Informal Consultative Meeting by the Chairperson of the
High-level FMCT Expert Preparatory Group
(New York, 15-16 February 2018)

Legal and Institutional Issues

Statement by Pakistan Delegation

Madam Chairperson,

We thank you for your opening remarks and briefing, and also thank all the presenters for their presentations.

Before delving into the elaboration of our comments on the Legal and Institutional issues of a Fissile Material Treaty, FMT, let me emphasize that our views on the different aspects of the treaty are without prejudice to our objections to the fundamental nature of a cut-off only treaty envisaged under the Shannon Mandate. These views were expressed yesterday afternoon in our general statement. Our comments on specific treaty elements should be seen in the context of an FMT that covers existing stocks, and not on a Fissile Material Cut-off Treaty (FMCT).

Pakistan’s views on these issues are also contained in the document A/71/140/Rev.1/add.1 which had been submitted pursuant to OP-3 of UNGA resolution 70/39 (of December 2015). Our general views on these issues have also been outlined in the working paper submitted by Pakistan to the Conference on Disarmament published as document CD/2036 in Aug 2015.

Madam Chair,

The Fissile Material Treaty should ban the production of fissile material for nuclear weapons purposes. Production for civilian peaceful purposes and non-proscribed military activities should be conducted under strict verification. At the same time, the existing stocks of fissile material should be appropriately covered by the treaty to address the regional and global asymmetries in their national holdings.

In order to be effective and credible, an FMT should include a robust verification mechanism overseen by an independent treaty body that is capable of detecting any non-compliance in a timely manner, without any discrimination between states. Pakistan would favour a comprehensive approach to verification, whereby all nuclear material and facilities covering the entire fuel cycle would be subject to verification, and not just the so-called 'choke points' facilities like enrichment and reprocessing plants. Let me acknowledge here the very useful and thought-provoking input provided by Dr. Rob Floyd of Australia yesterday regarding a risk-based approach.
There is neither any insurmountable technical barrier nor any prohibitive financial requirement that would prevent us from pursuing such a comprehensive approach, as outlined very eloquently by Dr. Zia Mian. We should not be distracted or misled by arguments relying on technical and financial pretexts. Choosing a verification approach is first and foremost a political decision.

The treaty’s verification regime should be capable of verifying both the quantities of declared stocks, as well as the verification of the reduction of fissile material stocks as agreed between the states parties on a regional or global basis.

The verification system should provide timely detection of any diversion or non-compliance. It should also provide credible assurance regarding the absence of any undeclared or clandestine activity involving the production of fissile material for prohibited purposes.

Where applicable, the shut-down and dismantlement of facilities such as reprocessing and enrichment plants as well as dedicated plutonium production reactors should also be verified.

The verification obligations under an FMT would apply to the nuclear weapons possessing states. For non-nuclear weapon states parties to the NPT, the IAEA Comprehensive Safeguards Agreement and the Additional Protocol already provide the desired level of assurance.

The verification tasks under the treaty should be performed by an independent and dedicated treaty body – an FMTO – without excluding the use of IAEA resources. The responsibility to verify and oversee the treaty’s implementation cannot be assigned exclusively to the IAEA. Besides the problems arising from differences between the membership of the IAEA and the states parties to the treaty, the Agency’s decision making organs and procedures are not inclusive enough to effectively perform the oversight function. The FMTO would need an executive governing body that includes all the major stakeholders on a permanent basis - which is not the case with the IAEA Board of Governors.

Madam Chair,

The treaty should establish an FMTO with an appropriately staffed Secretariat, a Conference of States Parties meeting annually, and an executive council that includes all the major stakeholders on a permanent basis, meeting regularly and taking all decisions by consensus.
In terms of ensuring compliance, the FMTO should first and foremost try to deal with cases of non-compliance itself through consultations and clarifications as well as through technical means including special inspections and challenge inspection under a specified and pre-agreed procedure. Those cases that cannot be suitably resolved may be referred to the United Nations General Assembly by the treaty's executive council in a non-discriminatory manner. The referral to the United Nations Security Council would not be a feasible option as the Security Council would be unable to deal effectively with cases of non-compliance by a permanent veto- wielding member, which in the case of FMT would form the majority of fissile material producers.

The treaty must include amendment provisions to allow inter alia the possibility to keep the instrument up to date with latest technological developments. For a treaty that is negotiated and adopted under the consensus rule, its amendments should also only be agreed by consensus among all states parties.

For the treaty to enter into force, the minimum threshold should require ratification by all states that produce fissile materials, as defined in the treaty. The treaty must be of a limited duration, with the possibility of a renewal by consensus. This would allow for a serious review before the expiry of the initial duration with respect to its implementation, effectiveness, and contribution to nuclear disarmament, etc.

Like all treaties impacting on national security interests, states parties must be able to withdraw from the FMT, following an appropriate notice on the grounds of their national security. However, any withdrawing state must continue to remain accountable for any violations or non-compliance with the treaty while it was still a party to it.

Madam Chairperson,

Without developing full clarity and a common vision on the treaty's objective and its scope, discussions on other inter-linked elements such as legal and institutional aspects are premature. In our view, the select 25-member High Level FMCT Expert Preparatory Group is not the right forum for such discussions, especially when the larger issues of scope and treaty objectives remain unresolved, and the Shannon Mandate continues to be questioned as the basis for substantive work. Substantive discussions on a treaty dealing with fissile materials need to return to the CD and proceed on a consensus and non-divisive basis.

I thank you.