

Treaty on the Non-Proliferation of Nuclear Weapons
2010 Review Conference
New York, 4– 28 May 2010

Position Paper for by Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway, and Sweden (“the Vienna Group of Ten”)

Article III and preambular paragraphs 4 and 5, especially in their relationship to Article IV and preambular paragraphs 6 and 7

[Export Controls]

Draft Review Language:

1. The Conference urges all States Party to ensure that their nuclear-related exports do not assist the development of nuclear weapons or other nuclear explosive devices and that they are in full conformity with the objectives and purposes of the Treaty as stipulated, particularly in Articles I, II, III and IV. In this context, and also bearing in mind UN Security Council Resolution 1887 (2009), the Conference underlines that nuclear export controls are a legitimate, necessary and desirable means of implementing States’ Party obligations under Article III of the Treaty, in order not to contribute to a nuclear explosive activity, an unsafeguarded nuclear fuel cycle activity, or acts of nuclear terrorism.
2. The Conference underlines that effective export controls are also central to co-operation in the peaceful uses of nuclear energy, which depends on the existence of a climate of confidence about non-proliferation.
3. The Conference notes that Security Council resolution 1540 (2004), adopted on 28 April 2004, as reaffirmed in Security Council resolutions 1673 (2006) and 1810 (2008), requires all States to take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear weapons, including by establishing and maintaining appropriate effective national export and trans-shipment controls over nuclear weapon related items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export.
4. The Conference endorses the importance of the Zangger Committee as guidance for States Party in meeting their obligation under Article III, Paragraph 2 of the Treaty and invites all States to adopt the Understandings of the Zangger Committee in connection with any nuclear co-operation.
5. The Conference recommends that the list of items triggering IAEA safeguards and the procedures for implementation, in accordance with Article III, paragraph 2 of the

Treaty, be reviewed from time to time to take into account advances in technology, the proliferation sensitivity, and changes in procurement practices.

6. The Conference notes that a number of States Party have informed the IAEA that they co-operate on a voluntary basis through guidelines for their nuclear-related exports (INFCIRC/254 as amended). States Party note the important and useful role the Nuclear Suppliers Group (NSG) can play in guiding states in setting up their national export control policies. States Party took note of the transparency paper prepared by the NSG entitled “The Nuclear Suppliers Group: Its Origins, Role and Activities” (INFCIRC/539/Rev.4).
7. The Conference re-iterates that transparency in export controls should continue to be promoted within a framework of dialogue and co-operation among all interested States Party to the Treaty.
8. The Conference reconfirms paragraph 12 of decision 2 (“Principles and objectives for nuclear non-proliferation and disarmament”) of the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, that new supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material to non-nuclear-weapon States should require, as a necessary precondition, acceptance of full-scope IAEA safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices.
9. The Conference decides that new supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material should require, as a necessary precondition, acceptance of an additional protocol based on the model INFCIRC/540 (Corrected).

Working Paper: Export Controls

1. The Vienna Group of Ten (hereafter “the Vienna Group”) reaffirms that each State Party to the Treaty has undertaken not to provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material is subject to the safeguards required by Article III of the Treaty.
2. The Vienna Group underlines the responsibility all States Party have, and urges them to ensure that their nuclear-related exports to non-nuclear-weapon States do not assist the development of nuclear weapons or other nuclear explosive devices. The group reiterates that no State Party should transfer any nuclear-related items to any recipient whatsoever unless the transfer is in full conformity with the objectives and purposes of the Treaty as stipulated, particularly in Articles I, II, III and IV. In this context the group emphasizes the need to promote understanding among all States Party that nuclear export controls are a legitimate, necessary and desirable means of implementing States’ Party obligations under Article III of the Treaty, in order not to contribute to a nuclear explosive activity, an unsafeguarded nuclear fuel cycle activity, or acts of nuclear terrorism.
3. In this regard the Vienna Group notes that Security Council resolution 1540 (2004), adopted on 28 April 2004, and reiterated in Security Council resolutions 1673 (2006) and 1810 (2008), requires all States to take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear weapons, including by establishing and maintaining appropriate effective national export and trans-shipment controls over nuclear weapon related items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export. The Group further notes United Nations Security Council Resolution 1887 of September 2009 in which the Council unanimously called upon States to adopt stricter national controls for the export of sensitive goods and technologies of the nuclear fuel cycle.
4. The Vienna Group recognises that revelations in recent years about extensive covert networks related to the procurement and supply of sensitive nuclear equipment and technology have underlined the need for all States to exercise vigilance in countering proliferation, including through their nuclear export controls.
5. The Vienna Group underlines that effective export controls are also central to co-operation in the peaceful uses of nuclear energy, which depends on the existence of a climate of confidence about non-proliferation. In this respect the group notes the clear relationship between the non-proliferation obligations in Articles I, II and III and the peaceful uses objectives of Article IV of the Treaty. In this context the group reaffirms that nothing in the Treaty should be interpreted as affecting the inalienable right of all States Party to the Treaty to develop research, production and use of nuclear energy for peaceful purposes, without discrimination and in conformity with Articles I, II and III of the Treaty. The group notes the complementary and important role of national export control mechanisms in giving effect to States’ Party

obligations, under Articles I, II and III, not to contribute to the proliferation of nuclear weapons; and recognizes that such controls are intended to provide an environment of confidence for international cooperation in the peaceful uses of nuclear energy. The group notes similarly that recipient States have an obligation to exercise appropriately stringent controls to prevent proliferation.

6. The Vienna Group notes that a number of States Party meet regularly in an informal group known as the Zangger Committee, in order to co-ordinate their implementation of Article III, Paragraph 2 of the Treaty related to the supply of nuclear material and equipment. To this end, these States Party have adopted certain Understandings, including a list of items triggering IAEA safeguards, for their exports to non-nuclear-weapon States not party to the Treaty, as set forth in IAEA document INFCIRC/209 as amended. The Zangger Committee's Understandings also relate to exports to non-nuclear-weapon States Party to the Treaty insofar as the recipient State should recognize the items on the Trigger List as well as the procedures and criteria from Article III, paragraph 2 of the Treaty as a basis for its own export control decisions, including re-exports.
7. The Vienna Group endorses the importance of the Zangger Committee as guidance for States Party in meeting their obligation under Article III, Paragraph 2 of the Treaty and invites all States to adopt the Understandings of the Zangger Committee in connection with any nuclear co-operation.
8. The Vienna Group recommends that the list of items triggering IAEA safeguards and the procedures for implementation, in accordance with Article III, paragraph 2 of the Treaty, be reviewed from time to time to take into account advances in technology, the proliferation sensitivity, and changes in procurement practices.
9. The Vienna Group notes that a number of States Party have informed the IAEA that they co-operate on a voluntary basis through guidelines for their nuclear-related exports (INFCIRC/254 as amended). The group notes the important and useful role the Nuclear Suppliers Group can play in guiding States in setting up their national export control policies.
10. The Vienna Group recommends that transparency in export controls should continue to be promoted within a framework of dialogue and co-operation among all interested States Party to the Treaty.
11. The Vienna Group notes the decision in September 2008 of a number of States Party, participating in the Nuclear Suppliers Group, to grant an India-specific exception to the fullscope safeguards requirement in the Group's export control guidelines, based on certain non-proliferation commitments and actions by India (as outlined in IAEA INFCIRC/734). India's commitments related, inter alia, to signing and adhering to an Additional Protocol, exercising restraint on ENR transfers, strengthening export controls, continuing its moratorium on nuclear testing, and readiness to work with others towards conclusion of a multilateral FMCT. The Vienna Group expects India to

honour these commitments in full, noting that NSG Participating Governments have agreed to consult through regular channels on matters connected with the implementation of all aspects of the NSG's decision, taking into account relevant international commitments or bilateral agreements with India. The group notes that the NSG decision will remain the basis for civil nuclear cooperation with India by NSG Participating Governments. The group reiterates the importance it attaches to universalisation of the NPT, and its hope that India will join the NPT as a Non Nuclear Weapon State.

12. Notwithstanding that decision, the Vienna Group reaffirms that new supply arrangements for the transfer of source or special fissionable material, or equipment or material especially designed or prepared for the processing, use, or production of special fissionable material, to non-nuclear-weapon States should require, as a necessary precondition, acceptance of full-scope IAEA safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices. The group urges those supplier States that have not yet done so to require such conditions without delay.
13. Noting that all non-nuclear-weapon States Party to the Treaty have a legal obligation under Article III to accept safeguards stipulated under the NPT, and also noting that an INFCIRC/153 (Corrected) Safeguards Agreement together with an Additional Protocol (INFCIRC/540 (Corrected)) now represents the verification standard for NPT safeguards, the group confirms that this verification standard should be a condition for new supply arrangements to non-nuclear-weapon States. The group recognises the importance of the provisions of the Additional Protocol related to reporting to the IAEA on the export and import of nuclear-related equipment.
14. The Vienna Group notes that Article III of the Treaty is designed to detect and prevent the diversion of nuclear material, equipment and technology. This relates to not only diversion at the State level, but also diversion to individuals or sub-national groups. The group affirms, therefore, that transfers of nuclear material, sensitive equipment or technology should only take place if the recipient State has in place an effective and adequate national system of nuclear security. This system comprises NPT-related IAEA safeguards, an adequate system of physical protection, a minimum set of measures to combat illicit trafficking, and rules and regulations for appropriate export controls in case of retransfers.
15. While the responsibility to establish and implement such a system rests with the concerned State, supplying States Party have the responsibility to seek assurance that such a system is in place in the recipient State as a necessary precondition for nuclear supplies.