Article 36 remarks to OEWG, Geneva, 23 February 2016

Thank you Mr. Chairperson and thanks also to the panel for their presentations. I have a mixture of thoughts on the broader topic on the agenda as well as some reflections on the points made during the debate so far.

Let me start with some brief remarks on two of the key concepts that are under discussion, namely the idea of a legal gap and the idea of a treaty prohibiting nuclear weapons. What do we mean by a “legal gap”? This is simply the concept that, in essence, there is no explicit prohibition on nuclear weapons as there is for other prohibited weapons, in particular weapons of mass destruction. What do we mean by a “treaty prohibiting nuclear weapons”? This is simply a legally binding instrument agreed by states that wish to do so, in order to lay down a set of prohibited activities and a set of obligations on states that agree to prohibit these weapons. We have laid out our views on both these concepts in more detail in two joint papers with WILPF submitted as working papers to this OEWG. These are not complicated concepts, but of course they can be made more complicated for political purposes if one fears that they might threaten the status quo.

For us a fundamental point in all of this work is the moral basis for development of new international law in general - why do we make new law? In our view the process of reframing nuclear weapons in terms of their unacceptable humanitarian impact has been helpful in bringing to the fore the moral imperative for a prohibition on nuclear weapons. We would like to commend the work of Nobuo Hayashi on this point. The South African resolution on the ethical imperatives for our work, which passed by a majority at the UNGA last year, is another significant marker in this regard as well as remarks made by a number of faith leaders around the world. International law, like law in general, derives from fundamental moral principles about what we think is acceptable or unacceptable. In this way, it would seem like a natural step for states that see nuclear weapons as unacceptable to develop international law to prohibit them.

A number of delegations have referred to various aspects of existing international law relevant to nuclear weapons. We would agree with the idea that while there is a legal gap in relation to the prohibition and elimination of nuclear weapons, there is no legal vacuum. In 2014 we published a paper setting out some legal considerations from disarmament, humanitarian and environmental perspectives. In this we looked at nuclear weapons under public international law; the legal obligation to eliminate nuclear weapons; existing NWFZ treaties; the emergence of a customary prohibition on nuclear testing; the protection of the environment; the rules for the protection of human health, human dignity and human rights; and the general rules of protection under IHL. There’s no time to look at these in detail, but our conclusion was that a comprehensive, unambiguous treaty prohibition of nuclear weapons would build on, strengthen and be coherent with the established legal landscape. It should not be seen as a threat to existing instruments, to the extent that these instruments are perceived as supporting the prohibition and elimination of nuclear weapons.

We would also emphasise the importance of the humanitarian pledge in supporting the development of a legally-binding instrument to prohibit nuclear weapons. Our sense is that the OEWG represents an encouraging step forward based on the evidence set out during the conferences on the humanitarian impact of nuclear weapons in Norway, Mexico and Austria. We very much hope the humanitarian pledge that emerged from that process will be a useful organizing tool for the work ahead towards a legally-binding instrument to prohibit nuclear weapons. We look forward to participating in a diplomatic process to this end.
Since it has been raised several times during the debate so far, I might offer some thoughts on the main provisions of a treaty prohibiting nuclear weapons. We have been encouraged by the interest in the concept of a prohibition treaty here so far, including the comments by Brazil and Malaysia yesterday. In 2014 we set out the basic possible provisions of such a treaty in a joint paper done with Reaching Critical Will. We have also noted the work on this published here this week by ILPI and UNIDIR. The basic prohibitions that seem feasible in such a treaty would be use and threat of use; development and production; transfer or acquisition; stockpiling; deployment; and assistance with prohibited acts. There could also be some positive obligations in relation to victims’ rights, decontamination and remediation and cooperation and assistance to meet the obligations of the treaty. In relation to obligations that would pertain only to those states possessing nuclear weapons, it might be sensible to have a basic requirement for states parties to eliminate their nuclear weapons under the treaty, but not to pre-negotiate these provisions until the nuclear-armed states decide they might be in a position to join the treaty.

Finally Mr. Chairperson, let me set out some of our conclusions about the urgency, feasibility and impact of a prohibition treaty even without the nuclear-armed states.

The idea of urgency for a ban is reasonably clear. Evidence of the risks continues to emerge in an alarming way and the OEWG will hear more about this next week. The more is unearthed about accidents and incidents, the more the situation looks risky. Given the evidence of the severe consequences of nuclear weapons, the risk would seem to us to be unacceptable.

Some have said that nuclear disarmament can’t be completed without the nuclear-armed states. Of course that is self-evident. It is also self-evident that weapons prohibitions can and have been done amongst the states that wish to do so, not on a universal basis. That is actually the history of weapons prohibition. In fact, it is precisely because the nuclear-armed states are required for elimination that it makes sense to move forward with a prohibition now. The fact is, as Malaysia noted yesterday, that measures for disarmament are not open for negotiation right now, because the nuclear-armed states do not wish to pursue them. We don’t see a prohibition as a short-cut. We see it as a reinforcement to the legal and political infrastructure supporting the elimination of nuclear weapons. We certainly think practical work on actual disarmament should continue, this is all the more important in the face of the highly aggressive multi-billion dollar modernization programmes underway by nuclear-armed states.

Of course, the specific effects of a treaty prohibition on nuclear weapons without the nuclear armed states cannot be fully predicted, however the response from those states opposed to the concept indicates that it will. Such a treaty will certainly modify the status quo, which is that the nuclear-armed states see their weapons as legitimate and important means of promoting their security. Most of the world’s states do not subscribe to this concept of security, as we have heard here. It seems to us that a ban treaty would have a number of important impacts in relation to undermining the financial support to manufacturing these weapons, changing the political circumstances in nuclear-armed states as well as internationally, including in relation to general perceptions of nuclear weapons in parliaments, the media and the public. We welcome the suggestion by Switzerland to assess the effectiveness of various legal measures and would certainly be ready to contribute to that assessment. Our instinct is that a prohibition would definitely not take us backwards in relation to the current state of affairs. Indeed, our view is that a treaty prohibition on nuclear weapons is likely to be the most meaningful step that is within our reach today and we hope states will begin a diplomatic process to negotiate this instrument without delay.

Thank you Mr. Chairperson.