The United Nations General Assembly voted in December 2015 to establish a special working group with a mandate to develop “legal measures, legal provisions and norms” for achieving a nuclear-weapon-free world. The OEWG is intended to build on the findings and conclusions of the three “humanitarian impact” conferences in 2013 and 2014 as well as the historic “Humanitarian Pledge” which currently has the support of over 120 States. The first session of the Open-Ended Working Group (OEWG) took place from 22 to 26 February. The upcoming May session will cover two weeks and is expected to go deeper into the elements and “legal measures” needed to achieve progress in nuclear disarmament. Many governments and civil society organisations expect that the OEWG discussions are setting the stage for negotiations on a new legally binding instrument which prohibits nuclear weapons.

What happened in February?

The February OEWG session revealed that States are ready to address what kind of a legal instrument is needed to bring forward nuclear disarmament.

It is clear that the majority of States, especially the 120+ endorsers of the Humanitarian Pledge, acknowledge that a new legal instrument which prohibits nuclear weapons – their possession, use, stockpiling, transfer, etc. – is the most viable path forward.

Several delegations, including Brazil and Indonesia, have outlined clearly that they believe a ban treaty is the most logical next step since it can be negotiated now, even without the support of the nuclear weapon states, who have boycotted the OEWG thus far.

A few States, especially those who claim to rely on nuclear weapons for their security, have tried block the discussion about a ban treaty or steer matters into a different direction by claiming that a ban treaty wouldn’t have any effect without the nuclear weapon states or that it would “endanger international stability”.

Supporters of the Humanitarian Initiative and a ban treaty should tackle their arguments head on and counter by asking what those States are doing to reduce the role of nuclear weapons in their national security doctrines.

What you can do:

- **Reach out to your government’s mission in Geneva:** Will they attend the OEWG? Have they prepared a Working Paper? Will they reiterate their support for the Humanitarian Pledge (if applicable) and call for the immediate start of negotiations on a new legally binding instrument?

- **Contact your ministry for foreign affairs:** Update them on the importance of the OEWG and what the main points. Give them feedback on their national position. Will they express support for negotiations on a ban treaty?

- **Involve national parliamentarians** – encourage them to push their governments to prioritise the OEWG and to clarify what the national position is on the prohibition of nuclear weapons and the start of negotiations.

**Indicative timetable**

- 2–4 May: Risk and Transparency
- 9 – 13 May: Legal Measures, Legal Pathways and
- August: Drafting and negotiation of the OEWG report, to be subsequently presented to the UNGA.
Suggested Talking Points for the OEWG

A Humanitarian Imperative

- Having confronted and discussed the evidence on the risk and impact of a nuclear weapon detonation in Oslo, Nayarit and Vienna, States have an obligation to their publics to take concerted action to make progress in nuclear disarmament.

- The humanitarian impact of nuclear weapons must remain the essence of all efforts towards nuclear disarmament. The three conferences on the humanitarian impact of nuclear weapons demonstrated beyond doubt the urgent need to prohibit and eliminate nuclear weapons.

Risks

- Regardless of a State’s affiliation to a security or military alliance, any use of nuclear weapons poses an existential threat to us all. The fact that some States and some military alliances continue to possess and deploy nuclear weapons poses a threat to humanity as a whole. Nuclear weapons have no legitimate role in the defense doctrines of any state. They do not enhance security, but undermine it. They are not symbols of prestige, but instruments of terror.

Filling the Legal Gap

- Nuclear weapons remain the only weapons of mass destruction that have not yet been explicitly and comprehensively banned. The other weapons of mass destruction, biological and chemical weapons, are prohibited through international legal instruments. The lack of a similar instrument for nuclear weapons – the most dangerous and destructive of all WMD – constitutes an unacceptable legal anomaly.

- The Humanitarian Pledge – issued at the Vienna Conference in December 2014 – now has the support of 123 States and dozens more who voted in favour of the resolution at the UN General Assembly. The large majority of States recognise the existence of the “legal gap” which must be filled in order to make progress in nuclear disarmament.

- The “legal gap” regarding the prohibition and elimination of nuclear weapons arises from various deficits in the regulation of activities involving nuclear weapons. This includes the development, production, testing, transfer, acquisition, transit, stockpiling, deployment, threat of use or use of nuclear weapons, as well as assistance, financing, encouragement, or inducement of these activities.

- The current international legal framework regulating nuclear weapons is incomplete. The legal gap also arises because the rules in the existing instruments on nuclear weapons apply to different states in different ways. States must therefore outline and negotiate a comprehensive instrument that prohibits all activities involving nuclear weapons in all circumstances for all states parties.

- A new legal instrument would be complementary to and strengthen existing legal obligations, including those arising from the NPT. Negotiations of new legal prohibitions aimed at “filling the legal gap” would strengthen the NPT by fulfilling the obligations contained in Article VI of the Treaty to pursue negotiations in good faith on effective measures relating to nuclear disarmament.
Normative impact

- The existence of the legal gap and the lack of clarity regarding the “acceptability” of nuclear weapons, as either tools conferring a national security benefit – as argued by Nuclear Weapon States – or as weapons of mass destruction which threaten unacceptable humanitarian harm, are obstacles to the development of clear international norms against their continued existence. This facilitates the retention of these weapons by certain states and may incentivise proliferation.

- In the past, weapons have been eliminated after they have been prohibited. The prohibition of weapons on the basis of their unacceptable humanitarian impacts has tended to burst any notion of legitimacy conferred upon those weapons. Similarly, if prohibited by a multilateral legal instrument, nuclear weapons would lose their status as political instruments or tools ensuring national security. Even if nuclear-armed states do not join the negotiating process, the normative impact of a comprehensive legal prohibition of nuclear weapons would be significant.

Towards a Diplomatic Process

- The strength of support for the Humanitarian Pledge indicates that the international community is ready "to fill the legal gap" for the prohibition and elimination of nuclear weapons.

- We cannot continue to delay the prohibition of a weapon that is clearly unacceptable on humanitarian grounds. Other unacceptable weapons have long been prohibited.

- We must begin work now on elaborating the elements for a treaty that prohibits nuclear weapons and developing a road map to achieve such a treaty.

- A diplomatic process to negotiate this new legal instrument should be launched in 2016 with the aim of concluding it within two years.