STATEMENT BY AUSTRIA

AT THE SECOND SESSION OF THE
PREPARATORY COMMITTEE
OF THE 2005 REVIEW CONFERENCE OF THE PARTIES
TO THE TREATY ON THE NON-PROLIFERATION
OF NUCLEAR WEAPONS

CLUSTER II

Special Time allocated to the themes of
"Safety and Security of peaceful nuclear programs"

Geneva, 7 May 2003

by

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CHECK AGAINST DELIVERY
Mr. Chairman,
The Austrian delegation welcomes the opportunity offered by this exercise of a special time session on safety and security to address a few topics which we hope are able to contribute to clarifying questions and thereby promoting consensus building for the next Review Conference. We understand this exercise i.a. as to facilitate your task to produce a factual summary by the end of the week.

Mr Chairman,
This statement will deal with three themes: safeguards, physical protection and in a wider context export controls.

(Safeguards)
In the field of Safeguards we re-iterate the importance of the universal application of comprehensive safeguards in their latest development. INFCIRC 153 and INFCIRC 540 build the current standard of the NPT related IAEA safeguards system and should be implemented in all non-nuclear weapon states (NNWS). Let me explain why we come to this conclusion:

Art. III.1 contains two essential notions:
(a) NNWS parties to the NPT have to accept IAEA safeguards to be implemented on their territory; and
(b) for that purpose the IAEA has to develop and maintain a safeguards system, which would meet the new objectives contained in the NPT, the so-called “comprehensive safeguards system”.

It is clear that this NPT safeguards system when it was first established in 1971 could only contain, what was then state of the art. The question arises what should be done, if and when it is found out that the system as originally drafted is not good enough to meet all the objectives intended by Art. III.1? The answer is clear. The IAEA has to improve the system. In fact it did so after the revelations in Iraq, when we embarked into the exercise called the program 93+2, which led to the Additional Protocol, and we shall do so whenever there is a need for it.

Once the amendment is established, what would then be the next step for NNWS parties concerning the part of the system that contains the improvement? In a few statements colleagues question the fact that there is an obligation to have a legal instrument in place, which enables the IAEA to apply the improved standard in each safeguarded country.

We have to put the question: Is it in the interest of the NPT that the IAEA would remain deficient in its implementation and its “safeguards conclusions”, or isn't it the obligation of each NPT NNWS to embark into negotiations with the IAEA without undue delay, to bring this country’s obligation from the NPT in line with the improved NPT safeguards standard?

The answer can only go in the one direction: As each NNWS Party has to be in line with obligations set out in Art. III.1 to enable the Agency to meet its NPT safeguards objectives, it is the obligation of each such state to enter into all the legal instruments necessary to establish the Agency’s authority to perform its safeguards task, regardless of whether there are one, two or even more legal instruments. At the
moment there are two such instruments which transform the NPT member's abstract obligation of Art. III.1 into concrete legal obligations. And it was clearly stated in the IAEA's process that the Additional Protocol based on the model INFCIRC 540 is an integral part of the Comprehensive Safeguards Agreement based on the model INFCIRC 153.

Mr. Chairman,
My delegation can not understand the reluctance some delegations have to accept this argumentation of the legal nature of the Additional Protocol. Is it so difficult to accept that the safeguards system undergoes the same dynamic process as almost anything in life? We believe that the whole NPT is a dynamic concept and should not be petrified with a certain date. That understanding relates to Art. III and IV as it does for instance to Art. VI. Or would we agree that when we deal with disarmament that we would only take account of the arsenals that existed at the day of the entry into force of the NPT in 1970? It might facilitate our work a lot, but it would not satisfy the objectives of the NPT.

Mr. Chairman,
The same goes for another matter raised in our discussion at this Prep.Com. My delegation can not follow the argument that a country under the safeguards obligation of the NPT would not have an Add.Prot., because there is a neighbour that does not have a comprehensive safeguards agreement with the IAEA. Although we strongly support the principle of the universal application of IAEA comprehensive safeguards, we do not see the logic that an NPT party would not meet its obligations, because a non-party does not except such an obligation. What could a country party to the NPT gain from holding such a position?
We rather believe that acceptance of an Add.Prot. would strengthen the country's position and would be a strong argument in support of this principle of universal application.

On the same line, Mr. Chairman, my delegation would not be able to support a position that makes the acceptance of the Add.Prot. in Art. III conditional to a particular behaviour of another country in connection with Art.IV. We share and strongly support the view that Art. IV stipulates the right and obligation to provide access to the peaceful uses of nuclear energy for any State party to the Treaty, but at the same we are strongly convinced that this right of access to cooperation will be strongly facilitated with an Additional Protocol in place. This can open in a more general way possibilities of cooperation, although it would not take away the principle right of any Party to decide on a sovereign basis whether it wants to do trade with a particular other country or not. Confidence in nuclear security in the recipient country is the basis for cooperation and can not be superseded by any other interests.

We these arguments in mind my delegation would like to call on all states who are reluctant to accept Add.Prot. to embark into negotiations with the IAEA and conclude their Add.Prot. without delay.

Mr. Chairman,
Many delegations have expressed their concern about the fact that 47 countries,
parties to the NPT, have not yet concluded their respective comprehensive safeguards agreement. We hear the argument that those countries do not have nuclear activities and thus do not see a need for IAEA safeguards in their country. This view can not be supported. We have to clearly point out that the IAEA safeguards system is depending upon its countries like a chain needs its links. And it is a fact that a chain is only as strong as its weakest link. We therefore urge those 47 States parties to embark into negotiations with the IAEA without delay. At the same time we would like to remind the DG of the IAEA, when opening such negotiations to observe the current standard of NPT safeguards and base the deliberations on both model instruments, INFCIRC 153 and INFCIRC 540.

Austria in this regard welcomes and appreciates that this understanding has already been practiced by the distinguished delegation of Cuba in its negotiations with the Agency after its adherence to the NPT. We would once again like to use this opportunity to whole-heartedly welcome Cuba as Party to the Treaty and would like to offer our assistance and cooperation in the deliberations of the Preparatory Committee and the Conference.

(Physical Protection)
As regards the area of nuclear physical protection Austria has clearly stated its position in our intervention in Cluster II. We expressed the view that the product of the work of the Legal & Technical Expert Group presented in March this year is a good and viable basis for going into the next step and present to the Depositary of the Physical Protection Convention a clean text that would be the basis for the formal amendment process foreseen in Art. 20 of the Convention. There is wide agreement among the States parties to the 1980 Convention on Physical Protection, that this old Convention is far from what we would want to see in place in order to strengthen international nuclear security, i.e. after the events of September 11 2001. We should embark into this amendment process without delay, as it will take some time until the revision will become effective.

(Export Controls)
Mr. Chairman.
There is now doubt that export controls play an important role in nuclear non-proliferation. Nuclear cooperation involving the transfer of technology in which form ever can only take place, if the exporting state is convinced that the security conditions in the recipient country provide sufficient assurance that the nuclear items supplied would not be diverted from peaceful uses to non-peaceful purposes.

Mr. Chairman,
It is an undisputable fact that the obligations stemming from the export control provisions of Art. III.2 are the responsibility of each individual Party. Therefore it is necessary for each State party to have an appropriate set of rules and regulations for national export controls in place in order to meet its responsibility. This was particularly pointed out by NPT Conference 2000 in its Final Declaration.

At the same time we have to recognise the fact, that countries not regularly involved in nuclear transfers may not have the practical experience to build-up their own the required legislation. We therefore believe that it is within the responsibility of those States which have experience to assist other parties in meeting their legislative
needs.

(Zangger Committee)
In this regard we note that the Zangger Committee (ZAC), known as an informal, technical group of countries regularly involved in nuclear trade, which has been often referred to as the "faithful interpreter" of the export control provisions of the NPT, has been playing an important role in setting up a set of guidelines and a list of nuclear items that serve as guidance for the interpretation of Art. III.2. These Understandings, as published in the IAEA document series INFCIRC 209, have over the years gained wide acceptance. The work of the Committee was well recognised in almost all NPT Review Conferences and States parties were urged to base their export control policies on these interpretations.

As NPT Conferences emphasized the importance for cooperation and assistance in setting up national rules and regulations my delegation is pleased to note that the ZAC has launched a programme for "outreach activities" with interested countries. This outreach program is aimed at creating an on-going dialogue of equal partners based on the understanding of a common responsibility. It is not just aimed at telling what the Committee does, but also learning what our partners in the dialogue think about the needs to fulfil their responsibility under Art. III.2. This outreach activity could also include the necessary assistance for setting up and improving national rules and regulations.

(Review of the ZAC Understandings)
Mr. Chairman,
As previous Conferences demanded that the Zangger Committee review its interpretation from time to time in order to bring its Understandings in line with technological and other developments, Austria takes note of the on-going work in the ZAC for reviewing the Understandings to take account of developments in the NPT review process and hopes that the results of this work, an adapted set of the Understandings, will be presented in the report to the NPT Conference 2005.

But there are still some open questions where the Committee will have to seek guidance from the NPT Conference 2005 before adopting revised Understandings:

1. In safeguards it was established by the NPT sovereign in 1995 that Comprehensive Safeguards are a condition of supply. As the Add. Prot. has now become part of the safeguards system we need a clarification that this new standard has to be applied in export controls.
2. How should the Committee's Understandings deal with physical protection in export controls?
NPT parties are required to only allow exports of nuclear goods, if there is a sufficient level of security in place that will hinder any diversion from peaceful uses to non-peaceful purposes. Physical protection, i.p. on national level, plays an important role in meeting these security levels. We therefore expect that the NPT Conference 2005 will give guidance in this regard and confirm that physical protection as a condition of supply should be looked at before an export licence is issued. The IAEA recommendations as contained in INFCIRC 225 could be the reference for the levels of physical protection. We hope that some time in the future, with the development in the revision of the Physical Protection Convention, adherence to this convention
could become the norm for NPT export controls.

Mr. Chairman,
These are only some of the questions the Preparatory Committee for the 2005 NPT Conference will have to prepare. It is up to us, the members to cooperate in good faith and with the necessary spirit of compromise. I would like to conclude this statement with the assurance to all Parties that Austria will do its utmost to help bring this process to a good result.