeed overlook altogether, some of the key elements or qualifiers attached to those phrases.

The Court did not just say that there is an obligation to conduct negotiations in good faith on nuclear disarmament. It added 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.

Insofar as the Court focused on a 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 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 they did not decide that it would be lawful to use nuclear weapons even in a most extreme situation of self-defence.

We are coming up now almost to two decades since the Court delivered that Opinion and it is interesting to ruminate whether the Court would continue to say the same things today – or whether it might now view Article VI of the NPT in a somewhat different light, or whether there have been relevant changes to the underlying legal framework in the period since 1996.

Anyway, we thought it valuable as we take stock here and move forward to hear reflections on these sorts of issues by some very eminent international lawyers.

We’re very fortunate to welcome today two very prominent international law experts: Professor Andrew Clapham and Professor (emeritus) Louise Doswald-Beck who will conduct our “conversation”. Our conversation will begin between our two very eminent panellists - and then we’d like it to be a conversation with you all.

I understand that our conversation will of course cover IHL; what the Court had to say in 1996; as well as other aspects of IL such as the rules relevant to the exercise of self-defence.
First, Professor Andrew Clapham. Andrew is the Professor of International Law at the Graduate Institute of International and Development Studies and Director of the Geneva Academy of International Humanitarian Law and Human Rights.

Andrew is going to comment on the requirements applicable under international law to any exercise of self-defence.

Our next speaker will be Professor Louise Doswald-Beck who has previously been Head of the Legal Division of the ICRC, Secretary-General of the International Commission of Jurists, Director of the University Centre for International Humanitarian Law and Professor of International Law at the Graduate Institute.

Louise is going to outline the rules applicable in an armed conflict – the rules of IHL.