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Open-ended Working Group taking forward multilateral nuclear disarmament negotiations¹

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Taking forward multilateral nuclear disarmament negotiations

The “Legal Gap”: Recommendations to the Open-ended Working Group on taking forward nuclear disarmament negotiations

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** These States declared their support for the Pledge through the Special Declaration of the Community of Latin American and Caribbean States (CELAC) on the “Urgent Need for a Nuclear Weapon-Free World”, which resulted from the Third Summit of CELAC, held in Belén, Costa Rica, on January 28 and 29, 2015.

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State of Palestine, Sudan, Suriname, Swaziland, Tajikistan, The former Yugoslav Republic of Macedonia, Timor Leste, Togo, Trinidad and Tobago**, Tunisia, Tuvalu, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay**, Vanuatu, Venezuela (Bolivarian Republic of)**, Viet Nam, Yemen, Zambia, Zimbabwe**

1. The Humanitarian Pledge has been based on the facts-based discussions, findings and compelling evidence of the Conferences in Oslo, Nayarit and Vienna regarding the humanitarian consequences and risks associated with nuclear weapons. It stipulates that these findings and evidence should be presented to all relevant fora and in the UN framework, as they should be at the centre of all deliberations, obligations and commitments with regard to nuclear disarmament. Furthermore, an overwhelming number of formal endorsements and / or expressions of support for the Humanitarian Pledge calls on the imperative of human security for all and to promote the protection of civilians against risks stemming from nuclear weapons. All nuclear weapons possessor states are called upon to take concrete interim measures to reduce the risk of nuclear weapon detonations, including reducing the operational status of nuclear weapons and moving nuclear weapons away from deployment into storage, diminishing the role of nuclear weapons in military doctrines and rapid reductions of all types of nuclear weapons.
2. Article VI of the NPT is a legally binding multilateral nuclear disarmament obligation and hence the general basis for multilateral nuclear disarmament efforts. However, it does not provide specific guidance as to what kind of negotiations should be pursued in good faith nor what the effective measures relating to the cessation of the nuclear arms race should be.
3. The Humanitarian Pledge *inter alia* calls on all states parties to the NPT to renew their commitment to the urgent and full implementation of existing obligations under Article VI, and to this end, to identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons.
4. Building upon the Article VI obligation, a variety of effective measures have been identified and specified in some detail in Final Documents of past NPT Review Conferences, in particular 1995, 2000 and 2010, as being required to achieving and maintaining a world without nuclear weapons. They include non-legally binding measures such as the reduction and elimination of nuclear weapons, reducing of the roles of nuclear weapons in security doctrines, confidence building and transparency and various risk reduction measures, among others. Moreover, they also include broadly recognised effective legal measures to fill specific or partial legal gaps for the implementation of the NPT nuclear disarmament (and non-proliferation) obligations, such as the prohibition of nuclear test explosions (CTBT) and a prohibition of the production of fissile materials for nuclear weapons.
5. Other legal measures, however, such as the prohibition of possession, use, production, stockpiling, and transfer of nuclear weapons have not yet been considered in detail in the NPT context. Verification arrangements – legally binding as well as not legally binding – will also be key elements, especially to maintain a nuclear weapon free world. The very structure of the NPT requires additional legal (and non-legal) measures for its full implementation. Action 1 of the 2010 Action Plan underlines this by declaring that “All States parties commit to pursue policies that are fully compatible with the Treaty and the objective of achieving a world without nuclear weapons”. The different nuclear disarmament measures can and should be pursued in parallel.
6. Several different approaches have been discussed on how to take forward multilateral nuclear disarmament including different effective legal measures, namely the

so-called “building blocks”, “comprehensive nuclear weapons convention”, “prohibition/ban treaty” or “framework agreement” approaches in working papers, most recently at the 2015 NPT Review Conference (NPT/CONF.2015/WP.9). All of these approaches are aimed at implementing Article VI and how a world without nuclear weapons should be achieved. Consequently, they also represent different avenues for the prohibition and elimination of nuclear weapons.

7. Achieving and maintaining a world without nuclear weapons requires a multitude of legal and non-legal measures. The “building blocks” approach by definition recognizes that multiple measures are needed and essentially refers to a combination and sequence of different legal and non-legal measures. Conceptually, these different measures would include a legally binding instrument prohibiting nuclear weapons in some form.

8. A “comprehensive nuclear weapons convention” would foresee the legally binding codification of all effective legal measures required to achieve, but primarily, to maintain a world without nuclear weapons.

9. A prohibition / ban-treaty, would likely entail the prohibition of the use, stockpiling, production and transfer of nuclear weapons, without necessarily addressing all effective legal measures covered by a comprehensive nuclear weapons convention. It could also be considered as one (legal) link of the chain in a “building blocks” approach, a part of a framework agreement as well as a sub-set of a “comprehensive nuclear weapons convention” that would cover legally binding prohibitions but maybe not all other elements, such as for example verification measures. Consequently, the various approaches cannot be considered as mutually exclusive but as complementary. They have much in common as they aim at reinforcing the implementation of the Article VI obligation and taking forward nuclear disarmament negotiations.

10. The Countries supporting the Humanitarian Pledge consider it indispensable to reflect the following elements in the recommendations of the Open-ended Working Group:

(a) to follow the imperative of human security for all and to promote the protection of civilians against risks stemming from nuclear weapons,

(b) all states parties to the NPT to renew their commitment to the urgent and full implementation of existing obligations under Article VI, and to this end, to identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons and to cooperate with all stakeholders to achieve this goal,

(c) all nuclear weapons possessor states to take concrete interim measures to reduce the risk of nuclear weapon detonations, including reducing the operational status of nuclear weapons and moving nuclear weapons away from deployment into storage, diminishing the role of nuclear weapons in military doctrines and rapid reductions of all types of nuclear weapons,

(d) to cooperate with all relevant stakeholders, States, international organisations, the International Red Cross and Red Crescent Movements, parliamentarians and civil society, in efforts to stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks,

(e) to pursue an additional legal instrument or instruments with urgency and to support international efforts to prohibit and eliminate nuclear weapons,

(f) to recall that all such efforts are aimed at contributing to the full implementation of Article VI of the NPT and the achievement and maintenance of a world without nuclear weapons.