Mr. Chairperson,

First let me thank today's panelist, Dr. Casey-Maslen for his thoughtful treatment and analysis of the key questions to be addressed in our discussion about legal measures.

Canada has appreciated hearing the views expressed by all delegations over the course of last week, and in February. It has helped us to better understand the thinking and the motivation behind the various positions of the participating delegations which has led to the comments and interventions this morning.

We note in particular that delegations have continued to react in differing ways to the Chair’s synthesis paper which captured some of what was said in February. The discussion at that time was wide-ranging, as it has been these last few days, and while reducing the arguments to their essentials in a single document presents a real challenge, we want to share some of the concerns we have about the synthesis paper that we would like to put forward as part of the formal discussion we are pursuing this morning.

For Canada, the key take-away from all of our discussion to date is the shared desire to get to global zero, but we are also struck by the distance that exists between the various approaches. Indeed, we believe the discussions increasingly illustrate that we are more on parallel tracks than moving to a point of convergence.

Canada continues to believe that the Progressive Approach is the best way to advance nuclear disarmament, given what is realistically possible at this time. Several sections (paras 10 and 22) in the synthesis paper emphasize the benefits of pursing certain legal measures, but these require the participation of the states that actually possess nuclear weapons. As you know, Canada and supporters of the Progressive Approach sincerely believe that the participation of all weapons possessing states is indispensable for real and effective progress on nuclear disarmament.
The Progressive Approach takes account of today’s global security environment by offering a means to build confidence and trust, enhance transparency and provide scope for the Nuclear Weapons States to fulfill their obligations under the NPT. It is only in this way that we create the conditions necessary for genuine progress on disarmament.

We, like other states who believe in the Progressive Approach, found that the synthesis paper missed key aspects and over-emphasized elements related to measures that would prohibit nuclear weapons – particularly in its recommendations section. Indeed, we believe that the title for Section IV of the synthesis paper, by including the term “recommendations” confers a certain status to these approaches which has yet to be formally determined by the OEWG and could be misleading.

Turning more fully to today’s discussion on legal measures, Annex 1 is particularly problematic as it sets out “possible essential elements identified” as concrete effective legal measures and legal provisions, but only enumerated a series of criteria that might be relevant to a nuclear weapons convention or a ban. As others have said this morning that the Annex completely excluded the possible legal measures proposed in the Progressive Approach paper – including entry into force of the CTBT, negotiation of a Fissile Material Cut-off Treaty, negotiation of a post-NEW START between the US and Russia – is extremely concerning.

All the more so, given that the other annexes were largely a roll-up of suggestions, and not framed to present a single approach. We worry that the way these elements were presented in Annex 1 may be seen as favouring a particular approach.

Turning again to our present discussion, as you are aware, Canada submitted a Working Paper to this OEWG on the question of whether or not a legal gap in nuclear disarmament exists.

I do not intend to repeat all the arguments of our Working Paper which is available online to be read, but I would like to review some of the key points as a way of opening up further debate within this group about the concept of a legal gap, which we believe
has the potential to be misinterpreted. We would invite Dr. Casey-Masler to comment on these.

For us, the mere fact that a law or legal norm has not been imposed does not necessarily mean that there is a legal gap. The desire to implement a legal prohibition on nuclear weapons, similar to those that exist for chemical and biological weapons, is an understandable aspiration.

By definition, however, it does not constitute a legal gap. As Canada has argued in our paper, a legal gap only exists if the use and possession of nuclear weapons were inherently illegal, which they currently are not, under customary international law. This may seem like a pedantic point, but it is an important one. A legal gap is not created simply by the absence of a law or legal measure.

Separately in this forum, it has been suggested that Article VI of the NPT contains legal gaps that can be filled by the identification of effective measures for disarmament. Canada does not believe, however, that we should portray the possible outcomes of future nuclear disarmament negotiations under the NPT as filling legal gaps because the legal obligation contained in Article VI is very clear; it calls for States Parties to pursue negotiations in good faith. Once negotiations have been successfully concluded, including through the identification of effective measures for disarmament, this will not represent the filling of a legal gap, but rather the fulfillment of a legal obligation that already exists within the treaty.

Make no mistake, however, about Canada's conviction in the importance of doing the necessary groundwork to identify the spectrum of available legal and non-legal measures to achieve disarmament. We believe the work being carried out in this OEWG is essential in helping to bridge important differences in positions as we move toward negotiations when conditions are right.

We are emphasizing these points again today because we fear that current legal gap arguments have the potential to be wrongly interpreted as implying there are legal
grounds, as opposed to moral or humanitarian grounds, for proceeding to negotiate a ban on nuclear weapons. As this morning's guest speaker reminds us, we need to be clear on definitions and meanings when we discuss these items.

Thank you.