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Strengthening the Nuclear Non-Proliferation Regime: The Need For Broad Information and Access Rights

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Ladies and Gentlemen,

It is my pleasure to participate in this conference, and in particular in this panel discussion.

It is well recognized that developments over the last year and a half in the DPRK, Iran, Libya and some other countries have highlighted weaknesses in the nuclear non-proliferation regime. There has been a broad range of suggestions for addressing those weaknesses², including calls for appropriate international response to violations of, or withdrawal from, the NPT; multinationalization of sensitive nuclear fuel cycle activities; development of a system for the international guarantee of nuclear fuel supply to States which would forgo the development of sensitive nuclear technologies³; strengthening export control regimes; and strengthening the legal rights and authority of the IAEA. The Director General of the IAEA has also suggested "supplementing" the NPT with missing elements, one of which would be "a ban on the right of every country to develop plutonium or highly enriched uranium."⁴

Many of these ideas are beginning to be discussed in a variety of fora and in particular during this timely Conference organized by the Carnegie Endowment for International Peace, but clearly, the elaboration and implementation of some of them will take time because of the need to gain consensus among a large number of countries and stakeholders. However, there are practical steps that could and probably should be taken, some by the IAEA Board of Governors and others possibly by the UN Security Council, to strengthen the legal rights and authority of the IAEA in the near term. Based on the experience that has been gained in implementing strengthened safeguards measures, particularly in light of the new challenges faced in 2003, these remarks will focus on the IAEA's need for sufficient information and access in order to fully evaluate and verify the consistency of a State's activities with its declared nuclear programme. The suggestions address two distinct aspects: measures that are needed to improve the transparency of all States' nuclear related activities, and measures that would be needed to improve the IAEA's authority in the case of a State that has been found in breach of its safeguards commitments. Before focussing on these two issues, it is worth mentioning some of the limitations of the current safeguards system.

Limitations of the Safeguards System

Non-nuclear-weapon States Party to the NPT are required to conclude comprehensive safeguards agreements (CSAs) with the Agency within eighteen months of becoming party to the Treaty. It is obvious that the Agency has no ability to implement safeguards in States without safeguards agreements. As of the end of May 2004, more than 40 NPT States had yet to conclude such safeguards agreements long after having become party to the Treaty.

In addition to a comprehensive safeguards agreement, having an additional protocol⁵ in force is essential. Without it the Agency does not have the access to information or locations necessary to provide credible assurance of the absence of undeclared nuclear material and activities in States. Having an additional protocol in force should become the norm for **all** States, even for non-NPT States, because it is essential for the Agency to be informed of nuclear-related cooperation with non-nuclear-weapon States, particularly with regard to exports of nuclear material and technology.

Recent events have also highlighted the extent to which countries can develop their nuclear programmes with small amounts of nuclear material. There are some limitations to the information required to be reported to the Agency with respect to international transfers of small amounts of nuclear material. Nuclear-weapon States are only required to provide information to the Secretariat on international exports of nuclear material to any non-nuclear-weapon State *in an amount exceeding one effective kilogram*^{6, 7}. The three States with INFCIRC/66-type safeguards agreements, namely India, Israel and Pakistan, are only required to declare exports of *safeguarded* nuclear material. Therefore, in some cases the Secretariat relies solely upon the importing State to report its receipt of nuclear material. To illustrate the possible implications, a non-nuclear-weapon State could import just under ten metric tonnes of natural uranium as UF₆ from a nuclear-weapon State or a State with an INFCIRC/66-type safeguards agreement. The exporting State would not be required to report the export to the Agency. This quantity of feed material, if enriched (e.g. in a small clandestine centrifuge enrichment plant), could yield approximately 55 kg of HEU with 93% enrichment in U-235, which is more than the quantity needed to manufacture two nuclear explosive devices. Nuclear-weapon States and INFCIRC/66 States should therefore be called upon to strengthen their undertakings to report all exports of nuclear material that would be subject to safeguards in the recipient State.

Another limitation is that many States with comprehensive safeguards agreements in force, and which have only very small quantities of nuclear material, have concluded a protocol to their safeguards agreement⁸ which holds in abeyance most of the operative provisions of their safeguards agreements. As a consequence, this protocol, commonly referred to as a "small quantities protocol" or SQP, makes it difficult for the Agency to evaluate the nuclear programme (or lack thereof) for an SQP State or to confirm that the State meets or continues to meet the conditions required for having an operative SQP. The Secretariat of the Agency is currently considering ways in which its legal rights to information from and access to locations in these States could be strengthened.

In addition to strengthening the Agency's legal authority under safeguards agreements, we need to draw on recent lessons learned to formulate ways in which the international community can ensure compliance with the "spirit of the NPT", and not just the "letter" of the safeguards agreements.

Improved Transparency for all States

Article III.1 of the NPT states that "Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the IAEA **in accordance with the Statute of the IAEA** and the Agency's safeguards system, for the exclusive **purpose of verification of the fulfilment of its obligations assumed under this Treaty** with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices." Article VIII.A of the Statute of the IAEA specifies that "each member should make available such information as would, in the judgement of the member, be helpful to the Agency." In order for the Agency to have sufficient information to assess the consistency of a State's nuclear-related activities with its declared nuclear programme, Member States of the Agency that are party to the NPT should, therefore, be prepared to provide nuclear-related information, as needed and requested by the Agency.

But this interpretation of States' obligations under the NPT and the IAEA Statute has not been fully implemented in practice. Instead, States have only been obliged to provide information on current nuclear material inventories and activities that have taken place **since their safeguards agreements have come into force**. This has been a major loophole in the Agency's access to the information it needs to evaluate each State's past nuclear related activities, thereby making it difficult if not impossible for the Agency to reconstruct the State's nuclear history based essentially on open source information. It is therefore suggested that the Board, as a matter of priority, establish its understanding that a State should be obliged to provide to the Agency the information specified under its safeguards agreements and additional protocol covering its nuclear-related activities at least **since the time of becoming a party to the NPT** or any equivalent regional non-proliferation instrument⁹. This information would in particular include nuclear-related R&D activities conducted during that time as well as the sensitive manufacturing activities specified in Annex I of the additional protocol.

Increased Access in Specific Cases

It should be underlined that despite the increased access to information and nuclear-related locations afforded by an additional protocol to a CSA there remain a number of limitations which can be exploited by a would-be proliferator State to:

- delay providing information (or providing incomplete and imprecise information);
- delay providing access to specific locations to such an extent that the situation at the location may have changed in the meantime, and/or;
- set conditions that impede the Agency's access to information from knowledgeable individuals.

Such delays could potentially provide the State with the time and means to conceal past or current undeclared nuclear activities.

There could, therefore, be cases where the Agency would need further information and access than that provided for under a comprehensive safeguards agreement and an additional protocol in order to assess the consistency of information regarding a State's nuclear activities. It is therefore proposed that **once a State has been found by the Agency to be in non-compliance** with its safeguards agreements, measures should be taken to ensure that the State would not be able to delay or impede the Agency's ability to conduct its activities effectively and efficiently.

In such a case, the Agency's Board of Governors could call upon that State to provide Agency inspectors and experts with further access to information and locations. This would include short notice access to go anywhere, and interview anyone, at anytime without restrictions and to allow Agency inspectors to use their own equipment as they deem necessary for fulfilling their mandate. Such broader access should be extended to the Agency until such a time that it has been assessed that the State's declarations are correct and complete. It should be noted that these broad rights are foreseen in Article XII.A.6 of the IAEA Statute¹⁰. The Board could further indicate its intention to report to the UN Security Council any failure of the State to comply with such a request.

Conclusion

In summary, it should be recognized that comprehensive safeguards agreements and additional protocols are essential for the Agency to conduct sufficient activities to assess the consistency of a State's declared nuclear programme. Nevertheless the rights afforded to the Agency by those instruments are not absolute and as described above there are measures that could be taken in the near term to address some limitations to the Agency's legal authority and improve the Agency's assessment capability. However in the rare case of a State found to be in breach of its safeguards commitments, the Agency's access to information and locations should temporarily be further strengthened by a broad interpretation of States' obligations in the spirit of the NPT.

¹ Views expressed in this paper do not necessarily represent those of the International Atomic Energy Agency and the IAEA accepts no responsibility for them.

² For example, the statement by IAEA Director General ElBaradei to the 47th Regular Session of the IAEA General Conference 2003 Vienna, 18 September 2003; "President Announces New Measures to Counter the Threat of WMD," US President G. W. Bush, National Defense University, Washington, DC, 11 February 2004; and the statement by UK Foreign Secretary Jack Straw in the House of Commons on 25 February 2004.

³ [The Proliferation Challenge of the Nuclear Fuel Cycle in Non-Nuclear Weapon States](#), Pierre Goldschmidt, Institut Français des Relations Internationales, Paris, 26 April 2004.

⁴ Council on Foreign Relations, New York, 14 May 2004.

⁵ [INFCIRC/540\(Corrected\)](#), The Model Protocol Additional to the Agreement(s) between State(s) and the International Atomic Energy Agency for the Application of Safeguards.

⁶ Ref. INFCIRC/207, INFCIRC/207/Add.1, INFCIRC/207/Add.2

⁷ Although in practice two such States report all international exports of nuclear material.

⁸ Ref. GOV/INF/276 Annex B for the standard text.

⁹ It is worth noting that each State Party to the Chemical Weapons Convention is required to declare whether it has **or has had** any chemical weapons production facility and whether it has transferred or received, directly or indirectly, any equipment for the production of chemical weapons **since 1 January 1946**, and not just since the time they joined the Convention.

¹⁰ Article XII.A and its paragraph 6 state that "With respect to any Agency project, or other arrangement where the Agency is requested by the parties concerned to apply safeguards, the Agency shall have the following rights and responsibilities to the extent relevant to the project or arrangement:" ... "To send into the territory of the recipient State or States, inspectors designated by the Agency after consultation with the State or States concerned, **who shall have access at all times to all places and data and to any person who by reason of his occupation deals with materials, equipment, or facilities which are required by this Statute to be safeguarded, as necessary** to account for source and special fissionable materials supplied and fissionable products and **to determine whether there is compliance with the undertaking** against use in furtherance of any military purpose...".

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