Open Ended Working Group on Taking Forward Multilateral Nuclear Disarmament Negotiations

Statement by
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Effective legal measures

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Mr President,

Yesterday we made a general statement on our approach to the OEWG. We also explained our position with regard to a 'ban' on nuclear weapons.

Allow me today to start with making an observation regarding inclusivity and consensus as this was raised by several delegations. Does this sometimes slow down the process of our work? Absolutely. However, as the ICJ confirmed in its nuclear weapons opinion, states simply cannot be bound by legal rules that they have not - at the very least implicitly - consented to. Our emphasis on inclusivity is based on this basic fact.

Before this session on legal measures comes to an end, let me also express my thanks to the members of the panel, whose views and opinions have stimulated the discussion we have had here. We have always held the view that discussions with – and within – the academic world and civil society make for a valuable contribution to our work, and we should continue our dialogue on these matters. It is important that there is a wide spectrum of opinions in a forum in order to bring the discussions further.
Mr President,

Yesterday it was argued that states advocating for the start of negotiations on an FMCT or the entry into force of the CTBT are implicitly acknowledging that there is a legal gap.

We do not agree with that.

The NPT is the legal basis for dealing with non-proliferation and disarmament and has served us well so far. Particularly after the 2015 revcon we need to see how we can further strengthen the NPT. That includes in particular the follow up to further disarmament and effective measures on the basis of Article VI.

The NPT has its strengths and weaknesses. One of its strengths is that it is a short treaty with clear aims. Article VI is very clear about where we have to go with nuclear disarmament. But the drafters of the treaty were smart enough to realize that multiple measures would need to be taken, and that these would have to be decided on by states in reaction to changing circumstances and challenges.

So to speak, they have provided us with the necessary foundations for building a world without nuclear free weapons, but left it up to subsequent governments to complete the house. And for one, NPT states have made clear repeatedly that they regard both the CTBT and an FMCT as necessary actions towards the fulfilment of Article VI.

This however does not mean that there is a 'legal gap'.

Mr President,

We can progress without being bogged down in discussions on a hypothetical 'legal gap'.
A far more interesting question is: what makes measures effective? Let us look at the CTBT.

First, it codifies an existing norm, which gives it a legal authority even when it has not entered into force yet.

Second, this norm is broadly shared and supported, by NWS and NNWS alike.

Third, it is verifiable.

Fourth, this verification effort involves co-operation between NWS and NNWS, which builds confidence between these groups.

Last but not least, it builds on the legal foundations laid out by the NPT, and its members understanding of Article VI as reflected by several Review Conferences.

Clearly, we have managed to come up with effective measures on nuclear disarmament before. Our time here should be spend discussing what further elements or building blocks, legal or otherwise, we would need to build a world without nuclear weapons. This is a useful exercise and one that commended common ground during the OEWG of 2013.

Today, Australia on behalf of a number of states has presented a working paper on ‘the progressive approach’. This working paper intends to start exactly a discussion as I just outlined.

We strongly support this paper and think such a discussion would be a good and pragmatic way forward for this Working Group.

Thank you.