Panel IV on essential elements that could form part of effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons

We very much welcome the opportunity to have this debate today on essential elements that would comprise effective legal measures, legal provisions and norms. The Humanitarian Pledge endorsed now by 127 Sates pledged to fill the legal gap for the prohibition and elimination of nuclear weapons – and it is now of crucial importance to identify and specify with which elements this legal gap has to be filled.

For the first time we are having a discussion specifically dedicated to essential elements needed within an UN framework – as opposed to the numerous previous discussions on which approach to pursue. It is a test to delegations whether we are able to embark on a substantial debate or just want to rehash our old speeches on approach, avoiding new thinking. I am confident we should be able to agree that there are elements that need to be addressed regardless of the approach preferred.

And in fact we did so already in 2013, when the first OEWG agreed in its final report – which was adopted by consensus – on the following elements:

- Prohibition of the use of nuclear weapons
- Prohibition of threat of use of nuclear weapons
- Prohibition of possession
- Prohibition of stockpiling
- Prohibition of development
- Prohibition of transfer
- Prohibition of tests in all their forms, including both supercritical and subcritical tests.

We are of the view think that the elements just enumerated should be considered when pursuing soon a legal instrument to prohibit nuclear weapons. But further elements should be considered. Here I want to refer to Working Paper 34 introduced by Malaysia that Austria supports.
In the view of my delegation a prohibition of use would not be enough, since it e.g. would not exclude accidental detonations. So the prohibition of possession is fundamental.

There are many issues with regard to the elements that need further discussion. Just to name an example: What does transfer mean? Is it only the physical movement and/or the change of the title?

Moreover, we also think that the rights of victims of nuclear use or testing should be considered in such a legal instrument. The case was presented convincingly by the colleague from Palau in our meeting last week and reflected extensively in Working Paper 14.

As we have the privilege today to have such a distinguished international law expert as panelist, I would like to put forward the following questions to Dr. Stuart Casey-Maslen:

1. As we all know, the threat of use armed force is prohibited under Art 2(4) of the UN Charter. Would you see, nevertheless, merit in adding a provision on the threat of use of nuclear weapons in a legal instrument – in view of the special nature of nuclear weapons compared with conventional weapons, perhaps with a reference to the UN Charter to make sure that the prohibition of the threat of armed force through other weapons is not undermined?

2. It is argued that a legal instrument should also include a prohibition of production of nuclear weapons or other nuclear devices. How would you define the scope of such a prohibition of production, also in light of Art. II of the NPT?

3. My final question refers to Victim Assistance. As we are all aware, the Anti-Personnel Mine Ban Treaty, the Convention on Cluster Munition as well as CCW’s Protocol V on Explosive Remnants of War, have provisions on victim assistance, reflecting the need for assistance for the high number of civilian victims and to ensure that the rights of victims are adequately addressed. For Austria, this seems to be also an important view when pursuing a new legal instrument prohibiting nuclear weapons. This concern for the unacceptable harm that victims of nuclear weapons explosions and nuclear testing have experienced
is also reflected in the Humanitarian Pledge. Given the catastrophic wide-spread consequences of a possible nuclear weapons detonation, how would you — in a normative sense — define a “nuclear weapons victim” and how would define the scope of such an victim assistance obligation?

I thank you.