

# Amendment to the Convention on the Physical Protection of Nuclear Material

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**IAEA**

International Atomic Energy Agency

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AMENDMENT TO THE CONVENTION ON  
THE PHYSICAL PROTECTION OF  
NUCLEAR MATERIAL

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AMENDMENT TO THE CONVENTION ON  
THE PHYSICAL PROTECTION OF  
NUCLEAR MATERIAL

INTERNATIONAL ATOMIC ENERGY AGENCY  
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# FOREWORD

This publication brings together in a more convenient format the official records and other relevant documents relating to the negotiations on the Amendment to the Convention on the Physical Protection of Nuclear Material.

The Amendment to the Convention makes it legally binding for States Parties to protect nuclear facilities and material in peaceful domestic use, storage and transport. It also provides for expanded cooperation between and among States regarding rapid measures to locate and recover stolen or smuggled nuclear material, mitigate any radiological consequences of sabotage, and prevent and combat related offences.

The Amendment to the Convention represents the culmination of work that had been progressing since 1999, when in the light of comments made during several meetings of the IAEA Board of Governors and taking into account the recommendations of the Senior Expert Group for the Review of the IAEA's Programme of Activities, the Director General convened an Informal Open-ended Expert Meeting to discuss whether there is a need to revise the Convention on the Physical Protection of Nuclear Material.

The Meeting concluded on 23 May 2001 that there was a clear need to strengthen the international physical protection regime and recommended that a spectrum of measures be employed — including the drafting of an amendment to strengthen the Convention.

In response to this recommendation, the Director General formally convened an Open-ended Group of Legal and Technical Experts to prepare such an amendment. On 14 March 2003, the group concluded its work and submitted its final report to the Director General. Subsequently, further consultations were held among a number of States Parties to the Convention on the outstanding issues as identified in the final report of the group.

On 5 July 2004, the Director General, at the request of the Government of Austria and 24 co-sponsoring States, namely Australia, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Japan, Lithuania, Luxembourg, Norway, Poland, Portugal, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom and the United States of America, circulated to all States Parties proposed amendments to the Convention. At the same time, the Director General requested confirmation as to whether he should, as Depositary, call for a conference to consider these amendments.

On 3 February 2005 the Director General had received requests from a majority of States Parties to the Convention to convene such a conference.

The Conference was held at the IAEA's Headquarters in Vienna, from 4 to 8 July 2005. The Conference was formally opened by D. Waller, Acting Director General of the IAEA, who served as the Secretary-General of the Conference. Representatives of 88 States Parties and of one organization Party to the Convention participated in the Conference. Representatives of 18 States, the United Nations, the IAEA and the League of Arab States participated as observers.

The Conference elected A.J. Baer (Switzerland) as President. It also elected eight Vice-Presidents, namely: R.J.K. Stratford (United States of America), P. Espinosa-Cantellano (Mexico), P. Nieuwenhuys (Belgium), A.A. Matveev (Russian Federation), T. Feroukhi (Algeria), S.K. Sharma (India), T.A. Samodra Sriwidjaja (Indonesia) and W. Hailong (China). The Director of the IAEA Office of Legal Affairs, J. Rautenbach, served as the Legal Adviser to the Conference.

The Conference established a Committee of the Whole consisting of all States Parties and one organization Party to the Convention that participated in the Conference, and elected S. McIntosh (Australia) as Chairman and E. Gil (Spain) as Vice-Chairman.

The Conference established a Drafting Committee and elected K. Amégan (Canada) as Chairman. N. Singh (India) was elected as Vice-Chairman by the Drafting Committee. Representatives of the following States Parties participated: Algeria, Argentina, Australia, Belarus, Brazil, Canada, China, France, India, Israel, Japan, Mexico, the Netherlands, the Russian Federation, Spain, Sweden, the United Kingdom and the United States of America.

W. Tonhauser, L. Vez Carmona, A. Wetherall and M. Lorenzo Sobrado of the IAEA represented the Secretariat of the Conference.

The Conference had before it as the basis for its discussions the following documents: the Basic Proposal (document CPPNM/AC/L.1/1) and the proposal contained in document CPPNM/AC/L.1/2. At its first meeting, the

Conference decided to incorporate the latter proposal into the Basic Proposal to form a revised Basic Proposal (CPPNM/AC/L.1/1/Rev.1).

The Committee of the Whole examined and approved the draft Amendment as reviewed by the Drafting Committee in its Arabic, Chinese, English, French, Russian and Spanish language versions.

The Conference adopted by consensus on 8 July 2005 the text of the Amendment to the Convention. The Amendment is subject to ratification, acceptance or approval. The Final Act of the Conference was signed by delegates of 82 States.

The Amendment to the Convention, together with 12 other international legal instruments, constitutes an important milestone in the global efforts to combat nuclear terrorism.

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# **AMENDMENT TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL**

1. The Title of the Convention on the Physical Protection of Nuclear Material adopted on 26 October 1979 (hereinafter referred to as “the Convention”) is replaced by the following title:

**CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL AND NUCLEAR FACILITIES**

2. The Preamble of the Convention is replaced by the following text:

THE STATES PARTIES TO THIS CONVENTION,

RECOGNIZING the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

CONVINCED of the need to facilitate international co-operation and the transfer of nuclear technology for the peaceful application of nuclear energy,

BEARING IN MIND that physical protection is of vital importance for the protection of public health, safety, the environment and national and international security,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and co-operation among States,

CONSIDERING that under the terms of paragraph 4 of Article 2 of the Charter of the United Nations, “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,”

RECALLING the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994,

DESIRING to avert the potential dangers posed by illicit trafficking, the unlawful taking and use of nuclear material and the sabotage of nuclear material and nuclear facilities, and noting that physical protection against such acts has become a matter of increased national and international concern,

DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and by the threats posed by international terrorism and organized crime,

BELIEVING that physical protection plays an important role in supporting nuclear non-proliferation and counter-terrorism objectives,

DESIRING through this Convention to contribute to strengthening worldwide the physical protection of nuclear material and nuclear facilities used for peaceful purposes,

CONVINCED that offences relating to nuclear material and nuclear facilities are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures, or to strengthen existing measures, to ensure the prevention, detection and punishment of such offences,

DESIRING to strengthen further international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material and nuclear facilities,

CONVINCED that this Convention should complement the safe use, storage and transport of nuclear material and the safe operation of nuclear facilities,

RECOGNIZING that there are internationally formulated physical protection recommendations that are updated from time to time which can provide guidance on contemporary means of achieving effective levels of physical protection,

RECOGNIZING also that effective physical protection of nuclear material and nuclear facilities used for military purposes is a responsibility of the State possessing such nuclear material and nuclear facilities, and understanding that such material and facilities are and will continue to be accorded stringent physical protection,

HAVE AGREED as follows:

3. In Article 1 of the Convention, after paragraph (c), two new paragraphs are added as follows:

(d) “nuclear facility” means a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material;

(e) “sabotage” means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of personnel, the public or the environment by exposure to radiation or release of radioactive substances.

4. After Article 1 of the Convention, a new Article 1A is added as follows:

#### Article 1A

The purposes of this Convention are to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; as well as to facilitate co-operation among States Parties to those ends.

5. Article 2 of the Convention is replaced by the following text:

1. This Convention shall apply to nuclear material used for peaceful purposes in use, storage and transport and to nuclear facilities used for peaceful purposes, provided, however, that articles 3 and 4 and paragraph 4 of article 5 of this Convention shall only apply to such nuclear material while in international nuclear transport.

2. The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State Party rests entirely with that State.

3. Apart from the commitments expressly undertaken by States Parties under this Convention, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State.

4. (a) Nothing in this Convention shall affect other rights, obligations and responsibilities of States Parties under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

(b) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

(c) Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.

(d) Nothing in this Convention condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

5. This Convention shall not apply to nuclear material used or retained for military purposes or to a nuclear facility containing such material.

6. After Article 2 of the Convention, a new Article 2A is added as follows:

#### Article 2A

1. Each State Party shall establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and nuclear facilities under its jurisdiction, with the aim of:

- (a) protecting against theft and other unlawful taking of nuclear material in use, storage and transport;
- (b) ensuring the implementation of rapid and comprehensive measures to locate and, where appropriate, recover missing or stolen nuclear material; when the material is located outside its territory, that State Party shall act in accordance with article 5;
- (c) protecting nuclear material and nuclear facilities against sabotage; and
- (d) mitigating or minimizing the radiological consequences of sabotage.

2. In implementing paragraph 1, each State Party shall:

- (a) establish and maintain a legislative and regulatory framework to govern physical protection;
- (b) establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework; and
- (c) take other appropriate measures necessary for the physical protection of nuclear material and nuclear facilities.

3. In implementing the obligations under paragraphs 1 and 2, each State Party shall, without prejudice to any other provisions of this Convention, apply insofar as is reasonable and practicable the following Fundamental Principles of Physical Protection of Nuclear Material and Nuclear Facilities.

#### **FUNDAMENTAL PRINCIPLE A: *Responsibility of the State***

The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rests entirely with that State.

#### **FUNDAMENTAL PRINCIPLE B: *Responsibilities During International Transport***

The responsibility of a State for ensuring that nuclear material is adequately protected extends to the international transport thereof, until that responsibility is properly transferred to another State, as appropriate.

#### **FUNDAMENTAL PRINCIPLE C: *Legislative and Regulatory Framework***

The State is responsible for establishing and maintaining a legislative and regulatory framework to govern physical protection. This framework should provide for the establishment of applicable physical protection requirements and include a system of evaluation and licensing or other procedures to grant authorization. This framework should include a system of inspection of nuclear facilities and transport to verify compliance with applicable requirements

and conditions of the license or other authorizing document, and to establish a means to enforce applicable requirements and conditions, including effective sanctions.

**FUNDAMENTAL PRINCIPLE D: *Competent Authority***

The State should establish or designate a competent authority which is responsible for the implementation of the legislative and regulatory framework, and is provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities. The State should take steps to ensure an effective independence between the functions of the State's competent authority and those of any other body in charge of the promotion or utilization of nuclear energy.

**FUNDAMENTAL PRINCIPLE E: *Responsibility of the License Holders***

The responsibilities for implementing the various elements of physical protection within a State should be clearly identified. The State should ensure that the prime responsibility for the implementation of physical protection of nuclear material or of nuclear facilities rests with the holders of the relevant licenses or of other authorizing documents (e.g., operators or shippers).

**FUNDAMENTAL PRINCIPLE F: *Security Culture***

All organizations involved in implementing physical protection should give due priority to the security culture, to its development and maintenance necessary to ensure its effective implementation in the entire organization.

**FUNDAMENTAL PRINCIPLE G: *Threat***

The State's physical protection should be based on the State's current evaluation of the threat.

**FUNDAMENTAL PRINCIPLE H: *Graded Approach***

Physical protection requirements should be based on a graded approach, taking into account the current evaluation of the threat, the relative attractiveness, the nature of the material and potential consequences associated with the unauthorized removal of nuclear material and with the sabotage against nuclear material or nuclear facilities.

**FUNDAMENTAL PRINCIPLE I: *Defence in Depth***

The State's requirements for physical protection should reflect a concept of several layers and methods of protection (structural or other technical, personnel and organizational) that have to be overcome or circumvented by an adversary in order to achieve his objectives.

**FUNDAMENTAL PRINCIPLE J: *Quality Assurance***

A quality assurance policy and quality assurance programmes should be established and implemented with a view to providing confidence that specified requirements for all activities important to physical protection are satisfied.

**FUNDAMENTAL PRINCIPLE K: *Contingency Plans***

Contingency (emergency) plans to respond to unauthorized removal of nuclear material or sabotage of nuclear facilities or nuclear material, or attempts thereof, should be prepared and appropriately exercised by all license holders and authorities concerned.

**FUNDAMENTAL PRINCIPLE L: *Confidentiality***

The State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear material and nuclear facilities.

4. (a) The provisions of this article shall not apply to any nuclear material which the State Party reasonably decides does not need to be subject to the physical protection regime established pursuant to paragraph 1, taking into account the nature of the material, its quantity and relative attractiveness and the potential

radiological and other consequences associated with any unauthorized act directed against it and the current evaluation of the threat against it.

(b) Nuclear material which is not subject to the provisions of this article pursuant to sub-paragraph (a) should be protected in accordance with prudent management practice.

7. Article 5 of the Convention is replaced by the following text:

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their point of contact in relation to matters within the scope of this Convention.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

(a) State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof, and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations;

(b) in doing so, as appropriate, the States Parties concerned shall exchange information with each other, the International Atomic Energy Agency and other relevant international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container or recovering unlawfully taken nuclear material and shall:

(i) co-ordinate their efforts through diplomatic and other agreed channels;

(ii) render assistance, if requested;

(iii) ensure the return of recovered nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. In the case of a credible threat of sabotage of nuclear material or a nuclear facility or in the case of sabotage thereof, States Parties shall, to the maximum feasible extent, in accordance with their national law and consistent with their relevant obligations under international law, co-operate as follows:

(a) if a State Party has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in another State, the former shall decide on appropriate steps to be taken in order to inform that State as soon as possible and, where appropriate, the International Atomic Energy Agency and other relevant international organizations of that threat, with a view to preventing the sabotage;

(b) in the case of sabotage of nuclear material or a nuclear facility in a State Party and if in its view other States are likely to be radiologically affected, the former, without prejudice to its other obligations under international law, shall take appropriate steps to inform as soon as possible the State or the States which are likely to be radiologically affected and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations, with a view to minimizing or mitigating the radiological consequences thereof;

(c) if in the context of sub-paragraphs (a) and (b), a State Party requests assistance, each State Party to which a request for assistance is directed shall promptly decide and notify the requesting State Party,

directly or through the International Atomic Energy Agency, whether it is in a position to render the assistance requested and the scope and terms of the assistance that may be rendered;

(d) co-ordination of the co-operation under sub-paragraphs (a) to (c) shall be through diplomatic or other agreed channels. The means of implementation of this co-operation shall be determined bilaterally or multilaterally by the States Parties concerned.

4. States Parties shall co-operate and consult, as appropriate, with each other directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

5. A State Party may consult and co-operate, as appropriate, with other States Parties directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining their guidance on the design, maintenance and improvement of its national system of physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities.

8. Article 6 of the Convention is replaced by the following text:

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations or to States that are not parties to this Convention in confidence, steps shall be taken to ensure that the confidentiality of such information is protected. A State Party that has received information in confidence from another State Party may provide this information to third parties only with the consent of that other State Party.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material or nuclear facilities.

9. Paragraph 1 of Article 7 of the Convention is replaced by the following text:

1. The intentional commission of:

(a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment;

(b) a theft or robbery of nuclear material;

(c) an embezzlement or fraudulent obtaining of nuclear material;

(d) an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority;

(e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property or to the environment by exposure to



radiation or release of radioactive substances, unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated;

- (f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
- (g) a threat:
  - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to property or to the environment or to commit the offence described in sub-paragraph (e), or
  - (ii) to commit an offence described in sub-paragraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
- (h) an attempt to commit any offence described in sub-paragraphs (a) to (e);
- (i) an act which constitutes participation in any offence described in sub-paragraphs (a) to (h);
- (j) an act of any person who organizes or directs others to commit an offence described in sub-paragraphs (a) to (h); and
- (k) an act which contributes to the commission of any offence described in sub-paragraphs (a) to (h) by a group of persons acting with a common purpose; such act shall be intentional and shall either:
  - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence described in sub-paragraphs (a) to (g), or
  - (ii) be made in the knowledge of the intention of the group to commit an offence described in sub-paragraphs (a) to (g)

shall be made a punishable offence by each State Party under its national law.

10. After Article 11 of the Convention, two new articles, Article 11A and Article 11B, are added as follows:

#### Article 11A

None of the offences set forth in article 7 shall be regarded for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

#### Article 11B

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 7 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

11. After Article 13 of the Convention, a new Article 13A is added as follows:

Article 13A

Nothing in this Convention shall affect the transfer of nuclear technology for peaceful purposes that is undertaken to strengthen the physical protection of nuclear material and nuclear facilities.

12. Paragraph 3 of Article 14 of the Convention is replaced by the following text:

3. Where an offence involves nuclear material in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, or where an offence involves a nuclear facility and the alleged offender remains in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

13. Article 16 of the Convention is replaced by the following text:

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of the Amendment adopted on 8 July 2005 to review the implementation of this Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

14. Footnote <sup>b/</sup> of Annex II of the Convention is replaced by the following text:

<sup>b/</sup> Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 1 gray/hour (100 rads/hour) at one metre unshielded.

15. Footnote <sup>e/</sup> of Annex II of the Convention is replaced by the following text:

<sup>e/</sup> Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 1 gray/hour (100 rads/hour) at one metre unshielded.

# **CONFERENCE TO CONSIDER AND ADOPT PROPOSED AMENDMENTS TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL**

**Vienna, 4 to 8 July 2005**

## *AGENDA*

1. Opening of the Conference
2. Election of the President
3. Adoption of the Agenda (document CPPNM/AC/L.2)
4. Adoption of the Rules of Procedure (document CPPNM/AC/L.3)
5. Election of Vice-Presidents and other officers of the Conference\*
6. Organization of work of the Conference
7. Introduction of the proposed amendments to the Convention on the Physical Protection of Nuclear Material
  - (a) The Basic Proposal contained in document CPPNM/AC/L.1/1
  - (b) The proposal contained in document CPPNM/AC/L.1/2
  - (c) Incorporation of the proposal contained in document CPPNM/AC/L.1/2 into the Basic Proposal
8. Consideration of proposed amendments to the Convention on the Physical Protection of Nuclear Material
9. Consideration of the reports of the committees established by the Conference
10. Adoption of the amendments to the Convention on the Physical Protection of Nuclear Material
11. Adoption and signature of the Final Act
12. Closing of the Conference

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\* Including the selection of the 18 members of the Drafting Committee



# **RULES OF PROCEDURE**

## **I. REPRESENTATION AND CREDENTIALS**

### **Rule 1: Composition of delegations**

The delegation of each State Party participating in the Conference to consider and adopt proposed amendments to the Convention on the Physical Protection of Nuclear Material (hereinafter “the Conference”) shall consist of a head of delegation, who may be accompanied by as many alternates, advisers, experts and persons of similar status as may be required.

### **Rule 2: Alternates**

The head of delegation may designate any member in his/her delegation to act in his/her place during the Conference.

### **Rule 3: Submission of credentials**

The credentials of heads of delegations and the names of alternates, advisers, experts and persons of similar status shall be submitted to the Director General of the International Atomic Energy Agency (IAEA) before the opening of the Conference or not later than 24 hours after the opening of the Conference. The credentials shall be issued either by the Head of State or Government or by the Minister of Foreign Affairs of the State concerned.

### **Rule 4: Examination of credentials**

The credentials of all delegates shall be examined by the Secretary General of the Conference who shall submit a report thereon to the Bureau established under Rule 15. Thereafter, the Bureau shall report to the Conference.

### **Rule 5: Provisional participation in the Conference**

1. Pending a decision of the Conference upon their credentials, delegations shall be entitled to participate provisionally in the Conference.
2. Any delegate to whose admission a State participating in the Conference has made objection shall be seated provisionally with the same rights as other delegations until the Bureau of the Conference, pursuant to Rule 4, has reported and the Conference has given its decision.

## **II. OBSERVERS**

### **Rule 6: Representatives of States not Party to the Convention on the Physical Protection of Nuclear Material**

Any State not a Party to the Convention shall be invited to attend the Conference as observer and to participate without the right to vote in the deliberations of the Plenary. Such States may attend the Committee of the Whole and may only make oral statements at the invitation of the presiding officer and with the consent of the Committee.

**Rule 7: Representatives of the United Nations, the specialized agencies, the IAEA and of other intergovernmental organizations**

1. Representatives of the United Nations, the specialized agencies and the IAEA shall be invited to attend the Conference as observers and to participate without the right to vote in the deliberations of the Plenary.
2. Representatives of other intergovernmental organizations invited to regular sessions of the General Conference of the IAEA shall be invited upon their request to participate without the right to vote in the deliberations of the Plenary.

**Rule 8: Non-governmental organizations**

Any request received from a non-governmental organization invited to attend regular sessions of the General Conference of the IAEA as observer, shall be referred by the Secretary General to the Conference for its decision.

III. OFFICERS OF THE CONFERENCE

**Rule 9: Temporary President**

The Director General of the IAEA shall open the first meeting of the Conference and preside until the Conference has elected its President.

**Rule 10: Election**

The Conference shall elect from among the heads or members of delegations of participating States the following officers:

- (a) A President and eight Vice-Presidents;
- (b) A Chairperson and a Vice-Chairperson of the Committee of the Whole established under Rule 16;
- (c) A Chairperson of the Drafting Committee established under Rule 17.

**Rule 11: Acting President**

If the President of the Conference or the Chairperson of the Committee of the Whole is absent during a meeting or any part thereof, he/she shall appoint one of the Vice-Presidents or the Vice-Chairperson, respectively, to take his/her place, who, while acting as President of the Conference or Chairperson of the Committee of the Whole, shall have the same powers and duties as the President of the Conference or the Chairperson of the Committee of the Whole.

IV. SECRETARIAT

**Rule 12: Duties of the Secretary General of the Conference**

The Director General of the IAEA shall be the Secretary General of the Conference. He, or his representative, shall act in that capacity at all meetings of the Conference and of its committees and may designate a member of the Secretariat to act in his place at these meetings. The Secretary General of the Conference or his representative may at any time, with the approval of the presiding officer, make oral or written statements to such meetings.

**Rule 13: Direction of staff**

The Secretary General of the Conference shall provide and direct the staff required by the Conference and its committees and shall be responsible for all the necessary arrangements for the meetings of the Conference and its committees.

**Rule 14: Duties of the Staff**

Under the direction of the Secretary General of the Conference, staff shall receive, translate, reproduce and distribute documents of the Conference, its committees and other subsidiary bodies; prepare and circulate summary records of meetings and sessions; interpret speeches made at meetings; have custody of documents of the Conference in the archives of the Agency; publish the reports of the meetings of the Conference; distribute all documents of the Conference to the States Parties; and generally perform all other work which the Conference, its committees or other subsidiary bodies may require.

**V. COMMITTEES OF THE CONFERENCE****Rule 15: Bureau**

1. There shall be a Bureau of the Conference consisting of the President of the Conference, the eight Vice-Presidents, the Chairperson and the Vice-Chairperson of the Committee of the Whole and the Chairperson of the Drafting Committee.
2. The Bureau shall consider requests for the inclusion of additional items on the agenda of the Conference and shall report thereon to the Conference. In considering matters relating to the agenda of the Conference, the Bureau shall not discuss the substance of any item, except insofar as this bears upon the question whether the Bureau should recommend the inclusion of the item in the agenda, the rejection of the request for inclusion, and what priority should be accorded to an item the inclusion of which has been recommended.
3. The Bureau shall propose to the Conference the establishment of any additional committees which it considers necessary. It shall assist the President of the Conference in conducting and co-ordinating the work of the Conference.
4. No two members of the Bureau shall be members of the same delegation and it shall be so constituted as to ensure its representative character.
5. The Bureau shall receive the report on credentials by the Secretary General of the Conference and report thereon to the Conference.

**Rule 16: Committee of the Whole**

There shall be a Committee of the Whole on which each State Party participating in the Conference may be represented. It shall consider and report on any item referred to it by the Plenary. The Committee of the Whole may set up such other subsidiary bodies as it considers necessary.

**Rule 17: Drafting Committee**

1. There shall be a Drafting Committee, composed of not more than 18 members, selected by the Plenary. The members of the Committee shall be selected so that each language in which the instrument to be adopted by the

Conference is to be authentic will be represented. The Committee shall elect from among its members a Vice-Chairperson who, in the absence of the Chairperson, shall have the same powers and duties as the Chairperson of the Drafting Committee.

2. The Drafting Committee shall prepare drafts and give advice on drafting as may be requested by the Committee of the Whole. It shall also prepare the Final Act of the Conference. The Drafting Committee shall not alter the substance of texts submitted to it, but shall have the power to review and co-ordinate the drafting of all such texts. It shall report to the Committee of the Whole.

**Rule 18: Creation of committees**

In addition to the Committee of the Whole and the Drafting Committee, the Conference may establish such other committees as it deems necessary for the performance of its functions. Each of these committees shall elect its own Chairperson.

VI. BASIC PROPOSAL

**Rule 19: Basic Proposal**

The Basic Proposal for discussion by the Conference shall be the proposed amendments to the Convention (Document CPPNM/AC/L.1/1).

**Rule 20: Proposals and amendments**

Amendments to the Basic Proposal shall be communicated in writing to the Secretariat which shall circulate copies to all delegations. As a general rule, no proposed amendments shall be discussed or put to the vote unless its text has been distributed to all delegates, in all working languages of the Conference, not later than a half day preceding its discussion. The presiding officer may, however, permit the discussion and consideration of proposed amendments, or of motions as to procedure, even though these amendments or motions have not been distributed or have been distributed the same day.

VII. CONDUCT OF BUSINESS AT PLENARY MEETINGS OF THE CONFERENCE

**Rule 21: The presiding officer**

The President of the Conference, or in his/her absence the Vice-President appointed by him to take his place, shall be the presiding officer of the Conference.

**Rule 22: General powers of the presiding officer**

In addition to exercising the powers which are conferred upon him/her by these Rules, the presiding officer shall declare the opening and closing of each meeting of the Conference, shall direct its discussions, ensure observance of these Rules, accord the right to speak, put questions and announce decisions. He/she shall rule on points of order and, subject to these Rules, shall have control of the proceedings of the Conference and over the maintenance of order at its meetings. The presiding officer may propose to the Conference the limitation of the time to be allowed to speakers, the limitation of the number of times each delegate may speak on any question, the closure of the list of speakers or the closure of the debate. He/she may propose the suspension or adjournment of the meeting or the



adjournment of the debate on the item under discussion. The presiding officer, in the exercise of his/her functions, shall remain under the authority of the Conference.

**Rule 23: Voting**

The presiding officer shall not vote, but may appoint another member of his/her delegation to vote in his/her place.

**Rule 24: Public and private meetings**

1. The Plenary meetings of the Conference shall be held in public unless it decides that the meeting be held in private.
2. The meetings of the Committees of the Conference shall be held in private.

**Rule 25: Quorum**

The presiding officer may declare a meeting open and permit the debate to proceed when representatives of at least half of the States Parties to the Convention are present. The presence of representatives of a two-thirds majority of States Parties to the Convention shall be required for any decision to be taken on the Basic Proposal or on any part thereof or amendment thereto.

**Rule 26: Speeches**

No delegate may address the Conference without having previously obtained the permission of the presiding officer. The presiding officer shall call upon speakers in the order in which they signify their desire to speak. The presiding officer may call a speaker to order if his/her remarks are not relevant to the subject under discussion.

**Rule 27: Points of order**

During the discussion of any matter, a delegate may rise to a point of order, and the point of order shall be immediately decided by the presiding officer in accordance with these Rules. A delegate may appeal against the ruling of the presiding officer. The appeal shall be immediately put to the vote and the presiding officer's ruling shall stand unless overruled by a majority of the States Parties present and voting. A delegate rising to a point of order may not speak on the substance of the matter under discussion.

**Rule 28: Time-limit on speeches**

The Conference may on the proposal of the presiding officer limit the time to be allowed to each speaker and the number of times each delegate may speak on any question. When debate is limited and a delegate has spoken his/her allotted time, the presiding officer shall call him/her to order without delay.

**Rule 29: Closing of list of speakers**

During the course of a debate the presiding officer may announce a list of speakers and, with the consent of the Conference, declare the list closed. He/she may, however, accord the right of reply to any delegate if a speech delivered after the list has been closed makes this desirable.

**Rule 30: Adjournment of debate**

During the discussion of any matter, a delegate may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, two delegates may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The presiding officer may limit the time to be allowed to speakers under this Rule.

**Rule 31: Closure of debate**

A delegate may at any time move the closure of the debate on the item under discussion, whether or not any other delegate has signified his/her wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote. If the Conference is in favour of the closure, the presiding officer shall declare the closure of the debate. The presiding officer may limit the time to be allowed to speakers under this Rule.

**Rule 32: Suspension or adjournment of meeting**

During the discussion of any matter, a delegate may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall be immediately put to the vote. The presiding officer may limit the time to be allowed to the speaker moving the suspension or adjournment of the meeting.

**Rule 33: Order of procedural motions**

Subject to Rule 27, the following motions shall have precedence in the following order over all other proposals or motions before the meetings:

- (a) To suspend the meeting;
- (b) to adjourn the meeting;
- (c) to adjourn the debate on the item under discussion; and
- (d) for the closure of the debate on the item under discussion.

**Rule 34: Decisions on competence**

Subject to Rule 33, any motion calling for a decision on the competence of the Conference to adopt a proposal submitted to it shall be put to the vote before a vote is taken on the proposal in question.

**Rule 35: Withdrawal of proposals**

Any proposed amendment may be withdrawn by its proposer at any time before voting upon it has commenced. A proposal which has thus been withdrawn may be reintroduced by any delegate.

**Rule 36: Reconsideration of proposals and amendments**

When a proposed amendment has been adopted or rejected, it shall not be reconsidered unless the Conference, by a two-thirds majority of the States Parties to the Convention so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

## VIII. VOTING

### **Rule 37: Voting rights**

Each State Party to the Convention participating in the Conference shall have one vote.

### **Rule 38: Consensus**

The Conference shall make every effort to ensure that its decisions are taken by consensus.

### **Rule 39: Majority required**

Subject to Rules 37 and 38, the following decisions of the Conference shall require a two-thirds majority of the States Parties to the Convention:

- (a) Decision on the adoption of the Basic Proposal set out in Rule 19 or on any part thereof;
- (b) Decision on the adoption of any amendment to the Basic Proposal.

### **Rule 40: Simple majority**

Subject to Rules 36, 39 and 55, decisions of the Conference on all other questions shall be made by a majority of the States Parties to the Convention present and voting.

### **Rule 41: Meaning of “States Parties to the Convention present and voting”**

For the purpose of these Rules, the phrase “States Parties to the Convention present and voting” shall mean delegates casting a valid affirmative or negative vote. Delegates who abstain from voting shall be considered as not voting.

### **Rule 42: Methods of voting**

The normal method of voting shall be by show of hands. Any State Party to the Convention may request a vote by roll-call. The roll-call shall be taken in the English alphabetical order of the names of participating States Parties, beginning with the State whose name is drawn by lot by the presiding officer. Each delegate present shall reply “yes”, “no” or “abstention”.

### **Rule 43: Conduct during voting**

After the voting has commenced, no delegate shall interrupt the voting except on a point of order in connection with the actual conduct of the voting.

### **Rule 44: Explanation of vote**

The presiding officer shall permit States Parties to the Convention to explain their votes, after the voting, except when a vote is taken by secret ballot pursuant to Rule 48.

### **Rule 45: Division of proposals and amendments**

A delegate may move that parts of a proposal or of an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for

division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

**Rule 46: Order of voting on amendments**

1. When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall first vote on the amendment deemed by the presiding officer to be furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on, until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.
2. A motion shall be considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

**Rule 47: Order of voting on proposals**

If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The Conference may, after each vote on a proposal, decide whether to vote on the next proposal on the same question.

IX. VOTING IN ELECTIONS

**Rule 48: Secret ballot**

1. All elections shall be by secret ballot unless in the absence of any objections, the Conference decides to proceed without taking a ballot on an agreed candidate.
2. When candidates are to be nominated, each nomination shall be made by only one representative, after which the Conference shall immediately proceed to the election.

X. CONDUCT OF MEETINGS OF COMMITTEES

**Rule 49: Application of these Rules to committees**

1. Subject to these Rules, procedures governing the conduct of business in committees of the Conference shall conform to the Rules governing the conduct of business at plenary meetings of the Conference.
2. The Rules governing the conduct of business at plenary meetings of the Conference shall apply to the Drafting Committee as far as appropriate.

## XI. LANGUAGES

### **Rule 50: Official and working languages**

Arabic, Chinese, English, French, Russian and Spanish shall be the official and the working languages of the Conference in Plenary, in the Committee of the Whole and in the Drafting Committee. Speeches made in any one of the working languages in the Plenary, in the Committee of the Whole and the Drafting Committee shall be interpreted into the other working languages.

### **Rule 51: Interpretation from other languages**

Any delegate may make a speech in a language other than the working languages provided, however, that if he/she does so he/she shall him-/herself provide for interpretation into one of the working languages. In such cases, interpretation into the other working languages by the interpreters of the Secretariat may be based on the interpretation provided by the delegate.

### **Rule 52: Languages of records and important documents**

Summary records of plenary meetings of the Conference and the Committee of the Whole shall be prepared in the working languages. All important documents shall be made available in the working languages.

### **Rule 53: Sound recordings of meetings**

Sound recordings of meetings of the Conference and of the Committee of the Whole shall be made and kept in accordance with the practice of the IAEA.

### **Rule 54: Distribution of important documents**

The texts of all important documents shall be distributed by the Secretariat as soon as possible.

## XII. AMENDMENT AND INTERPRETATION OF RULES

### **Rule 55: Amendment of Rules**

These Rules may be amended by a decision of the Conference taken by a two-thirds majority of the States Parties to the Convention present and voting after the Bureau has reported on the proposed amendment.

### **Rule 56: Interpretation of Rules**

In the interpretation of these Rules, recourse may be had to the Rules of Procedure of the General Conference of the IAEA (GC(XXXI)/INF/245/Rev.1).



# THE BASIC PROPOSAL

**Proposed amendments to the Convention on the Physical Protection of Nuclear Material, adopted on 26 October 1979**

**proposed by Australia, Austria, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Japan, Lithuania, Luxembourg, Norway, Poland, Portugal, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland and United States of America**

1. The title of the 1979 Convention on Physical Protection should be amended as follows:

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL AND NUCLEAR FACILITIES

2. The Preamble of the 1979 Convention on Physical Protection should be replaced by the following text:

- (1) RECOGNIZING the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,
- (2) CONVINCED of the need to facilitate international co-operation and the transfer of nuclear technology for the peaceful application of nuclear energy,
- (3) BEARING IN MIND that physical protection is of vital importance for the protection of public health, safety, the environment and national and international security,
- (4) DESIRING to avert the potential dangers posed by illicit trafficking, the unlawful taking and use of nuclear material and the sabotage of nuclear material and nuclear facilities, and noting that physical protection against such acts has become a matter of increased national and international concern,
- (5) CONCERNED by the threats posed by international terrorism and organized crime,
- (6) BELIEVING that physical protection plays an important role in supporting nuclear non-proliferation and counter-terrorism objectives,
- (7) DESIRING through this Convention to contribute to strengthening worldwide the physical protection of nuclear material and nuclear facilities used for peaceful purposes,
- (8) CONVINCED that offences relating to nuclear material and nuclear facilities are a matter of grave concern and that there is an urgent need to adopt and/or to strengthen appropriate and effective measures to ensure the prevention, detection and punishment of such offences,
- (9) DESIRING to strengthen further international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material and nuclear facilities,
- (10) CONVINCED that this Convention should complement the safe use, storage and transport of nuclear material and the safe operation of nuclear facilities,
- (11) RECOGNIZING that there are internationally formulated physical protection recommendations that are updated from time to time which can provide guidance on contemporary means of achieving effective levels of physical protection,
- (12) RECOGNIZING that effective physical protection of nuclear facilities and nuclear material used for military purposes is a responsibility of the State possessing such nuclear facilities and nuclear material, and understanding that such material and facilities are and will continue to be accorded stringent physical protection,

3. In Article 1 of the 1979 Convention on Physical Protection, after paragraph (c), two new paragraphs should be added as follows:

- (d) “sabotage” means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of personnel, the public and the environment by exposure to radiation or release of radioactive substances;
- e) “nuclear facility” means a facility in which nuclear material is produced, processed, used, handled, stored or disposed of (including associated buildings and equipment), if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material.

4. After Article 1 of the 1979 Convention on Physical Protection, a new Article 1 A should be added as follows:

#### Article 1 A

The purposes of this Convention are to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; as well as to facilitate co-operation among States Parties to those ends.

5. Article 2 of the 1979 Convention on Physical Protection should be replaced by the following text:

- 1. This Convention shall apply to nuclear material used for peaceful purposes in use, storage and transport and to nuclear facilities used for peaceful purposes, provided, however, that articles 3 and 4 and paragraph 4 of article 5 of this Convention shall only apply to nuclear material while in international nuclear transport.
- 2. The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State Party rests entirely with that State.
- 3. Apart from the commitments expressly undertaken by States Parties under this Convention, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State.
- 4. (a) Nothing in this Convention shall affect other rights, obligations and responsibilities of States Parties under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

(b) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

(c) Nothing in this Convention condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

5. Nothing in this Convention shall affect navigational rights and freedoms, as enshrined in international law.

6. This Convention shall not apply to nuclear material used or retained for military purposes or to a nuclear facility containing such material.

6. After Article 2 of the 1979 Convention on Physical Protection, a new Article 2 A should be added as follows:



## Article 2 A

1. Each State Party shall establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and nuclear facilities under its jurisdiction, with the aim of:
  - (a) protecting against theft and other unlawful taking of nuclear material in use and storage, and during transport;
  - (b) ensuring the implementation of rapid and comprehensive measures to locate and, where appropriate, recover missing or stolen nuclear material; in case the material is located outside its territory, that State Party shall act in accordance with Article 5;
  - (c) protecting nuclear material and nuclear facilities against sabotage; and
  - (d) mitigating or minimizing the radiological consequences of sabotage.
2. In implementing paragraph 1 of this Article, each State Party shall:
  - (a) establish and maintain a legislative and regulatory framework to govern physical protection;
  - (b) establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework; and,
  - (c) take other appropriate measures necessary for the physical protection of nuclear material and nuclear facilities.
3. In implementing the obligations required by paragraphs 1 and 2 of this Article, each State Party shall, without prejudice to any other provisions of this Convention, apply insofar as is reasonable and practicable the following Fundamental Principles of Physical Protection of Nuclear Material and Nuclear Facilities.

### **FUNDAMENTAL PRINCIPLE A: *Responsibility of the State***

The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rests entirely with that State.

### **FUNDAMENTAL PRINCIPLE B: *Responsibilities During International Transport***

The responsibility of a State for ensuring that nuclear material is adequately protected extends to the international transport thereof, until that responsibility is properly transferred to another State, as appropriate.

### **FUNDAMENTAL PRINCIPLE C: *Legislative and Regulatory Framework***

The State is responsible for establishing and maintaining a legislative and regulatory framework to govern physical protection. This framework should provide for the establishment of applicable physical protection requirements and include a system of evaluation and licensing or other procedures to grant authorization. This framework should include a system of inspection of nuclear facilities and transport to verify compliance with applicable requirements and conditions of the license or other authorizing document, and to establish a means to enforce applicable requirements and conditions, including effective sanctions.

### **FUNDAMENTAL PRINCIPLE D: *Competent Authority***

The State should establish or designate a competent authority which is responsible for the implementation of the legislative and regulatory framework, and is provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities. The State should take steps to ensure an effective independence

between the functions of the State's competent authority and those of any other body in charge of the promotion or utilization of nuclear energy.

**FUNDAMENTAL PRINCIPLE E: *Responsibility of the License Holders***

The responsibilities for implementing the various elements of physical protection within a State should be clearly identified. The State should ensure that the prime responsibility for the implementation of physical protection of nuclear material or of nuclear facilities rests with the holders of the relevant licenses or of other authorizing documents (e.g., operators or shippers).

**FUNDAMENTAL PRINCIPLE F: *Security Culture***

All organizations involved in implementing physical protection should give due priority to the security culture, to its development and maintenance necessary to ensure its effective implementation in the entire organization.

**FUNDAMENTAL PRINCIPLE G: *Threat***

The State's physical protection should be based on the State's current evaluation of the threat.

**FUNDAMENTAL PRINCIPLE H: *Graded Approach***

Physical protection requirements should be based on a graded approach, taking into account the current evaluation of the threat, the relative attractiveness, the nature of the material and potential consequences associated with the unauthorized removal of nuclear material and with the sabotage against nuclear facilities or nuclear material.

**FUNDAMENTAL PRINCIPLE I: *Defence in Depth***

The State's requirements for physical protection should reflect a concept of several layers and methods of protection (structural or other technical, personnel and organizational) that have to be overcome or circumvented by an adversary in order to achieve his objectives.

**FUNDAMENTAL PRINCIPLE J: *Quality Assurance***

A quality assurance policy and quality assurance programmes should be established and implemented with a view to providing confidence that specified requirements for all activities important to physical protection are satisfied.

**FUNDAMENTAL PRINCIPLE K: *Contingency Plans***

Contingency (emergency) plans to respond to unauthorized removal of nuclear material or sabotage of nuclear facilities or nuclear material, or attempts thereof, should be prepared and appropriately exercised by all license holders and authorities concerned.

**FUNDAMENTAL PRINCIPLE L: *Confidentiality***

The State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear material and nuclear facilities.

4. (a) The provisions of this Article shall not apply to any nuclear material which the State Party reasonably decides does not need to be subject to the physical protection regime established pursuant to paragraph 1 of this Article, taking into account the nature of the material, its quantity and relative attractiveness and the potential radiological and other consequences associated with any unauthorized act directed against it and the current evaluation of the threat against it.

4. (b) Nuclear material which is not subject to the provisions of this Article pursuant to sub-paragraph 4 (a) should be protected in accordance with prudent management practice.

7. Article 5 of the 1979 Convention on the Physical Protection should be replaced by the following text:

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their point of contact in relation to matters within the scope of this Convention.
2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:
  - (a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof, and to inform, where appropriate, the International Atomic Energy Agency, and other relevant international organizations;
  - (b) in doing so, as appropriate, the States Parties concerned shall exchange information with each other, the International Atomic Energy Agency and other relevant international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:
    - (i) co-ordinate their efforts through diplomatic and other agreed channels;
    - (ii) render assistance, if requested;
    - (iii) ensure the return of recovered nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. In the case of a credible threat of sabotage of nuclear material or a nuclear facility or in the case of sabotage thereof, States Parties shall, to the maximum feasible extent, in accordance with their national law and consistent with their relevant obligations under international law, co-operate as follows:
  - (a) If a State Party has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in another State, the former shall decide on appropriate steps to be taken in order to inform that State as soon as possible and, where appropriate, the International Atomic Energy Agency and other relevant international organizations of that threat, with a view to preventing the sabotage.
  - (b) In the event of sabotage of nuclear material or a nuclear facility in a State Party and if in its view other States are likely to be radiologically affected, the former, without prejudice to its other obligations under international law, shall take appropriate steps to inform as soon as possible the State or the States which are likely to be radiologically affected and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations, with a view to minimizing or mitigating the radiological consequences thereof.
  - (c) If in the context of subparagraphs (a) and (b) of Article 5.3, a State Party requests assistance, each State Party to which a request for assistance is directed, shall promptly decide and notify the requesting State Party, directly or through the International Atomic Energy Agency, whether it is in a position to render the assistance requested and the scope and terms of the assistance that may be rendered.
  - (d) Co-ordination of the co-operation concerning subparagraphs (a), (b) and (c) of Article 5.3 shall be through diplomatic and other agreed channels. The means of implementation of this co-operation shall be determined bilaterally or multi-laterally by the States Parties concerned.

4. States Parties shall co-operate and consult as appropriate, with each other directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

5. A State Party may consult and cooperate, as appropriate, with other States Parties directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining their guidance on the design, maintenance and improvement of its national system of physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities.

8. Article 6 of the 1979 Convention on Physical Protection should be replaced by the following text:

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations or to States not Parties to this Convention in confidence, steps shall be taken to ensure that the confidentiality of such information is protected. A State Party that has received information in confidence from another State Party may provide this information to third parties only with the consent of that other State Party.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material or nuclear facilities.

9. The text of Paragraph 1 of Article 7 of the 1979 Convention on Physical Protection should be replaced by the following text:

1. The intentional commission of:

(a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

(b) a theft or robbery of nuclear material;

(c) an embezzlement or fraudulent obtaining of nuclear material;

(d) an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority.

(e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property by exposure to radiation or release of radioactive substances, unless the act is undertaken in conformity with national law of the State Party in whose territory the nuclear facility is situated;

(f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;

(g) a threat:

- (i) to use nuclear material to cause death or serious injury to any person or substantial property damage or to commit the offence described in sub-paragraph (e), or
  - (ii) to commit an offence described in sub-paragraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
- (h) an attempt to commit any offence described in sub-paragraphs (a) to (e);
- (i) an act which constitutes participation in any offence described in sub-paragraphs (a) to (h);
- (j) an act of any person who organizes or directs others to commit an offence as set forth in sub-paragraphs (a) to (f).
- (k) an act which contributes to the commission of any offence described in sub-paragraphs (a) to (f) of this article by a group of persons acting with a common purpose. Such act shall be intentional and shall either:
- (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in sub-paragraphs (a) to (f), or
  - (ii) be made in the knowledge of the intention of the group to commit an offence as set forth in sub-paragraphs (a) to (f);

shall be made a punishable offence by each State Party under its national law.

10. After Article 13 of the 1979 Convention on Physical Protection, a new Article 13 A should be added as follows:

#### ARTICLE 13 A

Nothing in this Convention shall affect the transfer of nuclear technology for peaceful purposes undertaken to strengthen the physical protection of nuclear material and nuclear facilities.

11. The text of paragraph 3 of Article 14 of the 1979 Convention on Physical Protection should be replaced by the following text:

3. Where an offence involves nuclear material in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, or where an offence involves a nuclear facility and the alleged offender remains in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

12. Article 16, of the 1979 Convention on Physical Protection, should be replaced by the following text:

1. A conference of States Parties shall be convened by the depositary to review the implementation of the 1979 Convention on Physical Protection as amended by the Protocol and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the prevailing situation five years after the entry into force of the Protocol.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.



# PROPOSAL SUBMITTED

## **1. Proposal submitted by the People's Republic of China regarding Article 2.4**

The Permanent Mission of the People's Republic of China to the United Nations and Other International Organizations in Vienna presents its compliments to the Secretariat of the International Atomic Energy Agency (IAEA) and has the honour to refer to the Secretariat's Note Verbale of 25 January 2005 circulating a Note Verbale dated 7 January 2005 from the Permanent Mission of the People's Republic of China containing the latter's proposal on the amendments to the Convention on the Physical Protection of Nuclear Material (CPPNM). In particular, the Government of the People's Republic of China proposed a new paragraph 2.4(c) which reads as follows, "Nothing in this convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes".

The Permanent Mission of the People's Republic of China kindly requests the Secretariat to issue the aforementioned proposal as an official document of the Diplomatic Conference for Considering and Adopting Proposed Amendments to the Convention on the Physical Protection of Nuclear Material with due regard to the item of Introduction of the Proposed Amendments of its Provisional Agenda.

The Permanent Mission of the People's Republic of China to the United Nations and Other International Organizations in Vienna avails itself of this opportunity to renew to the Secretariat of the International Atomic Energy Agency the assurances of its highest consideration.





# THE BASIC PROPOSAL (REVISED)

**Proposed amendments to the Convention on the Physical Protection of Nuclear Material, adopted on 26 October 1979**

**proposed by Australia, Austria, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Japan, Lithuania, Luxembourg, Norway, Poland, Portugal, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland and United States of America**

1. The title of the 1979 Convention on Physical Protection should be amended as follows:

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL AND NUCLEAR FACILITIES

2. The Preamble of the 1979 Convention on Physical Protection should be replaced by the following text:

- (1) RECOGNIZING the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,
- (2) CONVINCED of the need to facilitate international co-operation and the transfer of nuclear technology for the peaceful application of nuclear energy,
- (3) BEARING IN MIND that physical protection is of vital importance for the protection of public health, safety, the environment and national and international security,
- (4) DESIRING to avert the potential dangers posed by illicit trafficking, the unlawful taking and use of nuclear material and the sabotage of nuclear material and nuclear facilities, and noting that physical protection against such acts has become a matter of increased national and international concern,
- (5) CONCERNED by the threats posed by international terrorism and organized crime,
- (6) BELIEVING that physical protection plays an important role in supporting nuclear non-proliferation and counter-terrorism objectives,
- (7) DESIRING through this Convention to contribute to strengthening worldwide the physical protection of nuclear material and nuclear facilities used for peaceful purposes,
- (8) CONVINCED that offences relating to nuclear material and nuclear facilities are a matter of grave concern and that there is an urgent need to adopt and/or to strengthen appropriate and effective measures to ensure the prevention, detection and punishment of such offences,
- (9) DESIRING to strengthen further international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material and nuclear facilities,
- (10) CONVINCED that this Convention should complement the safe use, storage and transport of nuclear material and the safe operation of nuclear facilities,
- (11) RECOGNIZING that there are internationally formulated physical protection recommendations that are updated from time to time which can provide guidance on contemporary means of achieving effective levels of physical protection,
- (12) RECOGNIZING that effective physical protection of nuclear facilities and nuclear material used for military purposes is a responsibility of the State possessing such nuclear facilities and nuclear material, and understanding that such material and facilities are and will continue to be accorded stringent physical protection,

3. In Article 1 of the 1979 Convention on Physical Protection, after paragraph (c), two new paragraphs should be added as follows:

(d) “sabotage” means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of personnel, the public and the environment by exposure to radiation or release of radioactive substances;

(e) “nuclear facility” means a facility in which nuclear material is produced, processed, used, handled, stored or disposed of (including associated buildings and equipment), if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material.

4. After Article 1 of the 1979 Convention on Physical Protection, a new Article 1 A should be added as follows:

#### Article 1 A

The purposes of this Convention are to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; as well as to facilitate co-operation among States Parties to those ends.

5. Article 2 of the 1979 Convention on Physical Protection should be replaced by the following text:

1. This Convention shall apply to nuclear material used for peaceful purposes in use, storage and transport and to nuclear facilities used for peaceful purposes, provided, however, that articles 3 and 4 and paragraph 4 of article 5 of this Convention shall only apply to nuclear material while in international nuclear transport.

2. The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State Party rests entirely with that State.

3. Apart from the commitments expressly undertaken by States Parties under this Convention, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State.

4. (a) Nothing in this Convention shall affect other rights, obligations and responsibilities of States Parties under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

(b) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

(c) Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.

(d) Nothing in this Convention condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

5. Nothing in this Convention shall affect navigational rights and freedoms, as enshrined in international law.

6. This Convention shall not apply to nuclear material used or retained for military purposes or to a nuclear facility containing such material.

6. After Article 2 of the 1979 Convention on Physical Protection, a new Article 2 A should be added as follows:

#### Article 2 A

1. Each State Party shall establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and nuclear facilities under its jurisdiction, with the aim of:

- (a) protecting against theft and other unlawful taking of nuclear material in use and storage, and during transport;
- (b) ensuring the implementation of rapid and comprehensive measures to locate and, where appropriate, recover missing or stolen nuclear material; in case the material is located outside its territory, that State Party shall act in accordance with Article 5;
- (c) protecting nuclear material and nuclear facilities against sabotage; and
- (d) mitigating or minimizing the radiological consequences of sabotage.

2. In implementing paragraph 1 of this Article, each State Party shall:

- (a) establish and maintain a legislative and regulatory framework to govern physical protection;
- (b) establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework; and,
- (c) take other appropriate measures necessary for the physical protection of nuclear material and nuclear facilities.

3. In implementing the obligations required by paragraphs 1 and 2 of this Article, each State Party shall, without prejudice to any other provisions of this Convention, apply insofar as is reasonable and practicable the following Fundamental Principles of Physical Protection of Nuclear Material and Nuclear Facilities.

#### **FUNDAMENTAL PRINCIPLE A: *Responsibility of the State***

The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rests entirely with that State.

#### **FUNDAMENTAL PRINCIPLE B: *Responsibilities During International Transport***

The responsibility of a State for ensuring that nuclear material is adequately protected extends to the international transport thereof, until that responsibility is properly transferred to another State, as appropriate.

#### **FUNDAMENTAL PRINCIPLE C: *Legislative and Regulatory Framework***

The State is responsible for establishing and maintaining a legislative and regulatory framework to govern physical protection. This framework should provide for the establishment of applicable physical protection requirements and include a system of evaluation and licensing or other procedures to grant authorization. This framework should include a system of inspection of nuclear facilities and transport to verify compliance with applicable requirements and conditions of the license or other authorizing document, and to establish a means to enforce applicable requirements and conditions, including effective sanctions.

**FUNDAMENTAL PRINCIPLE D: *Competent Authority***

The State should establish or designate a competent authority which is responsible for the implementation of the legislative and regulatory framework, and is provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities. The State should take steps to ensure an effective independence between the functions of the State's competent authority and those of any other body in charge of the promotion or utilization of nuclear energy.

**FUNDAMENTAL PRINCIPLE E: *Responsibility of the License Holders***

The responsibilities for implementing the various elements of physical protection within a State should be clearly identified. The State should ensure that the prime responsibility for the implementation of physical protection of nuclear material or of nuclear facilities rests with the holders of the relevant licenses or of other authorizing documents (e.g., operators or shippers).

**FUNDAMENTAL PRINCIPLE F: *Security Culture***

All organizations involved in implementing physical protection should give due priority to the security culture, to its development and maintenance necessary to ensure its effective implementation in the entire organization.

**FUNDAMENTAL PRINCIPLE G: *Threat***

The State's physical protection should be based on the State's current evaluation of the threat.

**FUNDAMENTAL PRINCIPLE H: *Graded Approach***

Physical protection requirements should be based on a graded approach, taking into account the current evaluation of the threat, the relative attractiveness, the nature of the material and potential consequences associated with the unauthorized removal of nuclear material and with the sabotage against nuclear facilities or nuclear material.

**FUNDAMENTAL PRINCIPLE I: *Defence in Depth***

The State's requirements for physical protection should reflect a concept of several layers and methods of protection (structural or other technical, personnel and organizational) that have to be overcome or circumvented by an adversary in order to achieve his objectives.

**FUNDAMENTAL PRINCIPLE J: *Quality Assurance***

A quality assurance policy and quality assurance programmes should be established and implemented with a view to providing confidence that specified requirements for all activities important to physical protection are satisfied.

**FUNDAMENTAL PRINCIPLE K: *Contingency Plans***

Contingency (emergency) plans to respond to unauthorized removal of nuclear material or sabotage of nuclear facilities or nuclear material, or attempts thereof, should be prepared and appropriately exercised by all license holders and authorities concerned.

**FUNDAMENTAL PRINCIPLE L: *Confidentiality***

The State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear material and nuclear facilities.

4. (a) The provisions of this Article shall not apply to any nuclear material which the State Party reasonably decides does not need to be subject to the physical protection regime established pursuant to paragraph 1 of this Article, taking into account the nature of the material, its quantity and relative attractiveness and the potential radiological and other consequences associated with any unauthorized act directed against it and the current evaluation of the threat against it.

4. (b) Nuclear material which is not subject to the provisions of this Article pursuant to sub-paragraph 4 (a) should be protected in accordance with prudent management practice.

7. Article 5 of the 1979 Convention on the Physical Protection should be replaced by the following text:

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their point of contact in relation to matters within the scope of this Convention.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

(a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof, and to inform, where appropriate, the International Atomic Energy Agency, and other relevant international organizations;

(b) in doing so, as appropriate, the States Parties concerned shall exchange information with each other, the International Atomic Energy Agency and other relevant international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:

(i) co-ordinate their efforts through diplomatic and other agreed channels;

(ii) render assistance, if requested;

(iii) ensure the return of recovered nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. In the case of a credible threat of sabotage of nuclear material or a nuclear facility or in the case of sabotage thereof, States Parties shall, to the maximum feasible extent, in accordance with their national law and consistent with their relevant obligations under international law, co-operate as follows:

(a) If a State Party has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in another State, the former shall decide on appropriate steps to be taken in order to inform that State as soon as possible and, where appropriate, the International Atomic Energy Agency and other relevant international organizations of that threat, with a view to preventing the sabotage.

(b) In the event of sabotage of nuclear material or a nuclear facility in a State Party and if in its view other States are likely to be radiologically affected, the former, without prejudice to its other obligations under international law, shall take appropriate steps to inform as soon as possible the State or the States which are likely to be radiologically affected and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations, with a view to minimizing or mitigating the radiological consequences thereof.

(c) If in the context of subparagraphs (a) and (b) of Article 5.3, a State Party requests assistance, each State Party to which a request for assistance is directed, shall promptly decide and notify the requesting State Party, directly or through the International Atomic Energy Agency, whether it is in a position to render the assistance requested and the scope and terms of the assistance that may be rendered.

(d) Co-ordination of the co-operation concerning subparagraphs (a), (b) and (c) of Article 5.3 shall be through diplomatic and other agreed channels. The means of implementation of this co-operation shall be determined bilaterally or multi-laterally by the States Parties concerned.

4. States Parties shall co-operate and consult as appropriate, with each other directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

5. A State Party may consult and cooperate, as appropriate, with other States Parties directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining their guidance on the design, maintenance and improvement of its national system of physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities.

8. Article 6 of the 1979 Convention on Physical Protection should be replaced by the following text:

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations or to States not Parties to this Convention in confidence, steps shall be taken to ensure that the confidentiality of such information is protected. A State Party that has received information in confidence from another State Party may provide this information to third parties only with the consent of that other State Party.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material or nuclear facilities.

9. The text of Paragraph 1 of Article 7 of the 1979 Convention on Physical Protection should be replaced by the following text:

1. The intentional commission of:

(a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

(b) a theft or robbery of nuclear material;

(c) an embezzlement or fraudulent obtaining of nuclear material;

(d) an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority.

(e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property by exposure to radiation or release of radioactive substances, unless the act is undertaken in conformity with national law of the State Party in whose territory the nuclear facility is situated;

- (f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
- (g) a threat:
  - (i) to use nuclear material to cause death or serious injury to any person or substantial property damage or to commit the offence described in sub-paragraph (e), or
  - (ii) to commit an offence described in sub-paragraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
- (h) an attempt to commit any offence described in sub-paragraphs (a) to (e);
- (i) an act which constitutes participation in any offence described in sub-paragraphs (a) to (h);
- (j) an act of any person who organizes or directs others to commit an offence as set forth in sub-paragraphs (a) to (f).
- (k) an act which contributes to the commission of any offence described in sub-paragraphs (a) to (f) of this article by a group of persons acting with a common purpose. Such act shall be intentional and shall either:
  - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in sub-paragraphs (a) to (f), or
  - (ii) be made in the knowledge of the intention of the group to commit an offence as set forth in sub-paragraphs (a) to (f);

shall be made a punishable offence by each State Party under its national law.

10. After Article 13 of the 1979 Convention on Physical Protection, a new Article 13 A should be added as follows:

#### ARTICLE 13 A

Nothing in this Convention shall affect the transfer of nuclear technology for peaceful purposes undertaken to strengthen the physical protection of nuclear material and nuclear facilities.

11. The text of paragraph 3 of Article 14 of the 1979 Convention on Physical Protection should be replaced by the following text:

3. Where an offence involves nuclear material in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, or where an offence involves a nuclear facility and the alleged offender remains in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

12. Article 16, of the 1979 Convention on Physical Protection, should be replaced by the following text:

1. A conference of States Parties shall be convened by the depositary to review the implementation of the 1979 Convention on Physical Protection as amended by the Protocol and its adequacy as concerns the

preamble, the whole of the operative part and the annexes in the light of the prevailing situation five years after the entry into force of the Protocol.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.



# PROPOSALS SUBMITTED

## 1. Proposal submitted by Canada

The Permanent Mission of Canada to the International Organizations in Vienna presents its compliments to the Secretariat of the International Atomic Energy Agency and has the honour to refer to the Diplomatic Conference for Considering and Adopting Proposed Amendments to the Convention on the Physical Protection of Nuclear Material which will take place in Vienna from July 4 to 8, 2005. Canada supports the proposed changes as it will expand the coverage of the treaty and is an important step in the international community's efforts to combat terrorism being aware that this Convention is one of the 12 universal UN Conventions against Terrorism.

At the same time, Canada notes that the Basic Proposal makes no change to the extradition regime created by the Convention on the Physical Protection of Nuclear Material in 1979. At the Preparatory Meeting for the Conference to Consider and Adopt Proposed Amendments to the Convention on the Physical Protection of Nuclear Material, held on April, 4-7, 2005 in Vienna, the Canadian delegation noted that more modern UN Conventions against terrorism, such as the International Convention for the Suppression of Terrorist Bombings, the International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism, have established an important principle in relation to extradition for the terrorist offences created by those treaties. The provisions in these three treaties reflect the principle that claims of political motivation must not be recognised as grounds for refusing requests for the extradition of alleged terrorists. This principle is an important new tool in the fight against terrorism and the provisions relating to extradition in these Conventions are important measures in States' efforts to combat terrorism.

In Canada's view it is worth noting that the Terrorist Financing Convention, article 14, already requires states Parties to exclude the application of the political exception principle to the financing of the crimes created by the Convention on the Physical Protection of Nuclear Material. Canada believes it would be a missed opportunity, if, while updating and expanding the Convention on the Physical Protection of Nuclear Material, member states did not extend the approach that has been taken to the financing of the offences in the Convention on the Physical Protection of Nuclear Material to the commission of the offences themselves.

At the informal consultations on certain issues related to the amendment to the Convention on the Physical Protection of Nuclear Material on the margins of the Preparatory Meeting for the Conference to Consider and Adopt Proposed Amendments to the Convention on the Physical Protection of Nuclear Material, held on 5 April, 2005 in Vienna, Canada put forward, in writing, the suggestion that the language dealing with the exclusion of the political offence exception which has been used in the International Convention for the Suppression of Terrorist Bombings, the International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism also be included in the proposed amendments to the Convention on the Physical Protection of Nuclear Material. Following the supportive comments and helpful suggestions of other delegations present at that meeting, and also subsequent consultations, Canada, in accordance with Rule 20 of the Provisional Rules of Procedure, adopted by the Preparatory Meeting for the Conference to Consider and Adopt Proposed Amendments to the Convention on the Physical Protection of Nuclear Material, proposes that the following language, which is contained in all three UN treaties mentioned above, be inserted in the text following the existing Article 11 of the Basic Proposal to form new and additional Articles.

“11 (bis). None of the offences set forth in Article 7 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on

such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

11 (ter). Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 7 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons."

The Permanent Mission of Canada has the honour to request that the Secretariat issue the aforementioned proposal as an official document of the Diplomatic Conference to Consider and Adopt Proposed Amendments to the Convention on the Physical Protection of Nuclear Material and to circulate this Note Verbal to the State Parties to the Convention on the Physical Protection of Nuclear Material.

The Permanent Mission of Canada to the International Organizations in Vienna avails itself of this opportunity to renew to the Secretariat of the International Atomic Energy Agency the assurances of its highest consideration.

## **2. Proposal submitted by Mexico**

The Permanent Mission of Mexico to the international organizations in Vienna presents its compliments to the Secretariat of the International Atomic Energy Agency and has the honor to make reference to the upcoming Conference to consider and adopt proposed amendments to the Convention on the Physical Protection of Nuclear Material to be held in Vienna, from 4 to 8 July 2005.

Mexico attaches great importance to the review and amendment of the Convention on the physical protection of nuclear materials as a means to strengthen the international legal framework in the combat of terrorism and transnational organized crime.

Throughout the preparatory process, Mexico consistently objected to the inclusion of new subparagraph b) of Article 2.4. We believe that such a provision diminishes the effectiveness of the instrument by excluding the activities of military forces in the exercise of an official duty from the scope of application.

The proposed provision establishes that such activities will not be governed by this Convention "inasmuch" as they are governed by other rules of international law. Indeed, activities of military forces during an armed conflict are governed by international humanitarian law. However, not all activities of sabotage to be covered by the amended Convention fall under the protection of international humanitarian law since not all of them may be committed during an armed conflict.

Therefore, by making an exception we are creating loopholes to the amended instrument in detriment of its effectiveness. For instance, States Parties will not be able to cooperate among themselves, under the basis of the amended Convention, when requesting the extradition of a member of the armed forces who has committed an act of sabotage.

The delegation of China has made a useful contribution aiming at an agreed solution to this matter by proposing a new subparagraph c) of article 2.4 for which Mexico remains grateful. However, it is not sufficient to establish that nothing in the Convention shall be interpreted as a lawful authorization to the threat or use of force against nuclear materials or facilities. It is further necessary to underline that international law bans attacks on peaceful nuclear facilities not only in an armed conflict but also in peacetime.

Mexico maintains its willingness to look for a compromise solution that could cover the concerns of the delegations attending the Diplomatic Conference and looks forward to having open discussions on the matter with a constructive spirit.

In the spirit of compromise aforementioned, Mexico would be willing to accept the text of proposed subparagraphs b) and c) of Article 2.4 of the Convention, provided that the amended text includes the following two new preambular paragraphs and amendments to the proposed Article 2.4:

**Preambular paragraphs:**

**New p.p. 3 bis**

Considering that under the terms of Article 2, paragraph 4, of the Charter of the United Nations, “all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations”.

**New p.p.3 ter**

“Aware that nuclear facilities are strictly protected under international humanitarian law and underlying that acts against such facilities during peacetime wherever and by whomsoever committed are contrary to international law”.

**Article 2.4:**

Mexico proposes that current subparagraph (a) be placed after current subparagraph (d). As a consequence the subparagraphs will be renumbered. In addition Mexico proposes to use the phrase “insofar” instead of “inasmuch” in current subparagraph (b). Article 2.4 would read as follows:

- (a) The activities of armed forces during an armed conflict, as those terms are understood under international law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, ~~inasmuch~~ **insofar** as they are governed by other rules of international law, are not governed by this Convention.
- (b) Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.
- (c) Nothing in this Convention condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.
- (d) Nothing in this Convention shall affect other rights, obligations and responsibilities of States Parties under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

The Permanent Mission of Mexico kindly requests the Secretariat to circulate this Note Verbale to all States Parties to the CPPNM and issue the afore-mentioned proposal as an official document of the Diplomatic Conference for considering and adopting proposed amendments to the Convention on the physical protection of nuclear material to be considered under agenda item 7 of the provisional agenda of the Conference.

The Permanent Mission of Mexico avails itself of this opportunity to renew to the Secretariat of the International Atomic Energy Agency the assurances of its highest consideration.

### 3. Proposal submitted by Japan

#### NOTE VERBALE

The Permanent Mission of Japan to the International Organizations in Vienna presents its compliments to the Secretariat of the International Atomic Energy Agency and has the honour to refer to the Note Verbale N5.92 Circ. dated 28 April 2005 in which documents of the Conference to consider and adopt proposed amendments to the Convention on the Physical Protection of Nuclear Material (the Convention), to be held from 4 to 8 July 2005, were circulated to all States Parties to the Convention.

Recognizing the vital importance of the physical protection of nuclear material and facilities, Japan has been supporting the international efforts to strengthen the Convention, and in order to speed up the process of holding the Conference to adopt amendments, Japan has become a co-sponsor to the Basic Proposal (CPPNM/AC/L.1/1), proposed by Austria together with other 24 States Parties. Japan therefore supports the ultimate objective of the upcoming Conference to adopt the proposed amendments.

Japan has nevertheless noted that the Basic Proposal needs some modifications in terms of consistency with other terrorism conventions. In this respect, Japan wishes to propose the following. The issue was raised by Japan in the informal consultations held in the margins of the preparatory meeting for the Conference held from 4 to 7 April 2005, in which the proposal received general support.

The proposed modifications are as follows (see Annex 1):

The words “(a) to (f)” in subparagraphs 1(j) and 1(k) of Article 7 of the proposed amendments to the Convention should be replaced by “(a) to (h)”. The words “(a) to (f)” in subparagraphs 1(k) (i) and (ii) Article 7 should be replaced by “(a) to (g)”.\*

The reasons are as follows:

1. The language of the accomplice provisions, subparagraphs 1 (i) (j) and (k), follows other international conventions related to the prevention and suppression of international terrorism, namely:
  - The International Convention for the Suppression of Terrorist Bombings (1997) (subparagraphs 3(a) to (c) of Article 2)(Annex 2);
  - The International Convention for the Suppression of the Financing of Terrorism (1999) (subparagraphs 5(a) to (c) of Article 2 ) (Annex 3); and
  - The International Convention for the Suppression of Acts of Nuclear Terrorism(2005) (subparagraphs 4(a) to (c) of Article 2)(Annex 4)
2. In these conventions, the accomplice provisions, “to participate in an offence”, “to organize or direct others to commit an offence”, and “to contribute to the commission of an offence”, cover the same range of offences.
3. In the proposed amendments to the Convention, however, the coverage for 1(j) (organize or direct) and 1(k) (contribute) is narrower than the coverage for 1 (i) (participate). 1(g) (threat) and 1(h) (an attempt) are not covered in the cases of 1(j) and 1(k).
4. Considering that the language of the accomplice provisions of the proposed amendments to the Convention follows the above conventions, the range of offences covered should also be consistent.
5. Consistency with other conventions is particularly important for the following two reasons.

- The concept of accomplice is one of the most important and complex issues in criminal law. If the range of offences covered in accomplice provisions is inconsistent with those of other conventions, it may cause unnecessary confusion in implementation by a State Party.
- If the Convention would be the only convention to contain such restrictive provisions, “an attempt” (subparagraph 1(h)) cannot be made a punishable offence in the cases of 1(j) and 1(k), for instance. This could mean that the Convention may be criticized for being more lax with terrorists than other conventions.

\* The words “(a) to (f)” in subparagraphs 1(k) (i) and (ii) should be replaced by “(a) to (g)”. This formulation is consistent with subparagraphs 5(c) (i) and (ii) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism.

The Permanent Mission of Japan requests the Secretariat of the International Atomic Energy Agency to issue this proposal contained in this Note Verbale as an official document for the Conference to consider and adopt proposed amendments to the Convention, to be held from 4 to 8 July 2005.

The Permanent Mission of Japan avails itself of this opportunity to renew to the Secretariat of the International Atomic Energy Agency the assurances of its highest consideration.

## Annex 1

### Article 7

1. The intentional commission of:
  - (a) an act without lawful authority which constitutes the receipt, possession, use transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
  - (b) a theft or robbery of nuclear material;
  - (c) an embezzlement or fraudulent obtaining of nuclear material;
  - (d) an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority;
  - (e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property by exposure to radiation or release of radioactive substances, unless the act is undertaken in conformity with national law of the State Party in whose territory the nuclear facility is situated;
  - (f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
  - (g) a threat;
    - (i) to use nuclear material to cause death or serious injury to any person or substantial property damage or to commit the offence described in sub-paragraph (e), or
    - (ii) to commit an offence described in sub-paragraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

- (h) an attempt to commit any offence described in sub-paragraphs (a) to (e);
- (i) an act which constitutes participation in any offence described in sub-paragraphs (a) to (h);
- (j) an act of any person who organizes or directs others to commit an offence as set forth in sub-paragraphs (a) to (h).
- (k) an act which contributes to the commission of any offence described in sub-paragraphs (a) to (h) of this article by a group of persons acting with a common purpose. Such act shall be intentional and shall either:
  - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in sub-paragraphs (a) to (g), or
  - (ii) be made in the knowledge of the intention of the group to commit an offence as set forth in sub-paragraphs (a) to (g);

shall be made a punishable offence by each State Party under its national law.

## Annex 2

### International Convention for the Suppression of Terrorist Bombings

#### Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:
  - (a) With the intent to cause death or serious bodily injury; or
  - (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.
2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.
3. Any person also commits an offence if that person:
  - (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2 of the present article;
 

or
  - (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article;
 

or
  - (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the

group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

### Annex 3

## International Convention for the Suppression of the Financing of Terrorism

### Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
  - (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
  - (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.
2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a).
- The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;
  - (b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.
3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (a) or (b).
4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.
5. Any person also commits an offence if that person:
  - (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;
  - (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;
  - (c) Contributes to the commission of one or more offences as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either

- (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or
- (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

Annex 4

International Convention for the Suppression of Acts of Nuclear Terrorism

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
  - (a) Possesses radioactive material or makes or possesses a device:
    - (i) With the intent to cause death or serious bodily injury; or
    - (ii) With the intent to cause substantial damage to property or to the environment;
  - (b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:
    - (i) With the intent to cause death or serious bodily injury; or
    - (ii) With the intent to cause substantial damage to property or to the environment; or
    - (iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act
2. Any person also commits an offence if that person:
  - (a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 (b) of the present article; or
  - (b) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force.
3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.
4. Any person also commits an offence if that person:
  - (a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or
  - (b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article;
  - or
  - (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of



the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

#### **4. Proposal submitted by Paraguay**

The Permanent Mission of Paraguay to the International Atomic Energy Agency (IAEA) presents its compliments to the IAEA Secretariat in connection with the conference of plenipotentiaries to consider and adopt amendments to the Convention on the Physical Protection of Nuclear Material, to be held in Vienna starting 4 July 2005.

In this connection, the delegation of the Republic of Paraguay is putting forward for consideration, with the request that it be distributed to all participating delegations, the following proposal:

*“Article....: The provisions of this Convention shall apply, wherever appropriate, to **radiological** material and facilities.”*

The delegation of Paraguay insists on the incorporation of the word “**radiological**” in all corresponding parts of the Convention in view of the potential risks of trafficking in, or appropriation or illicit use of such material or facilities, and accidents which might occur as a result of the inadequate use or safekeeping of them.

National and international security also require that there be clear standards for the protection and safekeeping of such material and facilities, and it is for this reason that the extension of the provisions of the Convention, mutatis mutandis, to them is being suggested.

The proposal could be incorporated as the final clause of the Convention.

The Permanent Mission of Paraguay to the International Atomic Energy Agency takes this opportunity of reiterating to the IAEA Secretariat the assurances of its highest esteem.

#### **5. Proposal submitted by Norway, Colombia, Finland, Greece, Iceland, Ireland, Italy, Mexico, New Zealand, Slovenia, Sweden, Switzerland and Peru**

In accordance with Rule 20 of the Rules of Procedure, adopted by the Preparatory Meeting for the Conference to Consider and Adopt Proposed Amendments to the Convention on the Physical Protection of Nuclear Material, the Group of countries stated above suggest an insertion in the text of the Basic Proposal of the recommendations made by the Group of Legal and Technical Experts (GLTE) chaired by Mr. Denis Flory, at its last meeting 3-14 March 2003, when it surveyed possibilities for revising the Convention.

Our proposal has been previously suggested in Note N5.92.Circ, kindly circulated by the Secretariat of the International Atomic Energy Agency (IAEA) on 12 May 2005.

The proposed amendment concerns Article 7 and would read as follows:

In para 1 (a) and (e), after the word “property”, insert “**or to the environment**”; and in para 1 (g) i, after the word “damage”, insert “**or substantial damage to the environment**”.

#### Explanatory note:

This important inclusion would make damage to the environment an offence which should be made punishable under Article 7 in the Convention. The Group countries stated above understands why it at the time was considered necessary to omit this inclusion from the Basic Proposal, given that delegations were on the whole equally split on

the issue at the last inter sessional meeting. However, it is important to note that delegations from less than half of the States Parties to the Convention were present at that meeting and that this Diplomatic Conference therefore offers an opportunity for States Parties to consider the proposal in a more representative frame.

Moreover, that a similar inclusion in the International Convention for the Suppression of Acts of Nuclear Terrorism was adopted by consensus by the U.N. General Assembly on 13 April this year provides a strong reason to believe that several delegations have waived their previous opposition on the issue. This belief has in the past month been confirmed through démarches in several capitals and a range of bilateral consultations here in Vienna, which have given the group of countries stated above additional reason to hope for our amendment proposal's adoption at this Conference.

It is our view that a revised Convention does not suffice with including a reference to damage to only property, as this will leave externalities and common goods unprotected.

It is also worth noting that legal developments during the past years have taken advantage from the pronounced acceleration in the field of environmental economics and that it by no means longer neither is impossible to quantify, through selected indicators, damage to air, water, land or sea, nor to devise national and international legislation with reasonable implementation mechanisms.

Regarding the protection of the environment as intrinsic to the safety of public health, as well as to national and international security, Columbia, Finland, Greece, Iceland, Ireland, Italy, Mexico, New Zealand, Norway, Slovenia, Sweden, Switzerland and Peru urges all States Parties present and voting to positively consider our proposal, on the merit of the importance of the issue at hand.

## **6. Proposal submitted by Argentina**

The Permanent Mission of the Republic of Argentina presents its compliments to the Agency Secretariat and has the honour to refer to the Conference to Consider and Adopt the Proposed Amendments to the Convention on the Physical Protection of Nuclear Material (CPPNM), which is being held from 4 to 8 July 2005.

Argentina attaches great importance to the consideration and amendment of the Convention on the Physical Protection of Nuclear Material inasmuch as this will allow the strengthening of the legal framework for physical protection and provide new elements for the combat against terrorism and organized transnational crime.

I - the basic proposal excepts from the scope of the Convention the activities of armed forces undertaken in conformity with international law and, in particular, with the purposes and principles of the Charter of the United Nations and international humanitarian law. Similarly, it clearly provides that nothing in the Convention makes lawful otherwise unlawful acts.

Nevertheless, paragraph 2.4 (b) is somewhat imprecise in that it contains no definition of "military forces of a State".

The wording suggested in paragraph 2.4 (b) in the basic proposal reproduces Article 19 of the 1998 International Convention for the Suppression of Terrorist Bombings.

Argentina favours the introduction of a definition of "armed forces" in accordance with Article 1.4 of the same Convention, according to which "military forces of a State" means "the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security under their formal command, control and responsibility".

The introduction of this definition would allow establishing with greater precision the scope of the provision while at the same time achieving unity of content between international instruments.

It should also be noted that, following the preparatory meeting for this Conference (Amendment Conference for the Convention on the Physical Protection of Nuclear Material) held from 4 to 8 April 2005, the United Nations General Assembly approved by consensus, on 13 April 2005, the International Convention for the Suppression of Acts of Nuclear Terrorism, which, in its Article 1.6, reproduces the same definition of "military forces of a State" as was incorporated in the text of the International Convention for the Suppression of Terrorist Bombings.

In view of the above, Argentina proposes including this definition in the text of the Physical Protection Convention.

II - Moreover, Argentina feels it would be appropriate to modify the wording of paragraph 2.5 with a view to preserving, in addition to navigational freedom, all the other rights and freedoms recognized by the law of the sea.

Therefore, Argentina is proposing an alternative wording: "Nothing in this Convention shall affect navigational freedom or the rights and freedoms enshrined in the law of the sea."

This new wording would make it perfectly clear, without departing too far from the original proposal, that all rights and freedoms of the law of the sea are appropriately protected from any interpretation of this Convention that might diminish them.

III - Another issue of concern to Argentina relates to the endowing of the Fundamental Principles mentioned in Article 2.A.3 with a legal force which exceeds that accorded to the concept of 'principles' by legal thinking. There is a clear conceptual difference between what is viewed as a 'norm or rule of law' and what is understood by 'principles', 'fundamental' or otherwise. Thus, Argentina finds it inappropriate to use the verb "apply" in connection with these Fundamental Principles, since this tends to dilute the distinction between a 'legal norm' and a 'legal principle'. The consensus which exists on this issue is based on this distinction.

Therefore, Argentina feels it would be more appropriate for the Convention to provide that 'regard' be given to these Principles, as Article 18.1.(c) of the International Convention for the Suppression of Acts of Nuclear Terrorism says, which establishes that the States Parties shall "have regard to physical protection recommendations and health and safety standards published by the International Atomic Energy Agency."

The Permanent Mission of the Republic of Argentina requests the Secretariat to distribute this Note Verbale to all States party to the CPPNM and to publish the proposals in question as an official document of the Diplomatic Conference to be examined under item 7 of the Conference's provisional agenda.

The Permanent Mission of the Republic of Argentina takes this opportunity of reiterating to the Secretariat of the International Atomic Energy Agency the assurances of its highest esteem.



# SUMMARY RECORD OF THE FIRST PLENARY MEETING OF THE CONFERENCE TO CONSIDER AND ADOPT PROPOSED AMENDMENTS TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

Held at the Austria Center Vienna on Monday, 4 July 2005 at 10.45 a.m.

*Temporary President:* Mr. WALLER (Acting Director General, IAEA)

*President:* Mr. BAER (Switzerland)

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<sup>1</sup> CPPNM/AC/L.2



## **1. Opening of the Conference**

1. The TEMPORARY PRESIDENT declared open the Conference to Consider and Adopt Proposed Amendments to the Convention on the Physical Protection of Nuclear Material.
2. In addition to Euratom, there were currently 111 States Parties to the CPPNM, 89 of which were participating in the Conference. A further 17 States not yet party to the Convention were also attending as observers.
3. The CPPNM, together with the recently adopted International Convention for the Suppression of Acts of Nuclear Terrorism, marked milestones in international efforts to strengthen the physical protection of nuclear materials and facilities. Not only were those Conventions essential to nuclear security, but they also stood among the thirteen legal instruments that collectively embodied the international legal framework for combating, preventing, prosecuting and punishing terrorist offences generally.
4. It had, however, been acknowledged that the scope of the CPPNM was not sufficiently comprehensive for today's world. Most importantly, it covered neither the physical protection of nuclear material in peaceful domestic use, storage and transport, nor nuclear facilities themselves. The proposed amendments would remedy those shortcomings. They would also provide for expanded cooperation between and among States regarding rapid measures to locate and recover stolen or smuggled nuclear material, to mitigate any radiological consequences of sabotage, and to prevent and combat related offences. The amendments before the Conference were vitally important and, if adopted, would constitute another significant step towards reducing the vulnerability of States Parties and the entire world.
5. The CPPNM had originally been adopted in 1979 and had entered into force in 1987. In 1999, a number of countries had begun expressing concern that the Convention was incomplete and should be reviewed. Experts had reassessed the Convention and recommended that suitable amendments be prepared by a group of legal and technical experts. Such a group had been convened by the Director General of the IAEA in early September 2001. Just a few days later, the events in New York had left no doubt about the increased vulnerability faced by all.
6. In March 2004, the group of experts had adopted by consensus its final report. Subsequently, at the request of the Government of Austria and 24 co-sponsoring States, the Director General had circulated the group's proposed amendments to all States Parties for consideration. A majority of the States Parties had requested the convening of an amendment conference.
7. Any amendments adopted during the Conference by a two-thirds majority would, under Article 20 of the CPPNM, be circulated by the Director General to all States Parties. They would enter into force on the thirtieth day after the date on which two thirds of the States Parties had deposited their instruments of ratification, acceptance or approval with the depositary.
8. There were still some open issues before the Conference. However, given the gravity of the subject and the determination of States Parties, he trusted that they would be resolved during the course of the week. There was an obligation to succeed.
9. Lastly, having urged those States not party to the Convention attending the Conference as observers to accede to the Convention as soon as possible, he wished the Conference every success. Election of the President

## **2. Election**

10. The TEMPORARY PRESIDENT said that it was his understanding that there was general agreement among delegations that Mr. Baer (Switzerland) be elected President of the Conference.

11. Mr. Baer (Switzerland) was elected President by acclamation.
12. The TEMPORARY PRESIDENT congratulated Mr. Baer on his election.

**Mr. Baer (Switzerland) took the Chair.**

13. The PRESIDENT thanked delegations for the trust that they had placed in him and assured them that he would do his utmost not to disappoint them. He commended the Agency's Secretariat on their preparations for the Conference and the work undertaken over a number of years in support of the CPPNM amendment process.

14. International agreements were seldom ideal texts. The CPPNM represented what had been achievable in terms of political acceptability at the time of its adoption. However, times changed and the international political scene evolved with the result that international agreements either became obsolete or had to be modified — the NPT was a case in point. The CPPNM would be 26 years old in October, and the time for its modernization had come.

15. Physical protection as a goal in itself was not controversial, particularly in a world confronted daily with acts of terrorism. It would not serve any useful purpose to review the reasons why knowledgeable experts had taken almost six years to develop a revised text. What was important was the fact that the text before the Conference represented a consensus of technical and legal experts. It amended the earlier Convention in several respects, in particular broadening its scope to cover the physical protection of nuclear material used for peaceful purposes in domestic use, storage and transport, and it provided for physical protection against the sabotage of nuclear material and nuclear facilities used for peaceful purposes. The hard but fair debate had culminated in a 'package', an achievement of which the participants in the preparatory meeting should be proud. There were some points on which agreement had not been reached and, accordingly, various proposals in addition to the so-called 'Basic Proposal' were before the Conference. During the final attempts to resolve the outstanding differences, many delegations had expressed the view that the proposed 'package' text should not be modified at the last minute. In their opinion, the 'package' reflected a balanced perspective, which could meet with consensus and should not be tampered with.

16. It was for the Conference to decide whether, under the present circumstances, the proposed amendments to the CPPNM were the best that could be achieved. Caution should be exercised before deciding to open the 'package' since it would probably be extremely difficult, if not impossible, to wrap it up again. On the other hand, there was a possibility that the Conference might actually be able to improve the text. The issue was a delicate one and all participants knew what was at stake. Physical protection had become essential in today's world and the importance of an updated and efficient Convention could not be overemphasized.

17. Lastly, he was pleased to announce that Egypt had informed the Secretariat of its decision to accede to the CPPNM.

**3. Adoption of the agenda**

18. The PRESIDENT invited the Conference to adopt the provisional agenda contained in document CPPNM/AC/L.2, which had been the subject of extensive consultations during the preparatory meeting.

19. The agenda was adopted.

**4. Adoption of the Rules of Procedure**

20. The PRESIDENT said that the provisional Rules of Procedure, contained in document CPPNM/AC/L.3, had been discussed and modified at the preparatory meeting.



21. He took it that the Conference wished to adopt the provisional Rules of Procedure.

22. It was so decided.

#### **5. Election of Vice-Presidents and other officers of the Conference**

23. The PRESIDENT said that, in accordance with Rule 10 of the Rules of Procedure, the Conference was required to elect eight Vice-Presidents, a Chairperson and Vice-Chairperson of the Committee of the Whole and a Chairperson of the Drafting Committee.

24. In the course of informal discussions among heads of delegations, there had been general agreement that the following representatives be elected as Vice-Presidents of the Conference: for North America, Mr. Stratford (United States of America); for Latin America, Ms. Espinosa Cantellano (Mexico); for Western Europe, Mr. Niewenhuis (Belgium); for Eastern Europe, Mr. Matveev (Russian Federation); for Africa, Ms. Feroukhi (Algeria); for the Middle East and South Asia, Mr. Sharma (India); for South East Asia and the Pacific, Mr. Sriwidjaja (Indonesia); for the Far East, Mr. Wu Hailong (China).

25. He proposed that the persons whose names he had just read out be elected as Vice-Presidents of the Conference.

26. It was so decided.

27. The PRESIDENT then proposed that Mr. McIntosh (Australia) and Mr. Gil (Spain) be elected as Chairperson and Vice-Chairperson, respectively, of the Committee of the Whole.

28. It was so decided.

29. The PRESIDENT further proposed that Mr. Amégan (Canada) be elected as Chairperson of the Drafting Committee.

30. It was so decided.

31. The PRESIDENT said that, in accordance with Rule 17 of the Rules of Procedure, the Conference should elect not more than 18 members of the Drafting Committee and that the Committee should elect a Vice-Chairperson from among its members. He proposed that a representative from each of the following countries: Argentina, Australia, Belarus, Brazil, Canada, China, France, Germany, India, Israel, Japan, Mexico, the Netherlands, the Russian Federation, Spain, Sweden and the United States of America be elected as members of the Drafting Committee. A representative from an Arab country had yet to be elected.<sup>2</sup>

32. He took it that his proposal was acceptable.

33. It was so decided.

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<sup>2</sup> Subsequently a representative from Algeria was elected and a representative from the United Kingdom took the place of the representative of Germany in the Drafting Committee

## **6. Organization of work of the Conference**

34. The PRESIDENT said that the Rules of Procedure provided for a Plenary, a Committee of the Whole and a Drafting Committee. In accordance with the agenda just adopted, he proposed that the work in the Plenary at the beginning of the Conference be devoted to the incorporation of the proposal contained in document CPPNM/AC/L.1/2 into the Basic Proposal, contained in document CPPNM/AC/L.1/1. At the end of the Conference, the work of the Plenary would be to consider the reports of the Committees and to adopt the proposed amendments to the Convention and the Final Act.

35. Consideration of the text of draft proposed amendments and of the Final Act, and any other matter of substance referred to it by the Plenary, would take place in the Committee of the Whole, which would take up the proposed amendments in a manner to be decided by that Committee. The Committee of the Whole would transmit all drafting matters such as linguistic and editorial proposals to the Drafting Committee, which would subsequently report back to the Committee. The Committee of the Whole, after completing its work, would report to the Plenary by Friday, 8 July at the latest. Issues on which consensus had not been reached would be referred to the Plenary for consideration.

36. Sufficient interpretation would be provided to enable the Committee of the Whole and the Drafting Committee to meet in parallel if necessary. The presentation of national statements was not foreseen during the opening Plenary session. Such statements should be submitted to the Secretariat in writing for circulation to all States Parties. At the request of the delegation concerned, those statements would be included in the summary records of the Conference.<sup>3</sup>

37. He took it that the programme of work that he had outlined was acceptable to the Conference.

38. It was so decided.

## **7. Introduction of the proposed amendments to the Convention on the Physical Protection of Nuclear Material**

39. The PRESIDENT said that the preparatory meeting had not enjoyed the right to consolidate the Basic Proposal (CPPNM/AC/L.1/1) with the modification to that Proposal submitted by China (CPPNM/AC/L.1/2) prior to consideration by the Conference. Hence the inclusion of an agenda subitem 7(c) to incorporate the latter into the former as a single revised Basic Proposal.

40. The delegate from MEXICO said that under item 7 of the agenda, her delegation could not accept any proposal until the other proposals had been discussed. It would, however, agree to proceed on the understanding that the Chinese proposal had not been accepted, nor had the Basic Proposal been approved. Only once all proposals had been discussed under item 8 of the agenda could the Conference state its position on the substance, on the amendments to be adopted.

41. The PRESIDENT said that there was a clear distinction between the wording of items 7 and 8 of the agenda. Under item 7 the amendments were being introduced, whereas under item 8 the substance of those amendments would be considered and debated. Agreeing to incorporate the Chinese proposal into the Basic Proposal would not involve agreeing with the substance of either document. The procedure would result in having only one document to consider and any item of the revised document would then be open for discussion.

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<sup>3</sup> See Annex.

42. He asked whether he could take it that the Conference wished to incorporate the proposal contained in document CPPNM/AC/L.1/2 into the Basic Proposal contained in document CPPNM/AC/L.1/1.

43. It was so decided.

44. The PRESIDENT informed the Conference that the Basic Proposal, as revised, would be issued as document CPPNM/AC/L.1/1/Rev.1.

45. He took it that the Plenary requested the Committee of the Whole to begin its work on the consideration of the proposed amendments, and that the Plenary agreed to refer to the Committee for its consideration the proposed amendments, including those contained in document CPPNM/AC/L.1/1/Rev.1.

46. It was so decided.

**The meeting rose at 11.25 a.m.**



The following national statements were submitted by delegations to the Secretariat for inclusion in the summary records:

#### **Statement by Australia**

Australia welcomes the Diplomatic Conference to adopt amendments to the Convention on the Physical Protection of Nuclear Material (CPPNM). The state and complexity of international security has changed considerably since conception of the CPPNM. In the light of these changes, the CPPNM is in need of urgent revision. As one of the 13 international counter-terrorism instruments, a revised CPPNM will strengthen, inter alia, defences worldwide against the insidious threat of terrorism. It is essential that the CPPNM's mandate is extended to include domestic use, storage and transport and, inter alia, criminalize sabotage and trafficking with respect to nuclear facilities and material.

Australia supports the Basic Proposal as modified by China (CPPNM/AC/L.1/Rev. 1). Australia is willing to consider at the Diplomatic Conference other amendments which might further strengthen the Convention.

Australia urges all States Parties to the CPPNM to work for their common good and the strengthening of international security, leading to adoption of an amendment to the CPPNM. Early ratification of the amended Convention is essential for its full benefits to be realised. Australia urges those countries which are not States Parties to accede to and ratify the CPPNM as soon as possible.

#### **Statement by Belarus**

The Convention on the Physical Protection of Nuclear Material (CPPNM) is an important international legal instrument aimed at combating the most serious challenge to modern civilization — international terrorism. The process to develop and adopt amendments to the Convention, broadening its scope of application, is an important step both in terms of the establishment of a system of universal jurisdiction for crimes of a terrorist nature, and in ensuring nuclear non-proliferation.

A successful Conference will help to strengthen considerably a basic international legal instrument for the physical protection of nuclear material and nuclear facilities used for peaceful purposes. Clearly, a Convention with a broader scope will create the necessary conditions for States to join their efforts in the fight against the threat of nuclear terrorism and open up further possibilities for the development of international cooperation to enhance the reliability of the physical protection of nuclear facilities.

The Republic of Belarus has taken an active part in the process to develop amendments to the Convention on the Physical Protection of Nuclear Material that is in force. Our country attaches great importance to the successful outcome of the Conference to Consider and Adopt Amendments to the Convention.

Belarus considers that the Basic Proposal to amend the Convention put forward by 25 States, taking into account the proposal of the People's Republic of China, constitutes a good basis for achieving consensus. Our delegation is willing to discuss other proposals as well. However, we think that these proposals should not distract us from our main objective — the adoption of a Final Act which constitutes an effective instrument for international cooperation against terrorism and also meets the interests of all States Parties to the Convention.

This event, which is intended to make a significant contribution to strengthening international security and stability, must not be allowed to become a repeat performance of the unfortunate experience of the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

In conclusion, our delegation is grateful to the Director General of the IAEA, Dr. ElBaradei, and to the Secretariat, for their active and highly professional work with respect to the development of the amendments to the Convention and organization of this Conference.

#### **Statement by Brazil**

My delegation is pleased to see you chairing this important Conference aimed to Consider and Adopt Proposed Amendments to the Convention on the Physical Protection of Nuclear Material. In assuring you of our full support we are confident that, under your very able and wise leadership, the participating States Parties will be able to adopt consensual amendments to strengthen the Convention.

Brazil attaches special importance to nuclear physical protection and has a solid regulatory framework in this field, based on INFCIRC 225/Rev. 4. Our commitment to the CPPNM dates back to the drafting of the Convention. In fact, the Drafting Committee for the Convention, which met in Vienna between 1977 and 1979, was chaired by a Brazilian diplomat, Mr. Luiz Augusto de Castro Neves, who is currently the Ambassador of Brazil to China. Brazil signed the CPPNM in 1981 and ratified it in 1985 without reservations.

Brazil has actively supported the process to expand the scope of the Convention from its beginning. The unprecedented challenges that the international community has faced over the past years have made it clear that the legal framework to deal with those challenges, including the CPPNM, had to be strengthened. In this context, we had a very active participation in the open-ended Group of Legal and Technical Experts to prepare a draft amendment of the Convention, convened by the Director General in 2001. This notwithstanding, my country notes that in March 2003, when the Group completed the task for which it had been established and adopted by consensus its Final Report, it had not been able to agree on consensual language for some of the proposed amendments, which remained in square brackets.

In this context, my delegation wishes to recall that in document WP 130, of March 2003, a group of countries, including Brazil, clearly expressed their difficulty to accept the language proposed then for Article 2.4 (b) and reproduced now in the so-called basic proposal. In this respect, in view of the importance Brazil attaches to the amendment process of the CPPNM, even though my delegation would have preferred to see only consensual language included in the basic proposal, it is ready to work constructively with other delegations in order to achieve consensus on all the proposed amendments.

#### **Statement by Cuba**

The Republic of Cuba wishes to state that none of the proposed amendments to the Convention on the Physical Protection of Nuclear Material may be construed as encouraging or condoning the threat or use of force in international relations, which, under all circumstances, should be strictly governed by the principles of international law and the purposes and principles enshrined in the Charter of the United Nations.

Cuba is also of the firm conviction that none of the provisions of the amended Convention should be interpreted as a loophole for the use of or threat to use force against nuclear facilities intended for peaceful purposes. That would be a grave violation of international law, the purposes and principles of the Charter of the United Nations and the Statute of the International Atomic Energy Agency.

The Government of Cuba fully endorses the firm and clear position of the countries of the Non-Aligned Movement in this regard, as expressed in paragraph 91 of the Final Document of the 13th Non-Aligned Summit Conference, held in Kuala Lumpur, Malaysia in February 2003, which states “The Heads of State or Government reaffirmed the inviolability of peaceful nuclear activities and that any attack or threat of attack against peaceful nuclear facilities — operational or under construction — poses a great danger to human beings and the

environment, and constitutes a grave violation of international law, principles and purposes of the United Nations Charter and regulations of the International Atomic Energy Agency. They recognized the need for a comprehensive multilaterally negotiated instrument, prohibiting attacks, or threat of attacks on nuclear facilities devoted to peaceful uses of nuclear energy.”

Our country has firmly supported the process to amend the CPPNM, on the understanding that its basic objective is to strengthen the regime for the physical protection of nuclear material and facilities used for peaceful purposes. For that reason, Cuba believes that the amendment introduced as Article 2.4(b), of the amended Convention has, to a certain extent, undermined that objective by actually limiting the scope of the CPPNM, which could result in weakening the abovementioned physical protection regime.

The only way to avoid that, and to ensure the full implementation of the objectives of the amended Convention on the Physical Protection of Nuclear Material, is by fully respecting the principle of inviolability of nuclear facilities intended for peaceful purposes, and the undertaking pursuant to Article 2.4(c) which clearly states, “Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.” In that regard, Cuba believes that this undertaking includes the abstention from the threat or the use of force by the armed forces of a State against such facilities in another State.

#### **Statement by France**

Allow me at the outset to congratulate you on your election as President of this Diplomatic Conference for Amendment of the Convention on the Physical Protection of Nuclear Material. I would like to assure you of the unreserved support of the French delegation in your work. My delegation will spare no effort in ensuring that, under your leadership, the Conference culminates in the adoption of a clearly defined amendment to the Convention.

I would also like to say that France fully associates itself with the statement made by the head of the United Kingdom delegation on behalf of the European Union.

In recent years unprecedented events have taken place. The nuclear non-proliferation regime has been affected by several problems concerning respect for commitments calling its credibility into question, in particular revelations of the existence of clandestine networks for trafficking in technologies, equipment and associated material related to weapons of mass destruction and their vectors, or which could be used in their manufacture. Regarding security, the events of 11 September 2001 in New York, in Madrid in 2004, and others in Asia and elsewhere, not to mention any others, have brought to light the emergence of a new threat — that of international terrorism, which stops at nothing to achieve its aims. In particular, the threat that would be posed by the possession by terrorists of nuclear, chemical or biological weapons or radiological dispersion devices as well as the potential consequences of their use must be given serious attention.

The international community has of course reacted very quickly and resolutely to these new threats and several initiatives have been launched. To mention just a few: the adoption of United Nations Security Council Resolution 1373, establishment of the IAEA programme to prevent nuclear and radiological terrorism, establishment of the G8 Global Partnership with the adoption of action plans against the spread of weapons of mass destruction and NRBC terrorism, adoption of the European strategy to combat the spread of weapons of mass destruction and their vectors, adoption of Security Council Resolution 1540, the Proliferation Security Initiative (PSI), the Global Threat Reduction Initiative (GTRI), strengthening of national and export controls on dual use or sensitive goods, and most recently, the adoption by the United Nations General Assembly of the International Convention for the Suppression of Acts of Nuclear Terrorism. All of these initiatives are in the right direction and should be encouraged and developed.

Regarding the security of nuclear material, amendment of the Convention on the Physical Protection of Nuclear Material (CPPNM) has been under discussion since 1999. Among the instruments identified as contributing to the fight against terrorism, the CPPNM is the only multilateral legally binding instrument which relates to the physical protection of nuclear material. Let us be frank: at the time, not everyone was convinced that amendment was called for. The 1979 Convention, supplemented by the physical protection recommendations laid down by the IAEA, seemed sufficient for implementing security measures for nuclear material at national level, particularly during international transport. However, the terrorist threat changed things; while the responsibility for implementing physical protection lies primarily with States, collective security issues in the new context that I have just referred to make strengthening the Convention particularly necessary, especially in order to deal with activities involving nuclear material on national territory and nuclear facilities containing such material.

Between 1999 and 2001, the first group of technical and legal experts formed by the IAEA Director General considered the shape the revised Convention should take. The primary responsibility of States that I just mentioned, the highly sensitive and confidential nature of the measures taken nationally to evaluate and confront a threat directed against nuclear material or facilities, and the existence — in a State such as France, particularly — of military nuclear activities justified provisions we could not contemplate introducing into an amended Convention. The working group thus ultimately recommended that certain types of provisions should be excluded, including: application of the amended Convention to military nuclear materials and activities; regular reports by States Parties on the implementation of the Convention; peer review of the level of physical protection applied in a State Party; the legally binding nature of INFCIRC/225. What was envisageable for conventions on nuclear safety was not the case for nuclear security.

On the other hand, strengthening of the Convention was desirable on several counts. Specifically, several elements considered important by all had to be taken into account: the fundamental objectives and principles to be used as the basis for developing and maintaining national physical protection arrangements; extending the scope of the Convention to nuclear material used on national territory, including during the transport phases, as well as to facilities containing such material; criminalization of serious offences, particularly the sabotage of a nuclear facility.

Once these outlines had been defined and duly considered and the course for the work had been set, France contributed actively to drafting an amendment to the Convention with a view to strengthening it. In particular, it chaired the second group of experts convened by the Director General of the Agency, and participated fully in its work from December 2001 to March 2003. Six meetings of that group under the leadership of Mr. Denis Flory of the Institute for Radiological Protection and Nuclear Safety, each with representatives from around 50 States Parties, resulted in the preparation of a very detailed draft amendment to the Convention. The lack of consensus on some of the proposed provisions, preventing the convening of a diplomatic amendment conference from being requested, should not obscure the general agreement obtained at the time on over 90% of the draft amendment resulting from the group's work. Several States Parties, eager to achieve a consensual amendment proposal, were not deterred and conducted intensive consultations with a view to finding an acceptable text. In this regard, France would like to thank all the States Parties which contributed to finding a compromise solution, particularly Austria and China.

It is this compromise solution which the delegations participating in this Conference will be examining during the week. The proposed amendment before the Conference in fact consists of a Basic Proposal, submitted by Austria and 24 other States Parties, and a proposal submitted by China, designed to satisfy the serious objections raised by several States Parties. For technical reasons, including time, it was not possible to combine these two proposals into one before holding the Conference. However, one of the first decisions the Conference will have to make will be to merge the two texts into one for consideration. France believes that these two texts are inseparable and form the basis of the consensus it desires. With this consolidated proposal, we will have a considerably strengthened Convention: introduction of the principles and fundamental objectives of physical protection, a new requirement for the protection of nuclear facilities and material used in activities conducted on national territory,



criminalization of offences such as the sabotage of nuclear facilities or trafficking in materials, strengthening of international cooperation in the event of offences.

France will not seek to improve the amendment proposed by Austria and China, which it considers satisfactory as it stands. Other amendment proposals have however been submitted to the Conference, and may be submitted during the week. In a constructive spirit, my delegation will consider the merits of each proposed amendment with all the objectivity required, while keeping in mind the main objective, which we believe to be the adoption of a clearly defined amendment to the Convention.

The French authorities are convinced of the importance of strengthening the Convention on the Physical Protection of Nuclear Material. They do not doubt that all the States Parties to this Convention represented here are equally convinced of this. The responsibility of the French delegation, the responsibility of all of us this week, is to finish the work started almost six years ago. I do not doubt for a moment that under your effective leadership, Mr. President, the Conference will be able to exercise reason and compromise, and that in the end we will have an effective multilateral instrument for the protection of nuclear material and facilities, for the prevention and suppression of malignant or terrorist acts, and for the strengthened international cooperation demanded of the international community under the relevant Security Council resolutions.

### **Statement by Japan**

The physical protection of nuclear materials is a vital element of nuclear security and a highly important issue that needs to be tackled together by the international community. Japan places great value on this diplomatic conference to consider and adopt proposed amendments to strengthen the Convention on the Physical Protection of Nuclear Material.

As we already know, Professor Alec Baer is someone with extensive experience, having acted as chairman of the diplomatic conference to adopt a Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, the preparatory meeting for this conference. In this connection, Japan warmly welcomes his election as president of the conference. We would also like to express our gratitude for all the positive efforts made by State Parties. In particular, we thank the Government of Austria who created the basic proposal, putting the different ideas together, with the cooperation of Dr. ElBaradei and the IAEA Secretariat.

Since the terrorist attacks on September 11 2001, the international community has, with a sense of urgency, reviewed and strengthened measures against terrorism in a wide range of areas. Conversely, terrorist organizations have been increasing their capabilities to carry out activities such as acquiring funds and weapons, crossing over international borders, making use of advanced science and technology and implementing outreach campaigns. Nuclear terrorism, should it happen, could cause immeasurable damage and psychological impact on our whole society. Therefore, we should make the utmost efforts to take the necessary extensive measures to protect our society from nuclear terrorism. Considering the relative ease of access to radioactive sources and their possible diversion to creating a dirty bomb, the management and control of radioactive sources is no less urgent than the protection of nuclear materials. In this respect, Japan appreciates the efforts made by the IAEA in formulating the Code of Conduct on the Safety and Security of Radioactive Sources as well as the Guidance on the Import and Export of Radioactive Sources.

Let me now turn to the various counter-terrorism measures that my Government has undertaken.

With regard to the international conventions and protocols aimed at curtailing terrorist activities, Japan has already concluded and implemented all of the twelve Counter-Terrorism Conventions and Protocols. In addition, Japan has been making stringent efforts to fully implement United Nations Security Council resolutions 1373, 1540, and other relevant UN Security Council resolutions. Japan is also aiming for the early conclusion of the Interna-

tional Convention for the Suppression of Acts of Nuclear Terrorism, which was first adopted after the terrorist attacks on September 11, 2001.

Japan recognizes the importance of adding the physical protection of nuclear facilities to the Convention and extending the scope of physical protection to cover domestic use, storage and transport of nuclear materials. Japan has consistently participated in the negotiations on amendments to the Convention on the Physical Protection of Nuclear Material, in an effort to maintain and enhance motivation towards carrying out these amendments. As we know, a revision of the guideline on physical protection has been considered; INFCIRC225/Rev.4 is a valuable guideline for each State, and includes setting the Design Basis Threat. Making this guideline effective is an important duty for each State. Setting and responding to the Design Basis Threat specifically depends on the category of the nuclear facility and the current status of each State. It goes without saying that the strict management of confidential information is a prerequisite to the measures. However, it is very important to take measures that meet the needs and the current situation of each State while sharing with the experiences of other States.

The domestic implementation of rules and regulations in the field of physical protection of nuclear material and nuclear facilities for Japan, were approved at a Diet in May of this year. We are also in the process of strengthening the regulatory framework by introducing the Design Basis Threat (DBT) approach and an inspection system to verify continued compliance, together with the creation of inspector posts. In addition, a legal confidentiality obligation for operators and their employees, who are engaged in physical protection measures, will be established.

The basic proposal that is before this diplomatic conference is the result of discussions among experts that have taken place since 1999. These discussions have aimed at creating a proposal that would gain the broadest possible acceptance among the State Parties. Japan has become a co-sponsor to the proposal made by the Government of Austria. As a result of discussions at the Preparatory Meeting for this conference in April, there are some points that need to be adjusted. While Japan is proposing a technical correction to Article 7, we very much hope that the amendment is adopted at this conference in its optimum form.

It is clear that ongoing efforts will need to be made by the international community to ensure that nuclear security measures are effectively applied. Once the amendment of the Convention on the Physical Protection of Nuclear Material has been adopted, each State will be asked to ratify and implement the Convention as soon as possible. Furthermore, it is essential that the various measures adopted at the IAEA be extensively implemented, such as the Code of Conduct on the Safety and Security of Radioactive Sources and the Guidance on the Import and Export of Radioactive Sources. An increase in the number of countries concluding the Additional Protocol would also contribute to strengthening the base of nuclear security. Additionally, it is necessary to coordinate nuclear safety approaches, including the safety of nuclear facilities. Bearing all this in mind, it is very clear that the IAEA has an important role to play in implementing international measures for nuclear security, including physical protection.

Article 18 of the International Convention for the Suppression of Acts of Nuclear Terrorism, which was adopted in New York recently, also refers to the role of the IAEA. Japan believes that enhancing the effectiveness of nuclear security will continue to be an important activity in future, as well as considering how to organically coordinate those legal instruments as a whole through the IAEA. Japan supports and will continue to support these approaches made by the IAEA's initiative.

In concluding my statement, I would like to express Japan's commitment to contributing to future approaches by the Member States and the IAEA towards strengthening nuclear security. Japan looks forward to contributing to constructive discussions at this diplomatic conference to ensure the further effectiveness of the Convention on the Physical Protection of Nuclear Material.

### **Statement by New Zealand**

New Zealand welcomes the proposed amendments to the Convention on the Physical Protection of Nuclear Material. We are confident that they will strengthen the Convention and help prevent nuclear material falling into the hands of those who may use it to threaten international peace and security. Let me reassure you of New Zealand's full support in the week to come.

The Convention when opened for signature in 1980 served a useful purpose in establishing key minimum safety standards particularly relating to the transport of nuclear material and storage incidental to transport. The international landscape of global peace and security has, however, evolved markedly since the Convention was first adopted.

In today's environment, where we face a real and continual risk from terrorist's activities, nuclear material, in all its forms and wherever it is, must be protected. The broadening of the Convention is timely and one that recognises that nuclear material stored or produced at nuclear facilities is as vulnerable to misuse by terrorists as nuclear material in international nuclear transport is.

As a strong advocate of multilateralism and the rule of law, New Zealand lends its full support to international efforts to strengthen disarmament regimes and to develop robust verification measures to ensure compliance. Accordingly New Zealand can fully support amendments to introduce more effective measures to account for nuclear material whether in production, use, storage or transport. We also endorse the amendments that oblige States to introduce regimes to physically protect nuclear facilities from acts of theft or sabotage.

But, the Convention will not succeed in its aim without the support and acceptance of Member States of appropriate amendments to achieve these goals. We fully support the Basic Proposal, together with the proposed Chinese amendment to it.

Additionally, we encourage State Parties to support Canada's amendment which reflects, importantly, the principle that claims of political motivation must not be recognised as grounds for refusing requests for the extradition of alleged terrorists. Other international conventions reflect this principle and this Convention should be no different.

We also urge State Parties to support Norway's proposal to reinsert a reference to the environment in Article 7, which would make damage to the environment a punishable offence under this Convention. This amendment further supports the increased recognition of the potential risks to the environment through its being targeted by terrorist or other criminal acts as evidenced by the inclusion of a similar provision to that proposed here in the International Convention for the Suppression of Acts of Nuclear Terrorism.

Finally, we express our thanks to the Group of Legal and Technical Experts who have worked hard to draft these very comprehensive and effective proposed amendments to the Convention. We appreciate that the amendments do not meet the concerns of all State Parties but believe they go a long way to protecting all States.

### **Statement by Norway**

On behalf of my delegation, I would like to express appreciation to the Secretariat for its preparation of this Diplomatic Conference to revise the Convention on the Physical Protection of Nuclear Material, and to applaud Austria for its commendable and enduring work to facilitate a majority amongst the States Parties on a revision of the Convention. Norway reiterates its full support for adopting the Basic Proposal, and we are certain that, guided by your wise Chairmanship, a spirit of cooperation can prevail during the Conference. The outcome can lead to an enhancement of the global regime of physical protection.

In light of this important objective my delegation would like to explain why we regard our proposal - to insert a reference to the environment - as complementary to the Basic Proposal. Our amendment proposal has been kindly circulated in Note N5.92.Circ by the Secretariat of the International Atomic Energy Agency (IAEA) in accordance with Rule 20 of the Rules of Procedure, adopted at the Preparatory Meeting.

Our proposal is consistent with the text in the Basic Proposal of the recommendations made by Mr. Denis Flory, at its last meeting 3-14 March 2003, when it surveyed possibilities for revising the Convention. An inclusion of damage to the environment among the punishable offences listed in Article 7 is further necessary to enhance the consistency of the text.

Paragraph 3 of the Preamble, as contained in the Basic Proposal, makes a reference to the protection of public health, safety, the environment and national and international security. Also, Article 1 Ltr. d of the Basic Proposal defines the word sabotage as an act which can endanger the health and public safety of personnel, the public and the environment.

The group of countries supporting an environmental reference in the text understands why it at the time was necessary to omit this inclusion from the Basic Proposal, given that delegations were on the whole equally split on the issue at the last intersessional meeting. However, it is important to note that delegations from less than half of the States Parties to the Convention were present at that meeting. This Diplomatic Conference therefore offers an opportunity for States Parties to consider the proposal in a more representative frame.

Moreover, a similar inclusion in the International Convention for the Suppression of Acts of Nuclear Terrorism which was adopted by consensus by the UN General Assembly on 13 April this year provides a strong reason to believe that several delegations have reconsidered their previous opposition on the issue. This belief has in the past month been confirmed through démarches in several capitals and a range of bilateral consultations here in Vienna. Consequently, we have good reason to hope for our amendment proposal's adoption at this Conference.

It is our view that it is not sufficient that a revised Convention merely includes a reference to damage to property, as this will leave externalities and common goods unprotected. Legal developments during the past years have taken advantage of the pronounced acceleration in the field of environmental economics. It is no longer impossible to quantify, through selected indicators, damage to air, water, land or sea, or to devise national and international legislation with reasonable implementation mechanisms.

Regarding the protection of the environment as intrinsic to the safety of public health as well as to national and international security my delegation and the delegations of Columbia, Finland, Greece, Iceland, Ireland, Italy, Mexico, New Zealand, Slovenia, Sweden and Switzerland urges all States Parties to positively consider our proposal, in the merit of the importance of the issue at hand.

**Statement by Peru with respect to Article 7.1(e) of the Convention (Paragraph 9.1(e) of the Basic Proposal)**

Peru understands that the exception contained in this proposed amendment, that “unless the act is undertaken in conformity with national law of the State Party in whose territory the nuclear facility is situated” refers, for example, to situations in which the forces of law and order of the State Party perceive the need to intervene in order to prevent or repel an act directed against a nuclear facility or interfering with its operation, or if an emergency response team of that State has to take certain measures to prevent such an act from causing major damage.

**Statement by the Philippines**

First of all, allow me to express my delegation's heartfelt thanks and congratulations to you upon your election as President of our Conference. Your demonstrated wisdom and considerable skill, I am sure, will propel us to a

successful conclusion at this Conference. At the outset, let me pledge to you our full support and cooperation in your goal of seeking consensus on the issues we will be facing.

We gather during these four days to consider and adopt various amendments to the two decades old Convention on the Physical Protection of Nuclear Material (CPPNM). Since its adoption in 1979 and its entry into force in 1987, 112 States have become Parties to the Convention, demonstrating the vital importance of the security need it seeks to address. The Philippines signed the Convention on 19 May 1980.

Ambassador Domingo Siazon, Philippine Permanent Representative to the IAEA from 1979-1986, chaired the negotiations, which went on for a few years, leading to the 1979 meeting of governmental representatives to consider the drafting of a convention on the physical protection of nuclear material. Since its adoption, the Philippines has actively implemented the Convention.

Today, we have before us the basic proposal encompassing amendments from various countries who have sought to strengthen and update the Convention, bringing it into the 21st century. The basic proposal is the direct result of the hard work of the open-ended group of legal and technical experts convened by the Director General to consider ways of strengthening the Convention. May we also congratulate Austria for its fruitful work in the "Friends of the CPPNM amendment".

Before I go into the amendments themselves, allow me to highlight a few of the latest developments in my country in pursuit of the goals of the Convention.

On September 24, 2003, H.E. President Gloria Macapagal Arroyo created a *cabinet-level task force for the security of critical infrastructure (TFSCI)*, tasked with protecting vital national facilities. By "critical infrastructure", it includes nuclear as well as other radioactive sources in nuclear and radiation facilities.

The TFSCI formulated the national critical infrastructure security plan within the framework of the government's 16 pillars on counter-terrorism. Subsequently, the government has formed a *national committee on counter-terrorism*, charged with the formulation of a strategic and integrated national security plan, among others, for the protection of critical infrastructure. The Philippine Nuclear Research Institute (PNRI), our national competent authority, is a member of this committee.

The PNRI, in collaboration with national law enforcement, intelligence and security agencies and the office of civil defense, is drafting the *Philippine nuclear security plan*, which aims to prevent and detect malevolent acts against nuclear and other radiation sources and facilities, and to mitigate effects of radiation arising from these acts. The task force is also revising the present national radiological emergency preparedness and response plan (RADPLAN) to enable it to respond adequately to potential terrorist threats.

The Philippines subscribes to the role of international cooperation in ensuring the safety and security of nuclear and other radioactive materials.

From the IAEA, we continue to receive technical assistance; for example, in the form of an International Physical Protection Advisory Service (IPPAS) mission which was received in 2003. The Agency recently conducted a design basis threat (DBT) seminar-workshop in Manila. Knowledge gained from this workshop enabled the PNRI and the national law enforcement, intelligence and security agencies to undertake a DBT-based assessment of the threat against nuclear material and radioactive sources in the country.

This year, the PNRI conducted an awareness seminar on the detection of nuclear and radioactive materials at borders, with the assistance of experts from the Agency.

The PNRI is also implementing a technical assistance project under the US Department of Energy radiological threat reduction program. The project facilitates the provision of security upgrades of PNRI's critical radiation facilities and Category 1 and Category 2 sources in 23 hospitals throughout the country.

On the safe transport of radioactive materials, the Philippines is pleased to report that it has adopted the IAEA Safety Standard on the Transport of Radioactive Material, TS-R-1. PNRI has formulated and approved the code of PNRI regulations (CPR) Part 4, on the safe transport of radioactive material, to conform to TS-R-1. Consultations with the relevant agencies in the transport sector have resulted in enhanced cooperation among these agencies in the implementation of CPR Part 4.

Finally, the Philippines stands ready to implement Security Council resolution 1540 to respond effectively to the threat of proliferation due to nuclear material falling into the hands of malevolent non-State actors.

Focusing on the proposed amendments to the CPPNM, allow us to make a few comments. At the outset, the Philippines stands ready to join the consensus on the Basic Proposal as a whole. We support the expansion of the scope of the Convention to include all nuclear materials and not limited to those in transit, and to include nuclear facilities.

However, we believe there are some proposed amendments outside of the Basic Proposal that merit serious consideration. The reference to exclusion of activities of military forces in Article 2.4 should be mitigated by a reference to the illegality, under international law, of acts of violence against a nuclear facility used for peaceful purposes. Hence, the Philippine delegation supports the proposal from China for a new paragraph 2.4(c) which states, "nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes."

We hope that consensus would result in the deliberations during the Conference, in order to enable us to sign the Final Document adopting the proposed amendments to the CPPNM. The amendments, we believe, will strengthen the Convention in order to adapt to new realities and imperatives for safety and security of nuclear materials and facilities in the 21st century.

#### **Statement by the Russian Federation**

The Russian delegation welcomes the holding of the Diplomatic Conference to Adopt Amendments to the Convention on the Physical Protection of Nuclear Material. The whole world is interested in increasing the reliability of the global nuclear security system. The Russian Federation is completely committed to the principles underlying this Convention. A reliable mechanism to prevent the illicit seizure and use of nuclear material for criminal purposes is essential if States are to enjoy the inalienable right to develop and use atomic energy for peaceful purposes in accordance with the Treaty on the Non-Proliferation of Nuclear Weapons and the IAEA's Statute. This Convention fulfils that end. It lays down a firm legal basis for international cooperation with a view to developing effective measures for the physical protection of nuclear material both at the national and multilateral level, which is of the utmost importance now when the problem of proliferation of sensitive nuclear material and technologies is becoming increasingly acute and the threat of terrorism involving the use of weapons of mass destruction is becoming increasingly real.

Russia has always actively supported all means of strengthening the nuclear non-proliferation regime, and the fight against nuclear terrorism. Extremely important steps have been taken to this end in recent times. The United Nations Security Council adopted resolution 1540, aimed at preventing weapons of mass destruction and their components from falling into the hands of non-State actors; the Russian Federation was one of the initiators of this resolution. The adoption by the United Nations General Assembly in April this year of the International Convention for the Suppression of Acts of Nuclear Terrorism was a notable event. Russia, which for its part

submitted a draft of this convention to the United Nations for consideration, firmly supports its earliest possible entry into force and calls on all States to sign the Convention as soon as possible.

We think that this Conference is a further major step on the road to strengthening nuclear security. The current Convention on the Physical Protection of Nuclear Material is a key instrument in this area which is of crucial significance for mankind. Increasing its effectiveness is a task of enormous importance.

Mention should be made of the very positive outcome of the long and difficult work undertaken by the experts from the States Parties to the Convention to draw up correct, effective and balanced draft amendments.

The changes aimed at strengthening the physical protection of nuclear material in storage, use and transport within a State, and at protecting nuclear facilities against diversion, are particularly important to combat the rise of nuclear terrorism. As one of the 13 universal anti-terrorist conventions, the Physical Protection Convention should strengthen the emerging regime of international cooperation on combating terrorism and, in particular, on improving the effectiveness of criminal prosecution of persons involved in terrorist activities and the means of bringing them to justice. All the most recent anti-terrorist conventions — on terrorist bombings, the financing of terrorism, and the aforementioned Convention for the Suppression of Acts of Nuclear Terrorism — are based on this approach reflected in United Nations Security Council resolution 1373.

Agreement on the draft amendments to the Convention has become possible primarily thanks to the proposal put forward by the People's Republic of China, which eliminates ambiguity in the key issue of the inadmissibility of the use of force against nuclear facilities.

The Russian Federation is in favour of the rapid adoption of the package of amendments to the Convention.

We are counting on the success of this Diplomatic Conference. We believe that the rapid entry into force of the amended Convention on the Physical Protection of Nuclear Material will be in the interests of all States.

### **Statement by Spain**

At the outset, I would like to express my delegation's satisfaction with your appointment as President of this Conference, and wish you all the best in carrying out the difficult task conferred upon you that you have so graciously accepted. Be assured that my delegation will do its utmost to bring this Conference to a successful conclusion.

Spain attaches great importance to the physical protection of nuclear material and believes that the International Convention on the Physical Protection of Nuclear Material has given the international community a common language on the protection of nuclear material and has undoubtedly served as a key reference for the establishment of a solid regulatory framework within the national legal frameworks of the States Parties.

Almost twenty years after the current Convention entered into force in 1987, the Director General of the Agency in 1999 gave the international community the opportunity to revise its provisions in order to strengthen the regime for the physical protection of nuclear material agreed upon years earlier. Many things had happened in the world since then, and many more were still to come. There is no doubt today that the initiative of the Director General of the Agency to amend the Convention was premonitory of the growing international concern to prevent nuclear material from falling into the wrong hands as a result of failings in our protection systems.

The meetings of the expert group, from the time it was formed in 2001 until it was disbanded in 2003, managed to produce the closest one could come to a consensus text and, although it has not attracted full agreement, it is only fair to recognize the enormous value of the ground which has been covered. We have now met in this forum to

complete together the journey begun six years ago, and we should not settle for less than the successful achievement of the goal that the international community, at the initiative of the Director General of the Agency, set at that time.

Austria, supported by 25 other States including Spain, has submitted a draft amendment to the Convention to the Director General of the Agency for consideration at the Diplomatic Conference. This proposal, which was later supplemented by the proposal of the distinguished delegation of the People's Republic of China, constitutes a solid point of departure for the commencement of our work, and a firm path from which we must not stray too far if we do not wish to run the risk of missing the goal we have set for ourselves.

I would like to end my statement by stressing once again the importance that my country attaches to the physical protection of nuclear material, and our complete readiness to reach a consensus that will allow us to strengthen the current International Convention on the Physical Protection of Nuclear Material, to the benefit of the international community.



# **SUMMARY RECORD OF THE SECOND PLENARY MEETING OF THE CONFERENCE TO CONSIDER AND ADOPT PROPOSED AMENDMENTS TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL**

Held at the Austria Center Vienna on Friday, 8 July 2005 at 10.15 a.m.

*President:* Mr. BAER (Switzerland)

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<sup>1</sup> CPPNM/AC/1



## **– Condolences on the London bombings**

1. The PRESIDENT, speaking on behalf of all those present, offered sincere condolences to the people of the United Kingdom of Great Britain and Northern Ireland on the horrific bombings that had taken place the preceding day in the London transport system. All those participating in the Conference sympathized with their United Kingdom colleagues and joined them in their absolute condemnation of those barbaric acts of terrorism, whoever the perpetrators might have been. Not for the first time that century had innocent people been killed in the name of ideology, nor was it likely to be the last. In his opening remarks to the Conference, the Acting Director General of the IAEA had recalled that the horrifying events of 11 September 2001 had taken place while the Board of Governors was meeting.
2. However, such acts served only as an incentive to work towards making the world a safer place. They left no doubt as to the urgent need for better, tighter and more effective physical protection measures.
3. He invited delegates to observe one minute of silence to honour the memory of the victims.

**All present rose and stood in silence for one minute.**

## **9. Consideration of the reports of the committees established by the Conference**

4. The PRESIDENT said that, since the report of the Bureau of the Conference (document CPPNM/AC/L.11) had been issued, formal credentials satisfying the requirements of Rule 3 of the Rules of Procedure had been submitted for the delegates of Austria, Kuwait, Morocco and Euratom. Those three States and Euratom should therefore be considered within paragraph 3(a) of the report of the Bureau.
5. He took it that the Conference wished to adopt the recommendation contained in paragraph 4 of the report of the Bureau.
6. It was so decided.
7. At the invitation of the PRESIDENT, the CHAIRPERSON OF THE COMMITTEE OF THE WHOLE summarized the report by the Committee of the Whole (document CPPNM/AC/COW/1) and noted that consensus had been reached on all issues except one. He thanked delegates for their constructive approach.
8. The delegate from MEXICO requested that the reservation her country had expressed during the discussions in the Committee of the Whole with regard to preambular paragraph 6 of the draft text of the amendment to the Convention be reflected in the report.
9. The delegate from FRANCE requested that the titles of the action plans adopted by the G8 summit in Evian in 2003 appear in their correct form in paragraph 5 of the report. In the French version of the report, the words “garantir la sécurité des sources radioactives” should be removed from the title of the first action plan, and in the English text the words “Safety and” should be removed from the title of the second action plan.
10. The PRESIDENT, on the understanding that the corrections requested by the delegate from France in paragraph 5 of the report would be made, and that specific reference would be made in paragraph 10 to Mexico’s reservation, took it that the Conference wished to take note of the report by the Committee of the Whole.
11. It was so decided.

## **10. Adoption of the amendments to the Convention on the Physical Protection of Nuclear Material**

12. The PRESIDENT noted that if consensus was not reached on any issue at that stage the Conference would have to put unresolved issues to a vote. The result of any votes would be final and binding.
13. The delegate from MEXICO said that, in a spirit of compromise, her country's authorities had instructed her not to hamper the continuation and successful conclusion of the Conference. Therefore Mexico would not object to preambular paragraph 6, about which it had previously expressed reservations.
14. The PRESIDENT thanked the Mexican authorities for their flexibility.
15. The delegate from ALGERIA, supported by the delegate from PAKISTAN, thanked the delegates from Mexico and GRULAC for not blocking consensus.
16. The delegate from BRAZIL recalled President Lula da Silva's message at the G8 summit in Gleneagles expressing his country's firm condemnation of the terrorist acts committed in London on 7 July, conveying his sincere condolences to the Prime Minister of the United Kingdom, and extending solidarity to the families of the victims. Those tragic events had been a sad reminder of the need to strengthen the Convention on the Physical Protection of Nuclear Material. His delegation therefore attached great value to the consensus that had been reached on the proposed amendments to the Convention.
17. He congratulated the President and the Chairpersons of the Committee of the Whole and the Drafting Committee and commended them on having skilfully guided the Conference to a successful conclusion. He also commended the other Bureau members and the staff of the Secretariat on their competent and diligent work which had facilitated that positive outcome.
18. Brazil had actively supported the expansion of the scope of the CPPNM from the outset. The unprecedented challenges the international community had faced in recent years had demonstrated the need to reinforce the relevant legal framework, including the CPPNM. Brazil had joined the consensus on all the proposed amendments, including the provision contained in Article 2.4(b) and the inclusion of Article 2.4(c) on use of force. Brazil was particularly grateful to the delegation from China for having introduced that amendment. However, Brazil did consider that including a precise definition of the term 'military forces', and a reference to Protocol I of the Geneva Conventions of 1949, would have helped reinforce the principle that hostile acts against nuclear facilities used for peaceful purposes were contrary to international law, thus further strengthening the Convention. Article 2.4(b) created a loophole by establishing that the activities of armed forces were not governed by the Convention. Those concerns had been partly allayed by the inclusion of preambular paragraphs 4 and 5 and Article 2.4(c). Those elements would be taken into account by Brazilian legislators when they considered the amendments to the Convention.
19. His delegation was prepared to adopt all the agreed amendments to the CPPNM.
20. The delegate from SPAIN requested clarification as to whether the amended Convention would be subject to the customary formalities required for an international treaty, e.g. whether final clauses would need to be added.
21. The DIRECTOR OF THE IAEA OFFICE OF LEGAL AFFAIRS replied that there was no requirement for final clauses to be added to the amendment to the Convention. Delegates' signatures to the Final Act would simply confirm their approval of the language adopted by the Conference and were not a legal treaty action. In accordance with Article 20 of the Convention, the amendment would enter into force 30 days after two thirds of the States Parties had ratified or acceded to the amendment as it stood, without final clauses.

22. The PRESIDENT said that he took it that the Conference wished to adopt the amendment to the Convention on the Physical Protection of Nuclear Material.

23. It was so decided.

#### **11. Adoption and signature of the Final Act**

24. The delegate from BOLIVIA, speaking on behalf of GRULAC, said that the Group wished to stress once again the importance it attached to the Conference as a means of strengthening the international legal framework for combating terrorism.

25. The CPPNM was one of thirteen universal instruments on counter-terrorism and had been cited in all the reports of the United Nations Secretary-General to the General Assembly on measures to eliminate international terrorism. Similarly, the Security Council and various General Assembly resolutions on terrorism had made reference to the Convention.

26. The Group had therefore hoped that the preambular paragraph 3 proposed by Mexico would be included in the text. That text, which used language taken from the preamble of the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, read as follows: "Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, *inter alia*, 'the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States' ".

27. Those treaties enjoyed broad support globally and both the General Assembly and the Security Council had frequently urged States to accede to them. To date, 139 States had become party to the Terrorist Bombings Convention and 138 to the Financing of Terrorism Convention.

28. The delegate from MEXICO said that her Government regretted that consensus had not been reached on the inclusion in the Convention of a provision clearly stipulating that attacks during peacetime on nuclear facilities used for peaceful purposes were a violation of international law. The fact that nuclear facilities used for peaceful purposes were protected by international humanitarian law during times of conflict made it all the more crucial that a clear commitment be made that those facilities should not be the target of attack in peacetime.

29. During the consultation process, several formulations had been examined with a view to removing the loophole introduced by Article 2.4(b). In the interests of consensus, her country had proposed including language taken from other terrorism-related conventions that enjoyed broad acceptance.

30. Mexico regretted that it had not been possible to stipulate clearly that all acts of terrorism were unjustifiable and illegal, irrespective of where and by whom they were committed. The deplorable terrorist attack in London on the preceding day should prompt the international community to redouble its efforts to eradicate terrorism. The Conference should conclude with a clear message and a firm commitment to that goal, which would require all States Parties to show flexibility, as Mexico had done throughout the negotiations.

31. In conclusion, she noted that Mexico understood Article 2.4(b) of the amended Convention to mean that the activities of States' armed forces were excluded only in so far as they were regulated by other instruments of international law.

32. The delegate from CUBA said that none of the proposed amendments to the CPPNM could be interpreted as condoning the threat or use of force in international relations, which should be strictly regulated in all cases by the principles of international law and the aims and principles enshrined in the Charter of the United Nations. Cuba was also of the opinion that no provision of the amended Convention should be interpreted as permitting the use, or threat of use, of force against nuclear facilities intended for peaceful purposes, which would constitute a grave violation of international law, the principles and aims of the United Nations Charter and the Agency's Statute. His Government fully supported the position of NAM, as expressed in the Final Document of the XIII NAM Summit held in Kuala Lumpur in 2003, which held that any attack against peaceful nuclear facilities constituted a grave violation of international law, the principles and purposes of the United Nations Charter and IAEA regulations, and which recognized the need for a comprehensive multilaterally negotiated instrument prohibiting attacks, or threats of attacks, on such facilities.
33. His country had firmly supported the process for amending the CPPNM on the understanding that its main objective was to strengthen the physical protection regime for peaceful nuclear facilities. In that connection, Cuba considered that the amendment introduced as Article 2.4(b) undermined that objective by limiting the scope of the CPPNM, which could weaken the physical protection regime. The only means of guaranteeing full achievement of the objectives of the amended CPPNM was total respect for the principle of the inviolability of peaceful nuclear facilities and the commitment enshrined in Article 2.4(c) of the amended Convention.
34. The delegate from ARGENTINA joined other speakers in offering condolences to the United Kingdom in connection with the terrorist attacks in London on the preceding day. She also associated herself with the remarks made on behalf of GRULAC regarding the proposed insertion of a preambular paragraph, and the view expressed by the delegate from Mexico. With reference to paragraphs 10 and 11 of the draft Final Act, she suggested that the Amendment and the Report by the Committee of the Whole be attached to the Final Act as Annexes 1 and 2 respectively.
35. The PRESIDENT said it was his understanding that that would be done.
36. The delegate from CANADA thanked the Mexican delegation for the spirit of compromise it had shown.
37. The delegate from PAKISTAN congratulated the President and the Chairperson of the Committee of the Whole on their able handling of the work of the Conference. He also offered condolences to the families and victims affected by the terrorist attack in London, yet another reminder of the threat of terrorism and the need for concerted international action to combat it.
38. Pakistan's commitment to the campaign against terrorism in all its forms was unswerving. Terrorism using nuclear weapons and nuclear material was the ultimate nightmare scenario and his country therefore fully supported the strengthening of the regime for the physical protection of nuclear material and facilities.
39. All States had the right to develop and apply nuclear energy for peaceful purposes and to benefit from peaceful nuclear applications. Measures had to be taken to prevent the wrong use of nuclear technology in order to promote confidence in international cooperation and greater access to such technology for legitimate ends. As a party to the CPPNM, his country had already put in place legislative and administrative arrangements and multi-layered structures to ensure the safety and security of nuclear and radioactive material and sources. Strengthening the physical protection regime was a step in the right direction.
40. His country had been an active participant in the CPPNM amendment process and had shown flexibility on a number of issues in the interests of bringing that process to a successful conclusion. It had joined the consensus on the understanding that: the responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rested entirely with that State; strengthening the physical protection regime would

prevent and deter wrong use of nuclear technology, while facilitating and promoting greater international cooperation in the area of the peaceful uses of nuclear energy without undue restrictions; certain exclusions from the scope of application of the Convention did not imply immunity from other relevant provisions of international law, including international humanitarian law, and, in cases not involving armed conflict or situations not covered by international humanitarian law, the Convention would be fully applicable and no immunity would be permitted; and none of the provisions of the CPPNM could be interpreted as condoning otherwise unlawful acts or as precluding prosecution under other laws.

41. With regard to the preamble, Pakistan fully shared some delegations' concerns regarding Article 2.4(b). Certain formulations proposed in that connection had not addressed those concerns directly or explicitly, touched upon issues already amply reflected elsewhere in the Basic Proposal and were thus repetitive, and had no bearing on the goal of achieving an effective physical protection regime. Any physical protection regime was only truly effective when it prevented all attacks on nuclear material and facilities, regardless of the nature of the attack or the perpetrator. Accordingly, the amended Convention should be interpreted and applied in a manner that was fully consistent with the purposes and objectives of the United Nations Charter and international law, including international humanitarian law.

42. The delegate from the UNITED KINGDOM thanked all those who had offered condolences in connection with the terrorist bombings in London. That sympathy and solidarity was of great comfort to the people of the United Kingdom.

43. Speaking on behalf of the members of the European Union and Euratom, the acceding countries Bulgaria and Romania, the candidate countries Croatia and Turkey, the EFTA country Norway, and Ukraine, he said that the preceding day's events in London had underlined once more the grave threat posed by terrorism, and how people with malevolent intent were still trying to cause death and destruction. The work of the Conference was extremely relevant to that problem.

44. After long negotiations, consensus had been reached on substantial amendments to the CPPNM, extending its scope to include domestic transport, storage and use of nuclear material, and nuclear facilities. The amended Convention would meet the obligations pursuant to Security Council resolution 1540 and the objectives of the European security strategy and the European strategy against the spread of weapons of mass destruction.

45. European Union Member States had long spearheaded the ongoing efforts to strengthen the CPPNM and were grateful to Austria for its initiative in facilitating the consensus that had led to the holding of the Conference. They were also grateful to the People's Republic of China for its revision of the Austrian proposal that had facilitated the positive outcome of the Conference, and to all States Parties for the constructive and cooperative spirit they had shown. The European Union would like to place on record its thanks to the President of the Conference, the Chairperson of the Committee of the Whole, the Chairperson and members of the Drafting Committee, all officers of the Conference and the Secretariat.

46. Despite the positive outcome of the Conference, much work lay ahead. European Union Member States and Euratom would immediately start working on the ratification, acceptance or approval of the Amendment and urged all States Parties to do likewise. They also urged all States not party to the Convention to accede to it as soon as possible.

47. The PRESIDENT said that in his country, Switzerland, people had learned to live by consensus on important issues when it was in the general interest. He was pleased to see that the same spirit had prevailed at the Conference.

48. The delegate from the REPUBLIC OF MOLDOVA associated himself with the final statements made by other delegations.

49. The delegate from ALGERIA thanked the President for his able handling of the Conference's work and the Chairpersons of the Drafting Committee and the Committee of the Whole for their patience, which had contributed to the success of the Conference. She also thanked China for its highly constructive proposal, and all other delegations that had worked to improve the physical protection of nuclear material, especially nuclear facilities, in order to protect the use of nuclear energy for peaceful purposes and thus accelerate social and economic development.
50. The delegate from AZERBAIJAN offered his country's sincere condolences to the people of the United Kingdom and the families of those killed in the terrorist attacks in London. His country supported the international community's efforts to combat terrorism in all its manifestations, especially involving the use of nuclear material. It welcomed the consensus reached on the Amendment to the CPPNM, which was an important instrument in that fight.
51. The delegate from the REPUBLIC OF KOREA welcomed the consensus achieved on the landmark Amendment, which was a vital step forward in the efforts to strengthen the international regime for enhancing physical protection of nuclear material and combating terrorism. It would certainly contribute significantly to achieving and maintaining worldwide effective protection of nuclear material and facilities and preventing related crimes. Physical protection of nuclear material and facilities was a core issue in fighting terrorism. Success in achieving the Convention's objectives would depend on wider accession to it and its thorough implementation. His country encouraged all States Parties to expedite their internal processes for the early entry into force of the amendments and urged States not yet party to the Convention to accede to it as soon as possible. It welcomed the decision of Egypt to accede to the CPPNM.
52. His country had 20 nuclear power plants in operation and the sixth largest civilian nuclear power industry in the world. It was therefore aware of the importance of physical protection and was ready to implement the amended Convention. In May 2003 it had enacted legislation on physical protection and radiological emergencies which contained measures to strengthen such protection, as well as punishment for related crimes. The Republic of Korea was a party to all 12 anti-terrorism conventions and looked forward to participating in efforts to strengthen international mechanisms for fighting terrorism.
53. In conclusion, he thanked the President, the Chairperson of the Committee of the Whole, the Chairperson of the Drafting Committee and the Secretariat for their excellent work, as well as all delegations, especially China and Mexico, for their very worthwhile contributions.
54. The delegate from COLOMBIA commended the President of the Conference and the Chairperson of the Committee of the Whole on their successful efforts and offered condolences to the people of the United Kingdom.
55. Her country considered it important to strengthen legal mechanisms for the physical protection of nuclear material and was committed to the fight against all forms of terrorism. It had expressed doubts about the inclusion of military aspects in a Convention that applied to peacetime activities, which was why it had favoured the Chinese proposal and had supported the amendments proposed by Mexico. Her delegation had therefore been opposed to the inclusion of Article 2.4(b) and interpreted the amended text in the sense of Article 2.4(c), i.e. in the sense of the Chinese proposal.
56. The delegate from CHINA expressed condemnation for the terrorist acts in London and offered condolences to the victims' families.
57. China had participated actively in the amendment process and appreciated the efforts of all parties to achieve consensus and their constructive attitude. His delegation also appreciated the support its proposal had received from



all sides in the conviction that it would strengthen the physical protection of nuclear material and facilities and make a significant contribution to the fight against terrorism.

58. In conclusion, he thanked the President, the Chairpersons of the Committee of the Whole and the Drafting Committee and the Secretariat for their hard work, and the Austrian Government for its contribution to the success of the Conference.

59. The delegate from SERBIA AND MONTENEGRO expressed condemnation for the terrorist attacks in London and offered his country's condolences to the United Kingdom. Those attacks were yet another reason to strengthen efforts to fight terrorism. His delegation also associated itself with the statement made by the United Kingdom on behalf of the European Union.

60. The delegate from JAPAN joined his Prime Minister in condemning the savage act of terrorism that had been perpetrated in London and offered condolences to the Government of the United Kingdom, the victims and their families. He also associated himself with other speakers in their expressions of renewed determination to fight terrorism.

61. The consensus on the Amendment was a step in the right direction. He thanked the President, the Chairpersons and other officers, the delegation of China and the Austrian Government for their valuable contributions, and all other participants for the spirit of cooperation they had shown. Japan would accelerate the ratification process and encouraged other countries to do likewise. His country would also cooperate with the Secretariat's activities which were important for the process of ratification not only of the amended CPPNM but also of other anti-terrorism conventions.

62. The delegate from NEW ZEALAND joined previous speakers in their expressions of sympathy on the London bombings. Those attacks reinforced the relevance of the task undertaken by the Conference.

63. He commended the Mexican delegation on its flexibility and the constructive approach shown by other delegations.

64. The CPPNM was an important part of the international regime to combat terrorism. The aim of the Amendment was to ensure its full effectiveness in covering the kind of terrorist threats that had become more evident since the original Convention had entered into force.

65. The delegate from INDONESIA said that acts such as the terrorist attacks in London, which his country condemned, could be prevented only through concerted action by democratic and civilized countries. His delegation supported the Amendment and was ready to sign the Final Act.

66. The delegate from the PHILIPPINES, having expressed sympathy for the victims of the terrorist attacks in London, said it was gratifying that the Amendment had been adopted by consensus, which his country was happy to join in order to make the world a more secure and safe place.

67. The delegate from KUWAIT, after thanking the President, the other officers and the Secretariat for the part they had played in making the Conference a success, said that his country condemned all acts of terrorism. He extended his sympathy to the victims of the terrorist attacks in London and their families, and to the Egyptian Ambassador to Iraq and his family.

68. The PRESIDENT, noting that the third line of paragraph 10 of the draft Final Act would be amended to read "by consensus and will be circulated" pursuant to the decision just taken, invited the Conference to adopt the Final Act which would be ready for signature later that day.

69. The Final Act was adopted.

**The meeting rose at 11.35 a.m.**

# **SUMMARY RECORD OF THE THIRD PLENARY MEETING OF THE CONFERENCE TO CONSIDER AND ADOPT PROPOSED AMENDMENTS TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL**

Held at the Austria Center Vienna on Friday, 8 July 2005 at 4.10 p.m.

President: Mr. BAER (Switzerland)

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<sup>1</sup> CPPNM/AC/1

**Abbreviations used in this record:**

CPPNM	Convention on the Physical Protection of Nuclear Material
NPT Review Conference	Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

## **11. Adoption and signature of the Final Act (continued)**

1. The delegate from AUSTRIA joined those who had expressed their outrage at the terrorist attacks in London. On behalf of the Austrian Government, he offered deepest condolences to the victims of those terrible crimes and their families. Nevertheless, delegates had reason to be proud of their great achievement during the preceding week, whose relevance came into ever clearer focus in the light of terrorism.
2. He thanked delegates for their kind words regarding the contribution Austria had made to that process and paid tribute to the late Fritz Schmidt who had played a pivotal role. However, success had only been possible thanks to the exemplary cooperative spirit shown throughout the consultation and preparation process and that success was therefore truly collective, proving that multilateralism could effectively address important issues of concern.
3. The PRESIDENT said that diplomatic conferences were never routine meetings. They were also not very common, at least in the Agency. A diplomatic conference also involved an unusual transfer of knowledge because a group of legal and technical experts worked long and hard to agree on the text of a document and then had to hand it over to diplomats for their approval.
4. He congratulated the Conference on its remarkably positive attitude and on the genuine efforts made to understand the positions of others and the reasons for them. Efforts had been made by all to find ways around problems and persistence had been shown by many in looking for potential answers when the original ones did not work, all in a spirit of cooperation drawing on the ability and expertise of the delegates. The discussions had not been bilateral but had been a collective effort aimed at reaching consensus. Delegates had earned the success of the Conference and had made his task much easier. They could now report that success to those in their capitals who had also made an effort, but the key players had been those who had attended the Conference. There had been some difficult negotiations so that, at times, many had despaired of ever reaching consensus and yet, because they had never lost courage or taken no for an answer, all had ended up as winners.
5. In the broader context of non-proliferation, the view had been expressed that the amendment of the CPPNM had been the first positive sign since the discouraging NPT Review Conference in New York. Delegates should be proud of that proof that progress was still being made, though more slowly than many might wish.
6. The task was not finished because, to be effective, the Amendment had to be ratified. He reminded delegates to encourage their Governments to ratify it as soon as possible. The London bombings on the preceding day had provided more effective arguments for fast ratification than any could have imagined.
7. He thanked all delegates for their numerous contributions, the interpreters, précis-writers, technicians, support staff, secretaries, translators and others who had sometimes worked late into the night, and the security guards. He gave special thanks to Conference Services and drew attention to the various Agency and United Nations staff who had been involved in the running of the meeting.
8. The Conference could not have happened without the work of many States Parties and delegates over many years. However, special thanks were due to Austria for providing the Austria Center facilities, for the reception hosted by the Austrian Secretary General for Foreign Affairs, and because Austria had initiated the work of the group of 25 like-minded States Parties that had submitted the Basic Proposal. The individual who had proposed that initiative was particularly worthy of praise. He also thanked the many States that had taken the trouble to send a delegation to the Conference.
9. Next he thanked all the officers of the Conference, in particular Mr. McIntosh, the Chairperson of the Committee of the Whole, Mr. Amégan, the Chairperson of the Drafting Committee, and Mr. Gil, the Vice-Chairperson of the Committee of the Whole, who had led a group to find a solution to the problem posed by the

security of some radioactive sources. Members of the IAEA Office of Legal Affairs had been invaluable, not only in resolving legal and legalistic questions, but also as colleagues whose help could be relied upon.

10. Finally, he thanked all heads of delegations, deputy heads of delegations, alternates, delegates, senior advisers, advisers, counsellors, deputy counsellors and members of delegations. The positive attitude of all had made his work and that of the chairpersons of the committees much easier and more pleasant than it would have been otherwise.

11. The PRESIDENT invited a representative from each of the States Parties present to come up to the podium and sign the Final Act.

**The Final Act was signed by 82 representatives.**

## **12. Closing of the Conference**

12. The PRESIDENT declared the Conference to Consider and Adopt Proposed Amendments to the Convention on the Physical Protection of Nuclear Material closed.

**The meeting rose at 5.05 p.m.**

**SUMMARY RECORD OF THE FIRST BUREAU MEETING OF  
THE CONFERENCE TO CONSIDER AND ADOPT PROPOSED  
AMENDMENTS TO THE CONVENTION ON THE PHYSICAL  
PROTECTION OF NUCLEAR MATERIAL**

Held at the Austria Center Vienna on Thursday, 7 July 2005 at 10.10 a.m.

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**– Examination of delegates’ credentials**

1. The CHAIRMAN, recalling Rules 3, 4, and 5 of the Rules of Procedure (CPPNM/AC/L.3), called on the Secretary General of the Conference to introduce his draft report to the Bureau of the Conference.
2. The SECRETARY GENERAL OF THE CONFERENCE said that he had examined the credentials of delegates in accordance with Rule 4 of the Rules of Procedure and that the draft report showed that the Conference had been attended by 89 delegations, 69 of which had presented formal credentials that satisfied the requirements of Rule 3 of the Rules of Procedure. Various official communications which did not constitute formal credentials under Rule 3 of the Rules of Procedure had been received by the Director General: copies of original credentials had been received for the delegates of a further 10 States, while other official communications emanating from Ministries of Foreign Affairs, Permanent Missions or other authorities had been received for the delegates of 9 States as well as the European Atomic Energy Community (Euratom).
3. The CHAIRMAN asked members to consider and accept the draft report of the Secretary General. Since there were no comments, he suggested that the Bureau submit to the Conference a draft report of the Bureau stating that it had met to examine the credentials of the delegates, as provided for in Rules 3, 4, 5, 15.1 and 15.5 of the Rules of Procedure. The draft report contained a list of Member States whose delegates had, in the Bureau’s opinion, submitted credentials satisfying the requirements of Rule 3 of the Rules of Procedure, and another list indicating the Member States for whose delegates the Director General had received communications that did not comply with that Rule. In accordance with standard practice, the draft report indicated that the Bureau considered that delegates in the latter category should nevertheless be allowed to participate provisionally in the work of the Conference, on the understanding that credentials in due form would be submitted for each of them as soon as possible. He took it that the Bureau wished to submit the draft as its report to the Conference.
4. It was so decided.

**The meeting rose at 10.25 a.m.**



# **SUMMARY RECORD OF THE FIRST MEETING OF THE COMMITTEE OF THE WHOLE OF THE CONFERENCE TO CONSIDER AND ADOPT PROPOSED AMENDMENTS TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL**

Held at the Austria Center Vienna on Monday, 4 July 2005 at 3.20 p.m.

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<sup>1</sup> CPPNM/AC/1

**Abbreviations used in this record:**

CPPNM                      Convention on the Physical Protection of Nuclear Material

## **8. Consideration of proposed amendments to the Convention on the Physical Protection of Nuclear Material**

1. The CHAIRPERSON, having expressed appreciation of the confidence which the Diplomatic Conference had placed in him, invited the Committee to consider document CPPNM/AC/L.1/1/Rev.1 — the Basic Proposal (Revised).

Paragraph 1 (amended title)

2. The CHAIRPERSON, noting that there were no comments, said that the title would be referred as it stood to the Drafting Committee.

Paragraph 2 (amended Preamble)

3. The CHAIRPERSON, noting that in document CPPNM/AC/L.6 Mexico had proposed two new preambular paragraphs and changes to Article 2.4, suggested that discussion of the paragraph be postponed until Article 2.4 was discussed.

Paragraph 3 (addition of two new definitions to Article 1)

4. The representative of ROMANIA suggested that the definition of “nuclear facility” appear immediately below the definition of “uranium enriched in the isotope 235 or 233”.

5. The representative of the RUSSIAN FEDERATION said that he had no objection to the suggestion but wondered whether consequential changes would need to be made elsewhere in the text. He suggested that the Drafting Committee be requested to look into the matter.

6. The representative of LUXEMBOURG, referring to the definition of “nuclear facility”, said that the French translation of “significant amounts” should be “quantités significatives” rather than “quantités importantes”.

7. The representative of ALGERIA said that her delegation would like the definition of “nuclear facility” to be the same as that used in Agency safeguards agreements.

8. The CHAIRPERSON suggested that the proposed subparagraph (e), with a definition of “nuclear facility”, be taken up again later, when the issue raised by Algeria had been resolved.

9. He would refer the proposed subparagraph (d), with a definition of “sabotage”, and the Romanian suggestion regarding the order of the definitions to the Drafting Committee.

Paragraph 4 (Article 1 A)

10. The representative of ROMANIA suggested deleting the words “used for peaceful purposes” after “nuclear material” as they appeared after “nuclear facilities”.

11. The CHAIRPERSON said that he would refer Article 1 A to the Drafting Committee together with a note regarding the Romanian suggestion.

Paragraph 5 (amended Article 2)

Article 2.1

12. The representative of ROMANIA noted that the words “used for peaceful purposes” appeared twice there also.
13. The representative of GERMANY, supported by the representatives of ISRAEL and INDIA, said that he would prefer Article 2.1 — and Article 1.A — to be left unchanged. Although there was some redundancy, he believed that the present wording provided a necessary degree of precision.
14. The representative of SPAIN said that in the Spanish version the translation of the words “used for peaceful purposes” appeared only once.
15. The CHAIRPERSON said that he would refer Article 2.1 to the Drafting Committee together with a note regarding the comments made on it.

#### Article 2.2

16. The CHAIRPERSON, noting that there were no comments, said that Article 2.2 would be referred as it stood to the Drafting Committee.

#### Article 2.3

17. The CHAIRPERSON, noting that there were no comments, said that Article 2.3 would be referred as it stood to the Drafting Committee.

#### Article 2.4

18. The representative of CHINA thanked those delegations which had expressed support for subparagraph (c), which had been proposed by his country. He requested that a footnote be added to the text of the Basic Proposal (Revised) indicating that the proposal had been made by China.
19. The representative of the RUSSIAN FEDERATION expressed strong support for the Basic Proposal (Revised) and thanked the delegation of China for proposing subparagraph (c).
20. The representative of LUXEMBOURG said that his delegation was grateful to the delegation of China for its proposal but did not believe that the requested footnote was necessary as the proposal had been incorporated into the Basic Proposal (Revised).
21. The representative of FRANCE said that he too did not believe that the requested footnote was necessary.
22. The CHAIRPERSON pointed out that the text submitted to the Plenary would be from the Committee of the Whole, with no names of countries indicated. Any matters on which agreement was not reached in the Committee would be covered in the Chairperson’s report.
23. As Mexico had submitted a proposal regarding Article 2.4, and a proposal from Argentina was expected, further discussion of Article 2.4 would be deferred.

#### Article 2.5

24. The CHAIRPERSON said that, as a proposal from Argentina regarding Article 2.5 was also expected, the discussion of that article would be deferred.

Article 2.6

25. The CHAIRPERSON, noting that there were no comments, said that Article 2.6 would be referred as it stood to the Drafting Committee.

Paragraph 6 (Article 2 A)

Article 2 A.1

26. The CHAIRPERSON, noting that there were no comments, said that Article 2 A.1 would be referred as it stood to the Drafting Committee.

Article 2 A.2

27. The CHAIRPERSON, noting that there were no comments, said that Article 2 A.2 would be referred as it stood to the Drafting Committee.

Article 2 A.3

28. The representative of ARGENTINA said that her delegation would be submitting a proposal regarding Article 2 A.3.

29. The CHAIRPERSON said that the discussion of Article 2 A.3 would be deferred.

30. The representative of JAPAN said that his delegation would like the Fundamental Principles to be removed from Article 2 A.3 and placed in an annex to the amended CPPNM.

31. The CHAIRPERSON said that in the Group of Experts it had been agreed, after considerable discussion, that the Fundamental Principles should appear in the main body of the amended CPPNM.

32. The representative of JAPAN said that his delegation would not press the point.

Article 2 A.4

33. The CHAIRPERSON, noting that there were no comments, said that Article 2 A.4 would be referred as it stood to the Drafting Committee.

Paragraph 7 (new Article 5)

34. The CHAIRPERSON, noting that there were no comments, said that paragraphs 1–5 of Article 5 would be referred as they stood to the Drafting Committee.

Paragraph 8 (new Article 6)

35. The CHAIRPERSON, noting that there were no comments, said that paragraphs 1 and 2 of Article 6 would be referred as they stood to the Drafting Committee.

36. Paragraph 9 (paragraph 1 of Article 7)

37. The CHAIRPERSON drew attention to a proposal submitted by Japan in document CPPNM/AC/L.7 and to a proposal submitted by Norway, Colombia, Finland, Greece, Iceland, Ireland, Italy, Mexico, New Zealand, Slovenia, Sweden, Switzerland and Peru in document CPPNM/AC/L.9.
38. The representative of JAPAN, introducing the proposal submitted by his delegation, said that its purpose was to ensure that the amended CPPNM could not be criticized for being laxer than other terrorism-related conventions as regards accomplice provisions. Adoption of the proposal would result in greater consistency with those conventions.
39. The representatives of CANADA, ALGERIA, NEW ZEALAND, the UNITED STATES OF AMERICA, INDIA and BELGIUM expressed support for the proposal submitted by the delegation of Japan.
40. The representative of PAKISTAN said that his delegation would have liked to support the proposal submitted by Japan. However, it could not go along with the idea that the mere existence of a provision in other terrorism-related conventions justified its inclusion in the text under consideration.
41. The issue would have to be considered further during the examination of other articles, at which time his delegation would explain its position in greater detail.
42. The representatives of GERMANY, LUXEMBOURG and BULGARIA expressed support for the proposal submitted by the delegation of Japan.
43. The representative of the REPUBLIC OF KOREA said that his delegation would like to have more time in order to consider the implications of the proposal in the light of his country's legislation, under which attempts to commit certain crimes were not treated in the same way as the actual commission of those crimes.
44. The representatives of PERU, GREECE and the PHILIPPINES expressed support for the proposal submitted by the delegation of Japan.
45. The representative of ITALY, expressing support for the proposal, said his delegation wondered how countries which had difficulties with that proposal could accept provisions of the kind in question in other terrorism-related conventions.
46. The representatives of SPAIN, PORTUGAL and PARAGUAY expressed support for the proposal submitted by the delegation of Japan.
47. The CHAIRPERSON said that strong support had been expressed for the Japanese proposal. However, given the request for more time made by the representative of the Republic of Korea, the Committee of the Whole would postpone further consideration of the proposal.
48. In response to the statement made by the representative of Pakistan, he said that there was no automatic link between the CPPNM and other terrorism-related conventions — each proposal would be considered on its own merits.
49. The representative of NORWAY, introducing the proposal submitted in document CPPNM/AC/L.9 for the insertion of “or to the environment” after “property” in subparagraphs (a) and (e) of Article 7.1 and for the insertion of “or substantial damage to the environment” after “substantial property damage” in subparagraph (g)(i) of Article 7.1, pointed out that there was a reference to “the environment” in paragraph (3) of the proposed preamble and in the proposed definition of “sabotage”.



50. The representative of JAPAN said that his country fully appreciated the importance of environmental protection and the need to prevent terrorism directed against the environment, and it had proactively addressed environmental crimes by adopting laws which criminalized acts resulting in environmental damage.
51. However, the concept of “environmental damage” was vague as a constituent element of a criminal offence compared with death, injuries to persons and damage to property. Accordingly, the Japanese delegation was ready to join a consensus in favour of the proposal submitted in document CPPNM/AC/L.9 on the following understanding — in view of the vagueness of the concept of “environmental damage” as a constituent element of a criminal offence, each State should be allowed to make a national interpretation of the concept in the criminalization of acts damaging the environment.
52. In that context, it was his delegation’s understanding that the causing of substantial damage to the environment would be made an offence only if it involved serious injuries to persons or damage to property.
53. The representative of NEW ZEALAND, noting that his delegation was one of the sponsors of the proposal submitted in document CPPNM/AC/L.9, said that the mere fact that language similar to that proposed in that document appeared in other terrorism-related conventions did not justify its inclusion in the text now under consideration. However, the language reflected an important reality — that acts of terrorism could be directed against the environment as well as against persons and property. New Zealand’s domestic law implementing United Nations Security Council resolution 1373 contained language relating to acts that could cause environmental damage affecting the community as whole.
54. With regard to the statement just made by the representative of Japan, it should perhaps be borne in mind that with damage to the environment there would not always be a proprietorial interest, but communal property might well be adversely affected.
55. The representative of URUGUAY, having said that his delegation was not entirely in agreement with the statement made by the representative of Japan, expressed support for the proposal submitted in document CPPNM/AC/L.9.
56. The representative of CANADA, expressing support for the proposal, said that it was in line with a welcome trend towards taking the possibility of terrorist acts directed against the environment more and more seriously.
57. The representative of NORWAY said that the sponsors of the proposal believed that externalities and common goods should not be left unprotected in the amended CPPNM. It was now possible to quantify, with the help of selected indicators, damage to the environment and devise related national and international legislation with reasonable implementation mechanisms.
58. With regard to the proposed wording of Article 7.1(e), it would be for each State Party to judge whether the act in question was in conformity with its national law.
59. The representative of LUXEMBOURG said that someone who — for example — deliberately introduced radioactive material into a river would be committing an act of sabotage and that it would be illogical if that person were not liable to punishment for that act.
60. Also, it should be borne in mind that the Vienna Convention on Civil Liability for Nuclear Damage (the Vienna Convention), the Paris Convention on Third Party Liability in the Field of Nuclear Energy (the Paris Convention) and the Convention Supplementary to the Paris Convention (the Brussels Supplementary Convention) all contained provisions relating to environmental damage.

61. The representative of COLOMBIA, noting that her delegation was one of the sponsors of the proposal submitted in document CPPNM/AC/L.9, said that there were situations where environmental damage could far exceed damage to property.
62. The representatives of BRAZIL, GUATEMALA, AZERBAIJAN, CHILE, ROMANIA, ALGERIA, PAKISTAN, ECUADOR, MOZAMBIQUE, AUSTRIA, PARAGUAY, the KENYA and LATVIA expressed support for the proposal submitted in document CPPNM/AC/L.9.
63. The representative of GERMANY said that “environmental damage” was a rather vague concept, especially in the area of criminal law. His country’s understanding of “environmental protection” was based on the notion of protection of water, soil, air and biodiversity; property damage was covered by different areas of law. With that understanding, his delegation could support the proposal submitted in document CPPNM/AC/L.9.
64. The representative of PERU, noting that his delegation was one of the sponsors of the proposal, welcomed the support expressed for it and said that the proposed additions had been included in a forerunner document to the Basic Proposal but then omitted for some reason from later documents.
65. The representative of the REPUBLIC OF KOREA, expressing support for the proposal, said that environmental damage arising out of a terrorist act directed against nuclear material or nuclear facilities could be disastrous. That fact had been taken into account in his country’s legislation relating to the physical protection of nuclear material and nuclear facilities and to radiological emergencies, under which an act directed against a nuclear facility where the offender knew that damage to the environment would probably ensue was punishable.
66. The CHAIRPERSON said that he took it that there was unanimous support for the proposal, which would be reflected in Article 7 as sent to the Drafting Committee. He asked whether there were any further comments on Article 7.1.
67. The representative of CHILE said that the phrase in subparagraph (e) “unless the act is undertaken in conformity with national law of the State Party in whose territory the nuclear facility is situated” seemed to imply that acts causing death, serious injury or substantial damage could be permitted by law.
68. The representative of the RUSSIAN FEDERATION, supported by the representative of LUXEMBOURG, said that, in view of the prolonged discussions in the Group of Experts, the text of subparagraph (e) should be referred to the Drafting Committee without any substantive changes.
69. The representative of PERU, supported by the representative of COLOMBIA, said that the phrase referred to by the representative of Chile related to circumstances where — for example — the forces of law and order of a State Party intervened in order to stop an attack on a nuclear facility.
70. The representative of CHILE agreed with the explanation given by the representative of Peru.
71. The representative of ARGENTINA, supported by the representative of INDIA, said that perhaps the Drafting Committee could find clearer wording.
72. The representative of BELGIUM, having noted that not all delegations were represented in the Drafting Committee, said that it would be difficult to improve the wording of subparagraph (e) without changing the substance. He would not like to give a free hand to the Drafting Committee.
73. The representative of the UNITED STATES said it was his delegation’s understanding that the Drafting Committee could not make substantive changes.

74. The purpose of the phrase under consideration was to make it clear that, when — say — a State's emergency response forces intervened in order to stop an attack on a nuclear facility and something went wrong, they could not be accused of having committed a punishable offence under that State's national law.

75. The representative of FRANCE expressed support for what the representative of the United States had said about the purpose of the phrase under consideration.

76. The representative of the RUSSIAN FEDERATION, having expressed support for the statements made by the representatives of Belgium and the United States, said that in his delegation's view the present wording was sufficiently clear. His delegation could go along with the present wording being referred to the Drafting Committee for possible editorial improvement, but not for the making of substantive changes.

77. The CHAIRPERSON said that there appeared to be no disagreement with the substance of subparagraph (e), which he would forward to the Drafting Committee with a note indicating that the wording had been the subject of lengthy negotiations and the Drafting Committee should make editorial changes only if there was a very good reason for making them.

78. The representative of PAKISTAN suggested that the phrase "shall be made a punishable offence by each State Party under its national law" be moved to the chapeau of Article 7.1, with appropriate editorial adjustments.

79. The CHAIRPERSON said that the suggestion was an appropriate one for consideration by the Drafting Committee.

80. Noting that there were no further comments on Article 7.1, he said that the text in the Basic Proposal (Revised) as amended by the proposal submitted by Norway and 12 other countries in document CPPNM/AC/L.9 would go forward to the Drafting Committee and that the Committee of the Whole would resume consideration of the proposal submitted by the Japan in document CPPNM/AC/L.7 later.

Articles 11(bis) and 11(ter) (proposal submitted by Canada in document CPPNM/AC/L.5)

81. The representative of CANADA asked whether it would be an appropriate time for her to introduce the proposal.

82. The CHAIRPERSON said that it would.

83. The representative of CANADA, summarizing the thinking behind the proposal, said that the proposed wording for Articles 11(bis) and 11(ter) was already contained in the International Convention for the Suppression of Terrorist Bombings the International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism.

84. The representatives of JAPAN, TURKEY, ALGERIA, SPAIN, COLOMBIA, POLAND, GERMANY, BRAZIL, MEXICO, SWITZERLAND, NORWAY, SWEDEN, GREECE, NAMIBIA, PORTUGAL, ECUADOR, and CHILE, expressed support for the Canadian proposal.

85. The representative of CHINA, expressing support for the Canadian proposal, said that his delegation had made a similar proposal in the Group of Experts.

86. The representative of the RUSSIAN FEDERATION, supported by the representative of NEW ZEALAND, welcomed the Canadian proposal and said that it was important to prevent the creation of safe havens for terrorists.

87. The representative of INDIA, expressing support for the Canadian proposal, said that those who intentionally committed the acts enumerated in Article 7 should not be regarded as committing political offences.
88. The representative of AUSTRIA, expressing support for the Canadian proposal, said that his delegation considered Articles 11(bis) and (ter) to be a package which would bring the CPPNM into line with recent thinking.
89. The representatives of URUGUAY, BURKINA FASO and PERU expressed support for the Canadian proposal.
90. The representative of the REPUBLIC OF KOREA, expressing support for the Canadian proposal, said that his country's national legislation contained provisions similar to those contained in Articles 11(bis) and (ter).
91. The representative of the UNITED STATES, expressing support for the Canadian proposal, said that it would make the extradition provisions in the amended CPPNM consistent with those in other anti-terrorism conventions.
92. The representative of PAKISTAN, expressing support for the Canadian proposal, said that he wished to see relevant points of principle and logic from other anti-terrorism conventions reflected in the amended CPPNM — a position which he would explain during the discussion of Article 2.4.
93. The representative of IRELAND and FINLAND expressed support for the Canadian proposal.
94. The representative of FRANCE said that Article 11(bis) could give rise to constitutional issues in France. In view of the broad support expressed for the Canadian proposal, however, his delegation would not oppose its adoption by consensus.
95. The CHAIRPERSON, having thanked the French delegation for its constructive attitude, said that the proposed Articles 11(bis) and 11(ter) would be referred to the Drafting Committee.

Paragraph 10 (Article 13A)

96. The CHAIRPERSON, noting that there were no comments, said that Article 13A would be referred as it stood to the Drafting Committee.

Paragraph 11 (new Article 14.3)

97. The CHAIRPERSON, noting that there were no comments, said that the new Article 14.3 would be referred as it stood to the Drafting Committee.

Document CPPNM/AC/L.8 (proposal submitted by Paraguay)

98. The representative of PARAGUAY, introducing his delegation's proposal that the word "radiological" be inserted before "material and facilities" in all relevant parts of the amended CPPNM, said that in his delegation's view it was important that all radioactive material and associated facilities be covered by it.
99. The representative of BELGIUM said that in his view the Paraguayan proposal would fundamentally change the nature of the amended CPPNM and that he would have to seek instructions from his capital before entering into negotiations on it.
100. The CHAIRPERSON said that in his view the proposal was a radical one and that a decision on it should not be rushed into.

101. The representative of the UNITED KINGDOM, expressing support for the statement made by the representative of Belgium, said that the proposal was very far-reaching and that a great deal of time would have to be spent on considering its implications.
102. The representative of ALGERIA, endorsing the opinions expressed by three previous speakers, said that the proposal of Paraguay went beyond the limits imposed upon delegations by their capitals regarding amendments to the CPPNM.
103. The representative of INDIA said that the proposal of Paraguay called for a major substantive change and could not be adopted at such a late stage in the lengthy process of amending the CPPNM.
104. The representative of ISRAEL said that the Paraguayan proposal introduced complex issues on which it would not be possible to reach agreement during a one-week meeting.
105. The representative of CHILE said that the Paraguayan proposal went beyond the scope of the envisaged amendments to the CPPNM and that the objectives of the Paraguayan delegation were met to a large extent in the Code of Conduct on the Safety and Security of Radioactive Sources.
106. The representative of the UNITED STATES said that the question of covering radioactive material and associated facilities in the amended CPPNM had been raised long ago, but it had been decided that the necessary changes would be too extensive.
107. The United States Nuclear Regulatory Commission would not relish having to comply with a convention that required it to organize physical protection for every radium source and dental surgery within the United States.
108. In his view, the Code of Conduct on the Safety and Security of Radioactive Sources and the Guidance on the Import and Export of Radioactive Sources were, for the moment, the proper instruments for protecting radioactive material.
109. The CHAIRPERSON said that question of according the same degree of protection to radioactive material as to nuclear material was clearly a major one.
110. The representative of LUXEMBOURG said that there were hundreds of thousands of radioactive sources in the world, being used in medicine, industry, research, agriculture and so on, and that most of them presented no terrorism-related risk as they were of very low activity. However, there were sources of high activity which could present such a risk. What was missing in the Paraguayan proposal was a differentiation between sources of low and high activity.
111. The representative of the RUSSIAN FEDERATION said that his delegation was sceptical about the Paraguayan proposal as it would radically change the nature of the amended CPPNM.

**The meeting rose at 6 p.m.**



# SUMMARY RECORD OF THE SECOND MEETING OF THE COMMITTEE OF THE WHOLE OF THE CONFERENCE TO CONSIDER AND ADOPT PROPOSED AMENDMENTS TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

Held at the Austria Center Vienna on Tuesday, 5 July 2005 at 10 a.m.

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<sup>1</sup> CPPNM/AC/1

**Abbreviations used in this record:**

CPPNM	Convention on the Physical Protection of Nuclear Material
G8	Group of Eight
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
Nuclear Terrorism Convention	International Convention for the Suppression of Acts of Nuclear Terrorism
Terrorist Bombings Convention	International Convention for the Suppression of Terrorist Bombings



## **8. Consideration of proposed amendments to the Convention on the Physical Protection of Nuclear Material (continued)**

### Consideration of proposal submitted by Paraguay (continued)

1. The CHAIRPERSON said that, while most radioactive sources did not present a terrorism-related risk, highly active ones were a matter for concern. The Agency's General Conference had endorsed the Code of Conduct on the Safety and Security of Radioactive Sources in 2003 and the accompanying Guidance on the Import and Export of Radioactive Sources in 2004, and the Agency had recently held — in Bordeaux — an International Conference on the Safety and Security of Radioactive Sources. Clearly, a great deal of attention was being paid to the security of radioactive sources.
2. The HEAD OF THE AGENCY'S OFFICE OF NUCLEAR SECURITY said that the Code of Conduct on the Safety and Security of Radioactive Sources provided detailed guidance on improving the safety and security of radioactive sources.
3. The Agency's Secretariat was endeavouring to improve the safety and security also of radioactive material not in sealed sources — for example, radioactive waste.
4. The Secretariat had adopted a graded approach in recognition of the fact that high-activity sources required a greater degree of security than low-activity ones. It based that approach to a large extent on an Agency technical document containing a categorization of radioactive sources. In another technical document, the Secretariat had issued — in June 2003 — interim guidance on the security of radioactive sources. That document was currently being revised in the light of comments received on it and of experience gained in the past two years. Some of the concerns that had prompted the Paraguayan proposal made in document CPPNM/AC/L.8 were being addressed by the Secretariat, although not pursuant to a legal obligation arising out of a convention.
5. The VICE-CHAIRPERSON said that, while the proposal made by Paraguay did not fall within the purview of the Diplomatic Conference, it reflected concerns shared by many States Parties to the CPPNM. He suggested that those concerns be noted in the summary records of the Conference.
6. The representative of PAKISTAN, supported by the representative of ARMENIA, said that Paraguay's proposal called for too substantive a change in the CPPNM.
7. The representative of PARAGUAY said that his delegation was withdrawing its proposal, since it had become clear that the Diplomatic Conference was not the right forum in which to discuss the underlying issues. He welcomed the Vice-Chairperson's suggestion that Paraguay's concerns be noted in the summary records of the Conference.
8. Paraguay stood ready to cooperate in the development of a legally binding instrument on the safety and security of radioactive sources.
9. The representatives of AZERBAIJAN, the PHILIPPINES and ARGENTINA said that their countries also stood ready to cooperate in the development of such an instrument.
10. The representative of ALGERIA recalled that the Board was due to take a decision soon on the question of small quantities protocols and that its decision would have a bearing on the concerns of Paraguay and other countries.

11. The representative of the RUSSIAN FEDERATION said that his delegation had misgivings about the suggestion that Paraguay's concerns be noted in the summary records of the Diplomatic Conference.

12. The CHAIRPERSON said that no doubt the findings of the International Conference on the Safety and Security of Radioactive Sources held in Bordeaux would be before the Agency's Board of Governors in September 2005 and that soon afterwards the Agency's General Conference would have before it a draft resolution dealing with — inter alia — the safety and security of radioactive sources. That being so, he considered it inappropriate that the Diplomatic Conference continue discussing the Paraguayan proposal.

13. The representative of FRANCE said that his Government, which attached great importance to the safety and security of radioactive sources, had hosted the aforementioned international conference held in Bordeaux and also the summit at which the G8 had — in Evian in June 2003 — adopted an action plan for securing radioactive sources.

14. His delegation welcomed the Vice-Chairperson's suggestion that Paraguay's concerns be noted in the summary records of the Diplomatic Conference and hoped that the question of a legally binding instrument on the safety and security of radioactive sources would be taken up in due course.

15. The representative of LUXEMBOURG said that there was a significant imbalance between the number of legal instruments relating to the protection of nuclear material and the number of legal instruments relating to the protection of radioactive material. Given that dirty bombs were more likely to be used by terrorists than nuclear weapons, it was incumbent on the Agency's Board of Governors and General Conference to do something about that imbalance.

16. The CHAIRPERSON took it that the Committee wished to adopt the Vice-Chairperson's suggestion that the concerns of Paraguay be noted in the records of the Conference.

#### Paragraph 12 (new Article 16)

17. The CHAIRPERSON said that the references to "the Protocol" in the proposed text were probably inappropriate and, noting that there were no comments, proposed that the text be referred to the Drafting Committee together with a note regarding those references.

#### Consideration of proposal submitted by Mexico

18. The representative of MEXICO, referring to document CPPNM/AC/L.6, said that her country was concerned about the exception provision in the proposed Article 2.4. Differing opinions had been expressed on the matter during the formulation of the Basic Proposal, and her delegation was grateful to the delegations of Austria and China for their constructive efforts to bring about a consensus.

19. The main purpose of the Mexican proposal was to emphasize that international humanitarian law did not permit attacks on nuclear facilities operated for peaceful purposes either during times of war or during times of peace.

20. Mexico proposed that the expression "inasmuch as" be replaced by "insofar as" in subparagraph (b) since it had two distinct meanings. The Spanish version of that subparagraph conveyed what her delegation considered to be the correct meaning. If subparagraph (b) remained as it now stood, Mexico would not object, but it would be guided by the Spanish version.

21. The CHAIRPERSON suggested that the question of the choice between "insofar as" and "inasmuch as" be referred to the Drafting Committee.

22. The representative of the UNITED STATES said that referring the question to the Drafting Committee would imply that the question was not one of substance. In his view, the replacement of “inasmuch as” by “insofar as” would be a substantive change.
23. Referring to Article 56 of Protocol 1 additional to the Geneva Conventions, he said that in his opinion the Mexican proposal did not accurately reflect international law as represented in international humanitarian law. During the lengthy negotiations on amending the CPPNM, serious concerns had been expressed about the potential for attacks on nuclear facilities. For many delegations to the present conference, however, the objective was to criminalize the sabotage of nuclear facilities rather than to explore whether the amended CPPNM should apply to the members of armed forces. Constructive attempts had been made to provide for recourse under international humanitarian law in the event of the commission of offences under international law by the members of armed forces, but some concerns remained. In that connection, subparagraph (c), proposed by China, was a very valuable contribution.
24. The CHAIRPERSON said that some English dictionaries defined “insofar as” and “inasmuch as” in an identical fashion.
25. The representative of the UNITED KINGDOM said that there was a substantive difference between the two expressions.
26. The representative of CANADA, supported by NEW ZEALAND, said that “inasmuch as” could mean either “to the extent that” or “since”, in the sense of “because”. However, the International Convention for the Suppression of Terrorist Bombings (the Terrorist Bombings Convention) and the International Convention for the Suppression of Acts of Nuclear Terrorism (the Nuclear Terrorism Convention) both used “inasmuch as” in the context in which it appeared in subparagraph (b). The expression “inasmuch as” should therefore be retained.
27. The representative of AUSTRIA said that the proposed Article 2.4 represented a compromise resulting from lengthy negotiations and was based on existing treaty language and that the amended CPPNM should apply in cases that were not covered elsewhere by international law.
28. His delegation, which hoped that the proposed Article 2.4 would remain unchanged, was grateful to China for proposing subparagraph (c).
29. The representative of FRANCE, supported by the representative of BELGIUM, endorsed the views expressed by the representatives of the United States and Austria and said that the present wording of the proposed Article 2.4 was the best that could be hoped for.
30. The representative of BRAZIL said that her delegation shared Mexico’s view that the creation of legal loopholes could undermine the effectiveness of the amended CPPNM and believed that the Mexican proposal would usefully complement the proposal made by China.
31. Her delegation was in favour of the inclusion of preambular references both to the Charter of the United Nations and to international humanitarian law, with any necessary corrections to the proposed paragraph 3(ter).
32. The CHAIRPERSON asked the representative of Mexico whether she was willing to go along with the retention of the expression “inasmuch as”.
33. The representative of MEXICO said that she was, on the understanding that, when the amendments to the CPPNM were formally adopted, Mexico would be given an opportunity to make a statement to the effect that it was approving the Spanish version of the text.

34. Several delegations shared her delegation's opinion regarding the expression "inasmuch as". Moreover, although the expression was used in the Terrorist Bombings Convention and the Nuclear Terrorism Convention, the amended CPPNM would cover scenarios which were rather different from the scenarios covered by those two conventions.
35. The representative of CUBA expressed strong support for the proposal submitted by Mexico, and particularly for the proposed addition of preambular paragraphs 3(bis) and 3(ter).
36. In his delegation's view, subparagraph (b) of the proposed Article 2.4 left room for the use or threat of the use of force against nuclear material and nuclear facilities being used for peaceful purposes — something that would constitute a grave violation of international law, including the Charter of the United Nations and the Agency's Statute.
37. Cuba welcomed subparagraph (c), proposed by China, since it reflected the position of principle to which Cuba adhered within the Non-Aligned Movement. However, it was not clear whether subparagraph (b) or subparagraph (c) would prevail under various circumstances. The only way to avoid ambiguity in the interpretation of the amended CPPNM and to ensure the protection of nuclear material and nuclear facilities being used for peaceful purposes was to ensure that the principle of their inviolability was respected.
38. Cuba interpreted subparagraph (c) as including a commitment by States to abstain from the use and threat of use of force against nuclear material and nuclear facilities in other States, and it considered Mexico's proposal to be a useful complement to that subparagraph.
39. The representative of ALGERIA, having welcomed the spirit of compromise displayed by the representative of Mexico with regard to the expression "inasmuch as", said that the proposed additional preambular paragraphs were important for ensuring the cohesiveness and universality of the amended CPPNM.
40. The representative of COLOMBIA, supported by the representatives of CHILE, URUGUAY and ECUADOR, said that her country would interpret subparagraph (b) on the basis of the Spanish version.
41. She called for the inclusion of the additional preambular paragraphs proposed by Mexico.
42. The representative of ARGENTINA expressed support for the inclusion of the proposed additional preambular paragraphs and for the proposed reordering of subparagraphs in Article 2.4.
43. The representative of PAKISTAN said that, in his country's view, the exception foreseen in subparagraph (b) ran counter to the objective of strengthening the regime for ensuring the security of nuclear material and nuclear facilities. All attacks on nuclear material and nuclear facilities, regardless of the nature of the attack and of the perpetrator, should be prevented.
44. Welcoming subparagraph (c), he said that it reflected the principle that acts prohibited under the amended CPPNM were unlawful and would remain so, irrespective of the perpetrator, and the principle that in cases of armed conflict and in situations not governed by international humanitarian law the amended CPPNM would be fully applicable, without any prospect of immunity.
45. It was important to bear in mind that the military exclusion provision in other counter-terrorism instruments was accompanied by a provision on the protection of States' sovereignty and territorial integrity, and he saw no reason why the military exclusion provision in Article 2.4 should not be prefaced by something similar to Article 18 of the Terrorist Bombings Convention — for example, preambular paragraph 3(bis) proposed by Mexico.

46. The representative of CANADA, having thanked the Mexican delegation for its flexibility regarding the expression “inasmuch as”, expressed support for subparagraph (c), proposed by China, which elegantly captured an important principle.

47. As regards the two preambular paragraphs proposed by Mexico, paragraph 3(bis) quoted a principle set forth in the Charter of the United Nations. Was there any need to quote that principle in the Preamble to the amended CPPNM and, if so, should other principles set forth in the Charter not also be quoted?

48. Paragraph 3(ter) referred to “international humanitarian law” and “nuclear facilities”, but Article 56.1 of Protocol 1 to the Geneva Conventions spoke of “nuclear electrical generating stations” — a narrower concept than “nuclear facilities”. She did not think that the Diplomatic Conference should enter into aspects of international humanitarian law which were best left to experts in that field. Another difficulty with paragraph 3(ter) was that the words “acts against such facilities during peacetime ... are contrary to international law” might be inconsistent with the words “unless the act is undertaken in conformity with national law of the State Party in whose territory the nuclear facility is situated” in subparagraph (e) of the proposed Article 7.1. Moreover, the word “peacetime” in the context of international humanitarian law could give rise to uncertainty, since hostilities might be followed by occupation, during which international humanitarian law would still apply.

49. The representative of AUSTRIA, having thanked the Mexican delegation for the spirit of compromise displaced by it with regard to the expression “inasmuch as”, endorsed the views of the Canadian delegation concerning the preambular paragraphs proposed by the Mexican delegation. His delegation would go along with a consensus in favour of including paragraph 3(bis), but it did not think that paragraph 3(ter) should be included.

50. The representative of MEXICO said she understood that the subparagraph proposed by China would remain unchanged and that the summary records of the Committee would faithfully reflect the discussion on Article 2.4, including her delegation’s view that there was a substantive difference between the expressions “inasmuch as” and “insofar as”, so that her country would be guided by the Spanish version. As regards the proposed reordering of the subparagraphs of Article 2.4, she assumed that it was acceptable to the Committee.

51. As regards the proposed preambular paragraphs, her delegation, which was grateful both to those delegations which had expressed support for Mexico’s proposal and those which had explained their dissenting positions, believed that what would now be preambular paragraph (a) of Article 2.4 should be preceded by something on the lines of paragraph 3(bis). The purpose of paragraph 3(ter), which would complement the subparagraph of Article 2.4 proposed by China, was to emphasize that nuclear facilities were strictly protected in times of armed conflict and that acts against them in peacetime were contrary to international law, a situation that existed de facto in international law.

52. Admittedly, Article 56.1 of Protocol 1 to the Geneva Conventions referred to “nuclear electrical generating stations” and not to “nuclear facilities”. If an attack on a nuclear electrical generating station might “cause the release of dangerous forces”, however, so might attacks on other nuclear facility types, as they also were “installations containing dangerous forces”. Moreover, if international humanitarian law provided for the special protection of such facilities in times of armed conflict, there should be even stricter protection in peacetime. The second part of paragraph 3(ter) stated a fact corroborated by the Charter of the United Nations and by many General Assembly resolutions on friendly relations between States.

53. In 1981, the Security Council had condemned an attack by one State on the nuclear facilities of another State, describing it as a violation of the United Nations Charter and a grave threat to the Agency’s safeguards system, which was the cornerstone of the NPT. Consequently, Mexico believed that something on the lines of paragraph 3(ter) should be in the amended CPPNM, although her delegation was willing to be advised by other delegations regarding the language.

54. The representative of AUSTRALIA said that paragraph 3(ter) seemed to be claiming that international law prohibited attacks on all nuclear facilities whatever the circumstances. The CPPNM should not contain wording that purported to describe international law but in fact went far beyond it. The issue was a major substantive one which required careful consideration and which, in any case, should not be consigned to a preambular paragraph. The implications of the issue were too wide to be dealt with by the Diplomatic Conference.

55. The representative of URUGUAY, expressing support for the position of Mexico, said it was clear that international humanitarian law provided for the protection — albeit not necessarily the strict protection — of all nuclear facilities in situations of armed conflict. The fact that Article 56.1 of Protocol 1 to the Geneva Conventions referred to “nuclear electrical generating stations” rather than “nuclear facilities” was probably due to the fact that it dated back many years. If nuclear facilities were protected under international law in situations of armed conflict, they could not logically be denied such protection in peacetime. The language of paragraph 3(ter) could perhaps be adjusted, but there must be no suggestion that international law permitted any type of attack on nuclear facilities.

56. The representative of NEW ZEALAND said that the difficulty with paragraph 3(ter) perhaps lay in the manner in which it seemed to portray international law.

57. The representative of BELGIUM said, with regard to paragraph 3(ter), that the word “peacetime” raised difficulties: nowadays, international armed conflicts usually broke out without a declaration of war, and one could hardly speak of “peacetime” after a State had attacked a nuclear facility of another State; neither could one speak of a State being “at peace” if rebel forces were attacking a nuclear facility in that State. However, international humanitarian law applied both to international and to internal armed conflicts.

58. International humanitarian law contained provisions relating to the protection only of certain nuclear facilities, namely “nuclear electrical generating stations”, but he did not think that a reference to “nuclear facilities” would be in conflict with Article 56.1 of Protocol 1 to the Geneva Conventions.

59. The CHAIRPERSON said that there were three outstanding issues relating to the Mexican proposal. Regarding the first, the reordering of the subparagraphs in Article 2.4, only the representative of Argentina had commented, expressing support for the reordering. Regarding the second, the additional preambular paragraph 3(bis), the need for that paragraph had been questioned, but no opposition had been expressed. Regarding the third, the addition of preambular paragraph 3(ter), there had been expressions of concern on the grounds that the paragraph, while purporting to declare what international humanitarian law stated, was inaccurate.

60. In one sense, paragraph 3(ter) was too narrow, because it was not only in peacetime but also in wartime that certain nuclear facilities were protected against attack. On the other hand, international humanitarian law protected nuclear power stations, but the definition of “nuclear facility” proposed for the amended CPPNM was much wider — it included spent fuel storage facilities, enrichment facilities and radioactive waste management facilities among other things.

61. The representative of MEXICO said that the need for something like paragraph 3(ter) stemmed from the fact that subparagraph (b) of Article 2.4 did not cover the activities of armed forces in peacetime. Perhaps the inclusion in paragraph 3(ter) of the notion contained in Article 57.1 of Protocol 1 to the Geneva Conventions (“In the conduct of military operations, constant care shall be taken to protect the civilian population, civilians and civilian objects.”) would be helpful.

62. The representative of COLOMBIA said that it was important to consider the purpose of international humanitarian law, which was to minimize the effects of war on civilians. Although the protection of nuclear material and nuclear facilities was not mentioned in the Geneva Conventions or the additional protocols thereto, it was implied.

63. Given the exception provided for in subparagraph (b) of Article 2.4, the two preambular paragraphs proposed by Mexico were very necessary.
64. The representative of CANADA said her delegation was not in favour of trying to redraft paragraph 3(ter) so as to capture the essence of international humanitarian law. Not all States were parties to Protocols 1 and 2 to the Geneva Conventions, nor did all States agree with all their provisions. Moreover, there was customary international law that was applicable in the context of international humanitarian law. The Diplomatic Conference was not the right forum in which to embark on a task for humanitarian law experts.
65. Subparagraphs (c) and (d) of Article 2.4 were, in her opinion, sufficient to make it clear that the amended CPPNM would not authorize anything not otherwise authorized.
66. The representative of FRANCE said that his delegation, which was opposed to the inclusion of the two new preambular paragraphs proposed by Mexico, could go along with the inclusion of the first and last preambular paragraphs of the Terrorist Bombings Convention and Nuclear Terrorism Convention.
67. The representative of BRAZIL said it was important to retain the idea enshrined in paragraph 3(ter). It might be over-ambitious to try to summarize international humanitarian law, but perhaps mention could be made of the Geneva Conventions, especially Article 56.1 of Protocol 1. Even if some States were not parties to the Conventions and the protocols, appropriate language could surely be found to emphasize the importance of their provisions. The statement just made by the representative of France had been a helpful one in that connection.
68. The representative of URUGUAY said that, in his view, the argument that paragraphs 3(bis) and 3(ter) were not necessary was flawed. That having been said, he welcomed the statement just made by the representative of France.
69. The representative of BOLIVIA said that his delegation, which shared the concerns of Mexico, agreed with the representative of Brazil that it should be possible to find appropriate language emphasizing the importance of the provisions of the Geneva Conventions and the additional protocols thereto.
70. The representative of CUBA said that his delegation would like to see paragraph 3(ter) incorporated as it stood into the amended CPPNM.
71. The representative of ALGERIA said that, in her view, it was important that in the Preamble there be reference to the Charter of the United Nations and international humanitarian law. A formulation acceptable to all might be found by drawing on wording used in other international conventions relating to terrorism.
72. It should be recalled that an armed attack on a nuclear facility in peacetime had occurred in the Middle East region in 1981.
73. The representative of AZERBAIJAN said that, although he did not consider paragraphs 3(bis) and 3(ter) to be necessary, he would like to see reference made to international humanitarian law in the amended CPPNM.
74. The representative of LUXEMBOURG questioned the need to refer to the Charter of the United Nations and international humanitarian law in the Preamble as they would be mentioned in the operative part of the amended CPPNM.
75. The representative of ARGENTINA said that, in her view, a continuation of the discussion on paragraph 3(bis) and 3(ter) at the present juncture might not be constructive. Perhaps interested delegations should consult on them informally.

76. The representative of the UNITED STATES said that the Committee should not attempt to describe in one or two sentences the international humanitarian law provisions relating to nuclear facilities beyond what was stated in Article 56 of Protocol 1 to the Geneva Conventions. In that connection, it should be noted that, although nuclear electrical generating stations were accorded a special protected status by paragraph 1 of Article 56, that status was not absolute, as indicated in subparagraph 2(b).

77. He suggested a preambular paragraph reading along the following lines: “AWARE that nuclear electrical generating stations have a special protected status in accordance with international humanitarian law, and STRESSING that acts against such facilities can cause death or serious injury to persons or substantial damage to property or to the environment”.

**The meeting was suspended at 12.30 p.m. and resumed at 12.35 p.m.**

78. The CHAIRPERSON suggested that interested delegations hold informal consultations after the meeting under the leadership of the Vice-Chairperson of the Committee of the Whole with a view to resolving the issue of paragraphs 3(bis) and 3(ter).

79. The representative of BELGIUM suggested that Argentina’s proposal regarding the definition of “armed forces” be taken up before the informal consultations.

Consideration of Proposal I submitted by Argentina

80. The representative of ARGENTINA, introducing Proposal I submitted in document CPPNM/AC/L.10, said that, in her delegation’s view, the inclusion in the amended CPPNM of the definition of “military forces of a State” contained in the Terrorist Bombings Convention and the Nuclear Terrorism Convention would be very helpful.

81. The representative of the UNITED STATES, expressing support for the inclusion of a definition of “military forces of a State”, said that the wording in document CPPNM/AC/L.10 containing Argentina’s proposal was not identical to that in the Terrorist Bombings Convention and the Nuclear Terrorism Convention — the phrase “and persons acting in support of those armed forces who are” had been omitted after “national defence or security”.

82. The representative of ARGENTINA said that the phrase in question had been omitted inadvertently.

83. The representatives of CANADA, BOLIVIA, BELGIUM and SWEDEN expressed support for inclusion of the definition of “military forces of a State” contained in the Terrorist Bombings Convention and the Nuclear Terrorism Convention.

84. The representative of the RUSSIAN FEDERATION said that the Group of Experts had discussed the matter at length and had concluded that the inclusion in the amended CPPNM of a definition of “armed forces” was not appropriate. The character of the Terrorist Bombings Convention and the Nuclear Terrorism Convention differed from that of the CPPNM. Furthermore, subparagraph (b) of Article 2.4 in the Basic Proposal (Revised) spoke of the activities of “armed forces during an armed conflict, as those terms are understood under international humanitarian law”.

85. The representative of the UNITED KINGDOM said that, while he had some sympathy with the position of Russia, he would have no difficulty in accepting the definition given in the Terrorist Bombings Convention and the Nuclear Terrorism Convention.



86. The representatives of the NETHERLANDS, POLAND, ECUADOR, PERU, COLOMBIA and TURKEY expressed support for the inclusion of that definition.

**The meeting rose at 1 p.m**



# **SUMMARY RECORD OF THE THIRD MEETING OF THE COMMITTEE OF THE WHOLE OF THE CONFERENCE TO CONSIDER AND ADOPT PROPOSED AMENDMENTS TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL**

Held at the Austria Center Vienna on Tuesday, 5 July 2005 at 3.10 p.m.

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<sup>1</sup> CPPNM/AC/1

**Abbreviations used in this record:**

CPPNM	Convention on the Physical Protection of Nuclear Material
Nuclear Terrorism Convention	International Convention for the Suppression of Acts of Nuclear Terrorism
UNCLOS	United Nations Convention on the Law of the Sea

## **8. Consideration of proposed amendments to the Convention on the Physical Protection of Nuclear Material (continued)**

### Consideration of Proposal I submitted by Argentina in document CPPNM/AC/L.10 (continued)

1. The representative of FRANCE said that his delegation wished to reserve its position.
2. The representatives of the REPUBLIC OF MOLDOVA, CHILE and BRAZIL expressed support for Proposal I.
3. The representative of the RUSSIAN FEDERATION, responding to a question put by the Chairperson, said that his delegation's position — expressed during the Committee's previous meeting — had hardened.
4. The CHAIRPERSON said that he would report to the President on the discussion of Proposal I which had taken place in the Committee.
5. The representative of ARGENTINA asked whether Proposal I could not be considered by the informal group which, under the guidance of the Vice-Chairperson, was considering the Mexican proposal.
6. The CHAIRPERSON suggested that the Committee wait to see what conclusion the informal group had reached regarding the Mexican proposal before deciding whether to refer Argentina's Proposal I to it.

### Consideration of Proposal II submitted by Argentina in document CPPNM/AC/L.10

7. The representative of ARGENTINA, introducing Proposal II and the reasons given for making it, said that navigational rights and freedoms were not the only rights and freedoms enshrined in the law of the sea.
8. Her delegation had not included any mention of the United Nations Convention on the Law of the Sea (UNCLOS) as some States were not parties to UNCLOS.
9. The representative of NEW ZEALAND said that Proposal II was a useful proposal. The rights of coastal States were among the other rights enshrined in the law of the sea.
10. The representative of ALGERIA welcomed Proposal II with its reference to the law of the sea.
11. The representative of SWEDEN suggested that the wording proposed by Argentina be modified to read "... or the rights and freedoms enshrined in UNCLOS and in customary international law of the sea."
12. The representative of the REPUBLIC OF KOREA said that his country, which had a long coastline, attached great importance both to navigational freedom and to the rights of coastal States. His delegation therefore welcomed Proposal II.
13. The representative of NORWAY expressed support for the suggestion made by the representative of Sweden.
14. The representative of TURKEY, having thanked the delegation of Argentina for taking account of the concerns of States not parties to UNCLOS, suggested that the wording proposed by Argentina be modified to read "... navigational freedom or other rights and freedoms enshrined in international law."
15. The representative of ISRAEL expressed a preference for the retention of the reference to "international law". It was her delegation's understanding — widely supported in the Preparatory Meeting for the Diplomatic

Conference — that international law encompassed bilateral and multilateral treaties by which parties to the CPPNM were bound.

16. Her delegation would prefer the wording of Article 2.5 in the Basic Proposal (Revised) to remain unchanged, but in a spirit of compromise it could go along with the suggestion just made by the representative of Turkey.

17. As regards the suggestion made by the representative of Sweden, she pointed out that Israel was not a party to UNCLOS.

18. The representative of BRAZIL, welcoming Proposal II, said it was important that there be no reference to UNCLOS.

19. The representative of CANADA asked whether, in Proposal II, the words “enshrined in the law of the sea” qualified both “navigational freedom” and “the rights and freedoms”. If they qualified only “the rights and freedoms”, it should be borne in mind that — as indicated by the representative of Israel — there were bilateral agreements relating to navigational freedom.

20. Her delegation would also be interested to know what other rights and freedoms the Argentine delegation had in mind when making Proposal II. Was flag State jurisdiction in criminal matters one of them?

21. The representatives of NAMIBIA and CUBA expressed support for Proposal II.

22. The representative of GERMANY said that Proposal II was a constructive proposal. However, his delegation, which believed that there was sometimes virtue in imprecision, would prefer the wording in the Basic Proposal (Revised).

23. If a consensus in favour of other wording seemed to be emerging, his delegation would have to refer the matter to its capital.

24. The representative of the UNITED KINGDOM said that, as international law included the law of the sea, his delegation was not convinced that Proposal II constituted an improvement over the wording in the Basic Proposal (Revised).

25. The representative of JAPAN said that his delegation preferred the wording in the Basic Proposal (Revised), which had been the result of lengthy discussions.

26. The representative of AZERBAIJAN said that his delegation could not go along with Proposal II.

27. The representative of SWITZERLAND said that, as his country was land-locked but had several large lakes, his delegation would prefer the term “international law” to be used. The term was broader in scope than “the law of the sea”.

28. The representative of ARGENTINA said that she did not understand the first question asked by the representative of Canada.

29. As regards the second question, her delegation had had in mind rights and freedoms relating to — for example — cable-laying and fishing.

30. Her delegation was not insisting on the acceptance of Proposal II, but it would like wording that met the concerns of Argentina as a coastal State to be adopted.

31. The representative of NEW ZEALAND suggested that the wording in the Basic Proposal (Revised) be modified to read "... shall affect navigational rights and freedoms and other rights and freedoms as enshrined in the law of the sea and other relevant international law."
32. As New Zealand was a coastal State, his delegation would like wording that made it clear that not only navigational rights were to be protected.
33. The representative of FRANCE said that his delegation, which considered that international law included the law of the sea, preferred the wording contained in the Basic Proposal (Revised).
34. The representative of PERU said that her country shared Argentina's concerns and that the formulation just suggested by the representative of New Zealand might meet those concerns.
35. The representative of CHILE said that the suggestion made by the representative of New Zealand was a very useful one.
36. The representative of CANADA expressed support for the suggestion made by the representative of New Zealand.
37. The representative of SLOVAKIA, noting that his country was also land-locked, said that his delegation preferred the wording in the Basic Proposal (Revised), which referred to "international law" and not to "the law of the sea".
38. The representative of ARGENTINA said that her delegation could accept the wording suggested by the representative of New Zealand, which should meet the concerns also of land-locked countries.
39. The representative of BELGIUM said that her delegation, which welcomed Proposal II, could also accept the wording suggested by the representative of New Zealand.
40. The representative of GERMANY said that his delegation, which preferred the wording in the Basic Proposal (Revised), could not imagine how rights and freedoms relating to activities such as cable-laying and fishing could be affected by the CPPNM.
41. The representative of ISRAEL, having expressed a preference for the wording in the Basic Proposal (Revised), said that, if other wording was contemplated, her delegation would have to insist on a formulation along the lines of "... international law, including the law of the sea and relevant international treaties". In her delegation's view, the law of the sea was customary law and did not include treaty law.
42. The representative of NEW ZEALAND, responding to a point raised by the Chairperson, said that in the wording suggested by him he had used the word "relevant" in order to exclude international law relating to matters such as human rights.
43. Referring to the statement just made by the representative of Germany, he said that ships not only plied the high seas but also passed through coastal States' exclusive economic zones. That raised issues such as the right of innocent passage and the potential for damage to the environment of coastal States.
44. Referring to the statement just made by the representative of Israel, he said that he regarded the words "other relevant international law" in the formulation suggested by him as including relevant customary law and relevant bilateral and multilateral treaties.

45. The CHAIRPERSON said that there was obviously a division of views in the Committee. He would like to present clear alternatives to the Plenary — the wording in the Basic Proposal (Revised), the formulation suggested by the representative of New Zealand and any other formulations considered appropriate by Committee members.
46. The representative of ISRAEL said that the modified wording suggested by the representative of Turkey might be appropriate.
47. She requested that the formulation suggested by the representative of New Zealand be circulated in writing; her delegation might wish to make additions to it.
48. The representative of SENEGAL suggested wording along the lines of “...shall affect the rights and freedoms of navigation or of the law of the sea provided for in international law.” [“... ne modifie les droits et libertés de navigation ainsi que du droit de la mer prévus par le droit international.”]
49. The CHAIRPERSON said that, unless informal consultations outside the Committee led to a breakthrough in the near future, he would in due course inform the President about the proposals currently “on the table” — of which there appeared to be four.
50. The representative of ARGENTINA requested the Chairperson to allow time until Wednesday morning for informal consultations.
51. Referring to the latest statement made by the representative of Germany, she said that among the activities which her delegation had had in mind when making Proposal II had been activities which might have an adverse impact on the marine environment of coastal States.
52. The representative of NORWAY expressed support for the formulation suggested by the representative of New Zealand.
53. The CHAIRPERSON said that the Committee could resume its discussion of the matter now under consideration later if progress was made in informal consultations. Otherwise he would report to the President along the lines which he had already indicated.

#### Consideration of Proposal III submitted by Argentina in document CPPNM/AC/L.10

54. The representative of ARGENTINA, explaining Proposal III, said that its purpose was to take account of the clear conceptual difference between a “legal norm” and a “legal principle”.
55. The representative of BELGIUM said that his delegation, while understanding Argentina’s concerns, was unhappy about the watering-down effect of the phrase “insofar as is reasonable and practicable” following “each State Party shall ... apply”.
56. The representative of CANADA said that her delegation would have preferred stronger language in the chapeau of Article 2 A.3 and would be happy to see the phrase “insofar as is reasonable and practicable” deleted. She said that the language in that article should be retained and not weakened further.
57. The representatives of the NETHERLANDS, the UNITED KINGDOM, GERMANY, SWITZERLAND, ISRAEL and the REPUBLIC OF KOREA expressed support for the comment made by the representative of Canada.



58. The representative of ARGENTINA said her delegation would not press further for the acceptance of Proposal III. However, it considered that its concerns as expressed in document CPPNM/AC/L.10 remained valid.

59. The representative of ROMANIA noted that the first part of FUNDAMENTAL PRINCIPLE D (“The State should establish or designate a competent authority which is responsible for the implementation of the legislative and regulatory framework”) was very similar to subparagraph (b) of Article 2 A.2 (“[each State Party shall] ... establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework”).

60. The CHAIRPERSON said that, as the chapeau to Article 2 A.3 included the words “without prejudice to any other provisions of this Convention”, where fundamental principles repeated the language of substantive provisions of the amended CPPNM, the substantive provisions would prevail. He took it that the Committee wished the chapeau of Article 2 A.3 to remain unchanged.

**The meeting was suspended at 4.15 p.m. and resumed at 4.35 p.m.**

Definition of “nuclear facility”

61. The CHAIRPERSON recalled that, during the Committee’s first meeting, the representative of Algeria had stated that her delegation would like the definition of “nuclear facility” to be the same as that used in Agency safeguards agreements.

62. The representative of ALGERIA said that, following consultations with the Agency’s Secretariat, her delegation could accept the definition of “nuclear facility” contained in paragraph 3 of document CPPNM/AC/L.1/1/Rev.1 since the purpose of the CPPNM was the protection of — not the application of safeguards to — nuclear facilities with associated buildings and equipment.

63. The representative of the REPUBLIC OF KOREA said that he was concerned that the definition of “nuclear facility” contained in document CPPNM/AC/L.1/1/Rev.1 was different from that contained in Article 1.3 of the Nuclear Terrorism Convention. As the CPPNM and the Nuclear Terrorism Convention applied to the same facilities in his country, the difference between the two definitions might give rise to confusion.

64. The CHAIRPERSON said that in his view it was appropriate for the two conventions to use different definitions of “nuclear facility” because — inter alia — the Nuclear Terrorism Convention related to radioactive material while the CPPNM related to nuclear material.

65. The representative of the UNITED STATES OF AMERICA said that the definition in document CPPNM/AC/L.1/1/Rev.1 contained a built-in threshold, since it related only to nuclear facilities which might release significant amounts of radiation or radioactive material if damaged or interfered with. The amended CPPNM should not contain a definition of “nuclear facility” which might deter States from becoming parties to it.

66. The representative of LUXEMBURG said that it was important to distinguish between facilities with significant amounts of nuclear material and facilities with only small amounts.

67. The CHAIRPERSON said that it would be excessive if the amended CPPNM were to call for the application of physical protection measures to, for example, a few milligrams of uranium in a solution used as a tracer.

68. The representative of BRAZIL expressed the view that, as the chapeau of Article 1 of the CPPNM read “For the purposes of this Convention”, it was acceptable that the CPPNM employ a definition of “nuclear facility” which differed from the definitions found in other instruments.

69. The representative of FRANCE, supported by the representative of the RUSSIAN FEDERATION, said that as the Nuclear Terrorism Convention and the CPPNM served different purposes and related to different kinds of material, they need not contain the same definition of “nuclear facility”.

70. The representative of the REPUBLIC OF KOREA said that, on reflection, he could go along with the definition of “nuclear facility” contained in document CPPNM/AC/L.1/1/Rev.1.

Consideration of the proposal submitted by Japan in document CPPNM/AC/L.7 (resumed)

71. The CHAIRPERSON recalled that, during the Committee’s first meeting, the representative of the Republic of Korea had said that his delegation would like to have more time in which to consider the implications of the Japanese proposal regarding Article 7.1.

72. The representative of the REPUBLIC OF KOREA said that consultations between the representatives of his country in Vienna and lawyers in Seoul were still under way. In the meantime, in the interests of assisting the deliberations in the Committee, he wished to make it clear that his delegation preferred that the wording of subparagraph (j) of Article 7.1 contained in the Basic Proposal (Revised) remain unchanged, subject to the results of the aforementioned consultations.

73. His country’s position was that the offence of organizing or directing others to commit a crime should be punishable as an independent offence regardless of success or failure once the attempt of the perpetrators of the crime had begun. In cases of nuclear terrorism, it was more important to focus on those who had masterminded the acts in question than on those who had simply carried out instructions. In most countries, attempts to commit a crime were punished less severely than accomplished crimes, so that linking the offence of directing or organizing a crime to the attempt to commit a crime could result in reduced punishments for those masterminding terrorist acts.

74. It was against that background that his delegation wished to have more time in which to consider the implications of the Japanese proposal.

75. The representative of JAPAN said that acceptance of his country’s proposal would bring the amended CPPNM more into line with the Terrorist Bombings Convention and the International Convention for the Suppression of the Financing of Terrorism, to both of which the Republic of Korea was a party.

76. The representative of the REPUBLIC OF KOREA said that several years had passed since the adoption of the Terrorist Bombings Convention and the International Convention for the Suppression of the Financing of Terrorism — years during which it had become clear that the CPPNM ought to be amended and thereby strengthened.

77. The CHAIRPERSON said that the issue would be taken up again at a later meeting of the Committee.

Consideration of Proposal II submitted by Argentina in document CPPNM/AC/L.10 (resumed)

78. The CHAIRPERSON, having recalled the discussion regarding Article 2.5 earlier in the meeting, said that there had been informal consultations outside the Committee on which the representative of New Zealand wished to report.

79. The representative of NEW ZEALAND said that his delegation and representatives of Argentina, Turkey, Israel, Norway, Germany and Sweden had had informal consultations which had resulted in the following text: “Nothing in this Convention shall affect navigational rights and freedoms and other marine-related rights and freedoms, as enshrined in international law.”

80. During the consultations, the representative of Israel had asked whether the notion of “international law” referred to in the text was regarded by the other members of the informal group as encompassing bilateral treaties as well as multilateral ones. As the informal group as a whole had agreed that it was, the representative of Israel was comfortable with the text.

81. The CHAIRPERSON, agreeing with the informal group’s opinion, said that the International Court of Justice spent a lot of time considering bilateral issues.

82. The representative of ALGERIA said that her delegation preferred Argentina’s Proposal II, with its reference to “the law of the sea”. However, in a spirit of compromise it would go along with the text just read out by the representative of New Zealand, on condition that the summary record of the meeting made it clear that, in Algeria’s view, international law included the law of the sea.

83. The representative of SENEGAL, recalling the suggestion made by him earlier in the meeting, said that he fully accepted the text just read out by the representative of New Zealand.

84. The representative of FRANCE asked the representative of New Zealand to clarify what was meant by “other marine-related rights and freedoms”.

85. The representative of NEW ZEALAND said that the reason for the phrase “other marine-related rights and freedoms” was that there was no reference to the law of the sea in the text which he had read out, so that provision was needed for the protection of those rights and freedoms which came under the law of the sea but were not navigational rights and freedoms, the most obvious being the right to protection of one’s marine environment.

86. The representative of the RUSSIAN FEDERATION, expressing support for the text in the Basic Proposal (Revised), said that the text read out by the representative of New Zealand contained a term not used by experts in maritime law. That term could lead to problems in the implementation of the amended CPPNM.

87. The representative of ARGENTINA said that the wording of Article 2.5 in the Basic Proposal (Revised) protected only the rights and freedoms of those States which engaged in the international maritime transport of nuclear material. Her delegation was trying to bring about a balance through recognition of the fact that coastal States had a right to protection of their marine environment.

88. The CHAIRPERSON said that the original CPPNM, which applied to nuclear material used for peaceful purposes “while in international nuclear transport”, had survived perfectly well without any reference to navigational rights or freedoms or to any other rights or freedoms under the law of the sea. He suggested that the Committee postpone further consideration of the matter until a later meeting.

#### Consideration of Proposal III submitted by Argentina in document CPPNM/AC/L.10 (resumed)

89. The representative of ALGERIA said that her delegation had welcomed Argentina’s proposal for Article 2 A.3 because it believed that the amended CPPNM should not be too difficult for States to implement. The repetition in paragraphs 1–3 of Article 2 A would probably give rise to problems.

90. The CHAIRPERSON said that he recalled having agreed to keep the text of Article 2 A.3 as it appeared in the Basic Proposal (Revised). As he had indicated in response to a comment made by the representative of Romania, where fundamental provisions repeated the language of substantive provisions of the amended CPPNM, the substantive provisions would prevail.

**The meeting rose at 5.45 p.m.**



# **SUMMARY RECORD OF THE FOURTH MEETING OF THE COMMITTEE OF THE WHOLE OF THE CONFERENCE TO CONSIDER AND ADOPT PROPOSED AMENDMENTS TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL**

Held at the Austria Center Vienna on Wednesday, 6 July 2005 at 11.15 a.m.

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<sup>1</sup> CPPNM/AC/1

**Abbreviations used in this record:**

CPPNM	Convention on the Physical Protection of Nuclear Material
GRULAC	Latin American and Caribbean Group
Nuclear Terrorism Convention	International Convention for the Suppression of Acts of Nuclear Terrorism
Terrorist Bombings Convention	International Convention for the Suppression of Terrorist Bombings

## **8. Consideration of proposed amendments to the Convention on the Physical Protection of Nuclear Material (continued)**

### Article 2.5

1. The CHAIRPERSON proposed that Article 2.5 in the Basic Proposal (Revised) — document CPPNM/AC/L.1/1/Rev.1 — be deleted.
2. The representatives of ARGENTINA, NEW ZEALAND, ISRAEL, IRELAND, GREECE, TURKEY, GERMANY, ALGERIA and the REPUBLIC OF KOREA supported the proposal.
3. The CHAIRPERSON took it that his proposal was acceptable to the Committee.
4. It was so agreed.

### The Preamble and Article 2.4

5. The VICE-CHAIRPERSON, reporting on the discussions in the informal working group which had examined the proposal submitted by Mexico in document CPPNM/AC/L.6, said that consensus had been reached on a new Mexican proposal — for three additional preambular paragraphs reading as follows:

“(1) HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

“(2) DEEPLY CONCERNED about the worldwide escalation of acts of terrorism in all its forms and manifestations,

“(3) RECALLING ALSO the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States.”

6. The representative of the RUSSIAN FEDERATION said that his delegation could go along with the new Mexican proposal on the understanding that Article 2.4 would remain as it stood in the Basic Proposal (Revised).
7. The representative of MEXICO said that, in the new proposal, paragraphs (2) and (3) replaced paragraph 3(ter) proposed by her country earlier. The purpose of the two paragraphs was to reaffirm the desire of the international community that nuclear facilities being used for peaceful purposes be protected from possible attacks during peacetime as well as wartime. Paragraph (1) had also been proposed in a spirit of flexibility and openness, following extensive consultations within the working group.
8. The representative of JAPAN, expressing support for the new Mexican proposal, said that it had been widely supported in the working group.
9. The representative of PAKISTAN said that his delegation was not happy with the new Mexican proposal since — unlike paragraph 3(ter) — it contained no reference to international humanitarian law. Perhaps the delegation of Mexico could review its new proposal and find a way of incorporating into it the international humanitarian law aspect of its earlier proposal.

10. At all events, while awaiting instructions from his capital, he was not prepared to discuss the new Mexican proposal any further.
11. The representative of BOLIVIA, speaking on behalf of the Latin American and Caribbean Group (GRULAC), said it was GRULAC's understanding that preambular paragraph 3(bis) of the original Mexican proposal would be included as paragraph 1(bis) in the new proposal and that the order of the subparagraphs of Article 2.4 would be as proposed by Mexico in document CPPNM/AC/L.6.
12. The representative of ALGERIA said that her delegation had agreed to the new proposal during the informal consultations, but, after discussions with officials in her capital, she hoped that a more balanced text could be arrived at.
13. Perhaps paragraph (1) of the new proposal, which referred to the purposes and principles of the Charter of the United Nations, could be improved through the inclusion of relevant wording from the Charter.
14. The representative of AUSTRIA, having commended the Mexican delegation on its new proposal, asked where the three paragraphs in question would appear in the Preamble. As regards the subparagraphs of Article 2.4, it was his understanding that they would remain as they appeared in the Basic Proposal (Revised).
15. The CHAIRPERSON said, with regard to the three paragraphs in the new Mexican proposal, that it was his understanding that they would be placed at the head of the Preamble, followed by the preambular paragraphs in the Basic Proposal (Revised).
16. The representative of ARGENTINA said it was her understanding that the proposed reordering of the subparagraphs of Article 2.4 had been agreed upon in the Committee.
17. The CHAIRPERSON said that, although no objections had been made to the proposed reordering, the Committee had not yet completed its consideration of Article 2.4, so that the reordering issue was still open for discussion.
18. The representative of CANADA, expressing support for Mexico's new proposal, said that it reflected a spirit of compromise and that, of all the proposals made in the informal working group, it had been the one attracting most support.
19. The representative of CUBA said it was his understanding that, while some delegations had had reservations about paragraph 3(ter), none had had any about paragraph 3(bis), which should therefore be included in the Preamble.
20. It was also his understanding that there was no opposition to the proposed rearrangement of the subparagraphs of Article 2.4.
21. The CHAIRPERSON asked the Mexican delegation whether he was right in thinking that the intention was for the three proposed new paragraphs to replace both paragraph 3(bis) and paragraph 3(ter).
22. The representative of MEXICO said that her delegation's new proposal had resulted from the informal consultations chaired by the Vice-Chairperson. However, once other GRULAC delegations had seen the proposal, it had been agreed within GRULAC that it was important that paragraph 3(bis) — which the Committee had not rejected — be included in the Preamble.



23. She understood the concerns of the other GRULAC delegations and hoped that the issue would not become a stumbling-block.
24. The representative of ARMENIA said her delegation was in favour of keeping Article 2.4 as it stood in the Basic Proposal (Revised). As regards the new Mexican proposal, since Armenia was a party to all 12 international anti-terrorism instruments, her delegation had no problem with the ideas expressed in it. That having been said, her delegation did not think there was any need to incorporate ideas already accepted by States parties to other legal instruments into the Preamble.
25. The representative of BRAZIL said that her delegation supported the new Mexican proposal on the understanding that paragraphs 3(bis) would be included in the Preamble.
26. The representative of AZERBAIJAN said that, in his view, Article 2.4 should remain as it appeared in document CPPNM/AC/L.1/1/Rev.1.
27. As regards the new Mexican proposal, the proposed paragraph (2) appeared to overlap somewhat with preambular paragraph (5) in document CPPNM/AC/L.1/1/Rev.1.
28. The representative of FRANCE said he was perplexed at the way the discussion of the new Mexican proposal had developed. That proposal had been submitted in a spirit of compromise, and paragraph (3) was essentially the same as one of the preambular paragraphs of the Nuclear Terrorism Convention.
29. He had understood from the discussion in the working group that the three new preambular paragraphs proposed would replace paragraphs 3(bis) and 3(ter) and that the order of the subparagraphs of Article 2.4 in document CPPNM/AC/L.1/1/Rev.1 would be retained. In the working group there had been no discussion of the position of the three proposed preambular paragraphs within the Preamble.
30. He agreed with the representative of Azerbaijan that the proposed paragraph (2) appeared to overlap somewhat with preambular paragraph (5) in document CPPNM/AC/L.1/1/Rev.1.
31. The representative of URUGUAY said that he was even more perplexed than the representative of France. In the working group there had been no discussion regarding the proposed rearrangement of the subparagraphs of Article 2.4. It was his understanding that the rearrangement proposal had been accepted by the Committee, although he recognized that the issue could still be reopened.
32. Perhaps there had been further informal consultations that morning — outside the framework of the working group — about which his delegation had not been informed.
33. The representative of INDONESIA said that his delegation, which had been ready to support paragraphs 3(bis) and (ter), appreciated Mexico's willingness to produce a compromise text. In the light of that text, however, it wondered whether preambular paragraphs (5) and (6) should be retained.
34. With regard to paragraph (3) in the new Mexican proposal, he would need to consult his capital regarding the position of Indonesia, which had subscribed to the United Nations Declaration on Measures to Eliminate International Terrorism.
35. The representative of NEW ZEALAND said that the new Mexican proposal deserved to attract broad support. Given the wording of the proposed paragraph (1), he doubted whether there was any need to include paragraph 3(bis) in the Preamble.

36. As regards the order of the subparagraphs of Article 2.4, he preferred the order in which they appeared in document CPPNM/AC/L.1/1/Rev.1.
37. The representative of the RUSSIAN FEDERATION said that, if Article 2.4 remained as it stood in the Basic Proposal (Revised), without a definition of “armed forces”, his delegation would be able to join a consensus on the Basic Proposal (Revised).
38. The CHAIRPERSON said that further informal consultations on the Preamble and Article 2.4 appeared to be necessary.
39. The representative of the UNITED STATES OF AMERICA suggested that: paragraph (1) in the new Mexican proposal be incorporated as it stood into the Preamble; paragraph (2) be combined with preambular paragraph (5) in the Basic Proposal (Revised), or just one of those two paragraphs be selected in order to minimize repetition; paragraph (3) in the new Mexican proposal be incorporated as it stood into the Preamble; paragraph 3(bis) be incorporated into the Preamble; and Article 2.4 be left as it stood in the Basic Proposal (Revised).
40. The representative of ARMENIA, having thanked the representative of the United States for his suggestions, said that her delegation would have difficulties with the inclusion of a definition of “armed forces”.
41. The representative of ARGENTINA said that her delegation would require time in which to consider the suggestions made by the representative of the United States.
42. Although her delegation had made a proposal regarding a definition of “armed forces” in connection with Article 2.4, it had not subsequently been consulted about that proposal.
43. The representative of ROMANIA, welcoming the United States representative’s suggestions, said that Article 2.4 should remain as it stood in the Basic Proposal (Revised).
44. The representative of ALGERIA said that a number of delegations had problems with paragraph (3) in the new Mexican proposal. In their view, the wording after “9 December 1994” should be deleted.
45. The representative of CHILE, having welcomed the United States representative’s suggestions, said that the Argentine delegation should have been consulted on its proposal regarding a definition of “armed forces”.
46. The representative of PAKISTAN, having thanked the representative of the United States for his suggestions, said that his delegation would participate with an open mind in the future deliberations of the working group if the group’s mandate was clearly defined and strictly followed.
47. He too believed that the delegation of Argentina should have been consulted on its proposal.
48. As regards the new Mexican proposal, it contained elements not acceptable to a number of delegations, including his own.
49. The representative of CHINA welcomed the suggestions made by the representative of the United States.
50. The representative of BRAZIL said that the suggestions made by the representative of the United States could, subject to the outcome of consultations on Argentina’s proposal, provide a good basis for a consensus.
51. The representative of AUSTRIA, having welcomed the suggestions made by the representative of the United States, said that the difficulties associated with the inclusion of a definition of “armed forces” in Article 2.4 might be

resolved if such a definition were included in Article 1, where all the other definitions would be found, and Article 2.4 were left as it stood in the Basic Proposal (Revised).

52. The representative of UKRAINE, having welcomed the suggestions made by the representative of the United States, said that his delegation was sceptical about the need to include a definition of “armed forces” at all.

53. The representative of BELGIUM, having thanked the representative of the United States for his suggestions, said that in her view it was essential to include a definition of “armed forces” in the amended CPPNM. She therefore welcomed the suggestion made by the representative of Austria.

54. Concern had been expressed that the focus of the current deliberations was shifting from physical protection towards combating terrorism. In that connection, she believed that, rather than quoting an entire preambular paragraph of the Nuclear Terrorism Convention, it would be preferable to include a general reference to that convention in the Preamble to the amended CPPNM.

55. The representative of MEXICO thanked the representative of the United States for his suggestions and indicated her delegation’s readiness to participate in further informal consultations.

56. The representative of AZERBAIJAN, having expressed support for the suggestions made by the representative of the United States, wondered whether it was necessary to include a definition of “armed forces” in Article 2.4(b).

57. The representative of ARGENTINA said that her delegation’s proposal was that the definition of “military forces of a State” contained in Article 1.4 of the Terrorist Bombings Convention and Article 1.6 of the Nuclear Terrorism Convention be used. Her delegation would join a consensus in favour of including that definition in Article 1 of the amended CPPNM.

58. The representative of BELARUS supported leaving the wording of Article 2.4 as it stood in the Basic Proposal (Revised) and said that his delegation was opposed to including a definition of “armed forces” in the amended CPPNM.

59. The representative of the UNITED KINGDOM, having commended the representative of the United States on his suggestions, said that, as some representatives had clearly not been made aware of the conclusions reached in the working group, perhaps the Committee of the Whole should not meet in parallel with the Drafting Committee. That would be in the interest of States with very small delegations.

60. The representative of the REPUBLIC OF KOREA said that, while the suggestions made by the United States representative were very constructive, the reference to the Declaration on Measures to Eliminate International Terrorism in paragraph (3) in Mexico’s new proposal was perhaps outdated. Given the fundamental shift that had taken place in perceptions of the international security environment since the events of 11 September 2001, it might be better to refer to an instrument that captured the essence of that declaration but had been adopted after 11 September 2001.

61. The representative of the RUSSIAN FEDERATION said that his delegation welcomed the general approach envisaged by the representative of the United States. The Diplomatic Conference should guard against allowing elements to enter the amended CPPNM that would make it unacceptable to some countries.

62. The representative of the UNITED STATES said that his delegation would have no problem with ending paragraph (3) in Mexico’s new proposal at “9 December 1994”.

63. As regards the question of including a definition of “armed forces” in the amended CPPNM, it was important to find a compromise that would enable the Russian Federation to complete the early ratification of an international legal obligation to apply physical protection measures to nuclear material in domestic use. It would clearly not be helpful if the Russian Federation found itself faced with an amended CPPNM that it could not ratify.
64. In response to comments made by the representative of Pakistan, he said that it had been agreed in the working group that paragraph 3(ter) proposed by Mexico in document CPPNM/AC/L.6 should be replaced by paragraph (3) in the new Mexican proposal. That compromise had been agreed upon because of the impossibility of reaching a consensus on how to characterize international humanitarian law.
65. The representative of ITALY said that, in his view, preambular paragraphs (5) and (6) in the Basic Proposal (Revised) contained sufficiently clear references to terrorism and paragraph (1) in Mexico’s new proposal was superfluous.
66. Paragraph (2) in Mexico’s new proposal was rather similar to paragraph (5) of the Preamble in the Basic Proposal (Revised), which could usefully be amended to read “DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and by the threats posed by international organized crime”.
67. His delegation shared the doubts expressed about paragraph (3) in Mexico’s new proposal. The main focus of the CPPNM was not on terrorism, and the Declaration on Measures to Eliminate International Terrorism was outdated.
68. His delegation would go along with a decision to include a definition of “armed forces” in Article 1 of the amended CPPNM if that was the wish of the majority of the States participating in the Diplomatic Conference. If, however, that would cause some States not to ratify the amended CPPNM, it would be better not to insist on the inclusion of a definition.
69. The representative of the RUSSIAN FEDERATION thanked the representatives of ITALY and the UNITED STATES OF AMERICA for their understanding of the difficulties that his country would face if a definition of “armed forces” were included in the amended CPPNM.
70. The legislation relating to his country’s armed forces included a provision to the effect that the armed forces dealt with — inter alia — physical protection, which was not in line with the definition of “military forces of a State” in conventions such as the Nuclear Terrorism Convention.

**The meeting rose at 1 p.m.**

**SUMMARY RECORD OF THE FIFTH MEETING OF THE  
COMMITTEE OF THE WHOLE OF THE CONFERENCE TO  
CONSIDER AND ADOPT PROPOSED AMENDMENTS TO THE  
CONVENTION ON THE PHYSICAL PROTECTION OF  
NUCLEAR MATERIAL**

Held at the Austria Center Vienna on Wednesday, 6 July 2005 at 3.15 p.m.

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<sup>1</sup> CPPNM/AC/1

**Abbreviations used in this record:**

CPPNM	Convention on the Physical Protection of Nuclear Material
Nuclear Terrorism Convention	International Convention for the Suppression of Acts of Nuclear Terrorism
Terrorist Bombings Convention	International Convention for the Suppression of Terrorist Bombings

## **8. Consideration of proposed amendments to the Convention on the Physical Protection of Nuclear Material (continued)**

### Paragraph 9 (Article 7) of CPPNM/AC/L.1/1/Rev.1

1. The representative of the REPUBLIC OF KOREA said that his delegation would agree to the Japanese proposal contained in document CPPNM/AC/L.7 being referred to the Drafting Committee provided that he could subsequently explain the position of the Republic of Korea for the record.
2. The CHAIRPERSON said that Article 7 would be referred to the Drafting Committee, together with the amendments proposed by Norway and others in document CPPNM/AC/L.9 and the Japanese proposal.

### Mexico's new proposal

3. The representative of INDIA said that there did not appear to be consensus on Mexico's new proposal and that, in her delegation's view, the reference to terrorism in preambular paragraph (5) in document CPPNM/AC/L.1/1/Rev.1 was sufficient.
4. The representative of MEXICO said that her country had particularly wanted the amended CPPNM to state explicitly that attacks during peacetime on facilities for the peaceful utilization of nuclear energy contravened international law, including the Charter of the United Nations.
5. A strong focus on terrorism in the amended CPPNM would not be out of place, as it was the increase in terrorist activities in recent years which had led to the review of the CPPNM.
6. Her delegation could accept the proposed combining of preambular paragraph (5) in document CPPNM/AC/L.1/1/Rev.1 with paragraph (2) in Mexico's new proposal.
7. The representative of HONDURAS expressed support for the suggestion made by the representative of the United States towards the end of the Committee's previous meeting and said that it was important to take account of the situation of the Russian Federation.
8. The representative of LUXEMBOURG said that the effectiveness of the amended CPPNM would not depend on whether it contained a definition of "armed forces", but it might be compromised if the inclusion of such a definition prevented the accession of the Russian Federation to the amended CPPNM.
9. The representative of TURKEY expressed support for the combining of paragraph (2) in Mexico's new proposal with preambular paragraph (5) in document CPPNM/AC/L.1/1/Rev.1.
10. A definition of "armed forces" should be omitted if its inclusion would prevent universal accession to the amended CPPNM.
11. The representative of ALGERIA said that, as she had indicated during the Committee's previous meeting, many delegations considered that paragraph (3) in Mexico's new proposal should simply refer to the Declaration on Measures to Eliminate International Terrorism without citing it.
12. She requested further clarification of the Russian Federation's reasons for opposing the inclusion in the amended CPPNM of a definition of "armed forces".

13. The CHAIRPERSON said that the definition of “military forces of a State” in conventions such as the Nuclear Terrorism Convention created difficulties for the Russian Federation because the nuclear facilities in that country were protected by forces belonging to the Ministry of the Interior, not by State military forces.
14. Recalling the suggestion made by the representative of Italy, he read out the following proposed wording for preambular paragraph (5): “DEEPLY CONCERNED about the worldwide escalation of acts of terrorism in all its forms and manifestations, and the threats posed by organized crime”.
15. The representative of ITALY recalled that he had used the expression “international organized crime”.
16. The representative of ALGERIA noted that the United Nations Office on Drugs and Crime used the expression “transnational organized crime”.
17. The representative of TURKEY, supported by the representative of BRAZIL, suggested that “organized crime” be used without qualification.
18. The representative of FRANCE proposed the following wording: “DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and by the threats posed by international terrorism and organized crime”.
19. The representative of MEXICO said that the wording proposed by the representative of France would meet Mexico’s aims and was in line with the purposes of the amended CPPNM.
20. The CHAIRPERSON asked for comments on the idea that paragraph (3) in Mexico’s new proposal simply refer to the Declaration on Measures to Eliminate International Terrorism without citing it.
21. The representative of MEXICO said that the Declaration was cited in the International Convention for the Suppression of the Financing of Terrorism, in the Nuclear Terrorism Convention and in the Terrorist Bombings Convention, and that citing it was appropriate given the contents of subparagraph (b) of Article 2.4 in document CPPNM/AC/L.1/1/Rev.1.
22. The representative of ALGERIA said that it would be better to cite something more recent than the Declaration on Measures to Eliminate International Terrorism, which dated from 1994.
23. The representative of CANADA said that, in her view, there was no legal difference between the full paragraph (3) in Mexico’s new proposal and a shortened version ending with “9 December 1994”. However, she would prefer to see the full paragraph (3) included in the amended CPPNM, because its inclusion would save time for future readers of the CPPNM text and because the same language was used in the recently adopted Nuclear Terrorism Convention even though the Declaration on Measures to Eliminate International Terrorism dated back more than ten years.
24. The representative of PAKISTAN said that he was not in favour of quoting selectively from a particular declaration.
25. The representative of MEXICO said that, in her view, quoting from the Declaration on Measures to Eliminate International Terrorism rather than just referring to it was more likely to underline the Declaration’s continuing significance.



26. The CHAIRPERSON suggested a formulation along the following lines: “BEARING IN MIND the Convention for the Suppression of Acts of Nuclear Terrorism, and particularly its sixth preambular paragraph, referring to the Declaration on Measures ...”.
27. The representative of MEXICO said that such a formulation would be acceptable to her delegation.
28. The representative of ALGERIA said that such a formulation would be acceptable to her delegation also.
29. The representative of PAKISTAN said that his delegation would prefer the short version — ending with “of December 1994” — of paragraph (3) in Mexico’s new proposal. He did not think that there should be a reference to the Nuclear Terrorism Convention, which was not yet open for signature.
30. The representative of NEW ZEALAND expressed support for the Chairperson’s suggestion.
31. The observer for EGYPT said that, in his view, paragraph (3) in Mexico’s new proposal should not be included in the Preamble of the amended CPPNM.
32. The CHAIRPERSON proposed that the Committee defer further consideration of paragraph (3) in Mexico’s new proposal and focus on paragraph (1). He recalled that, during the Committee’s previous meeting, the representative of Italy had said that in his view that paragraph was superfluous. However, there had been no objections to the paragraph.
33. The representative of INDIA, supported by the representative of ITALY, said that she would not like paragraph (1) in Mexico’s new proposal to become the first preambular paragraph of the amended CPPNM. That would unduly affect the orientation of the document.
34. The CHAIRPERSON asked whether the delegation of India could accept the text of paragraph (1) if it appeared later in the Preamble of the amended CPPNM.
35. The representative of INDIA said that her delegation could perhaps go along with that.
36. The representative of ARMENIA said that her delegation could go along with the approach envisaged by the Chairperson, although it would prefer that paragraph (1) be omitted.
37. The representative of BRAZIL said that it was important for his delegation that the Charter of the United Nations be referred to and that his delegation would like both paragraph (1) in Mexico’s new proposal and paragraph 3(bis) proposed by Mexico in document CPPNM/AC/L.6 to be included in the Preamble of the amended CPPNM.
38. The CHAIRPERSON suggested that paragraph (1) be included as the fourth preambular paragraph of the amended CPPNM.
39. The representative of ARGENTINA said that, in her view, paragraph (1) was not as appropriate as paragraph 3(bis) in document CPPNM/AC/L.6.
40. The representative of ALGERIA supported the view expressed by the representative of Argentina.
41. The representative of MEXICO recalled that paragraph (1) had resulted from consultations in a working group whereas paragraph 3(bis) had been proposed by Mexico alone. However, if a consensus emerged in favour of paragraph 3(bis), her delegation would not mind at all.

42. The CHAIRPERSON concluded that there might be strong support for including paragraph 3(bis) – rather than paragraph (1) – as the fourth preambular paragraph.

Article 2.4

43. The CHAIRPERSON read out the following statement:

“During the discussion of Article 2.4, which deals with, inter alia, the military forces of a State in the exercise of their official duties, there was a proposal by Argentina for the introduction into Article 1 (definitions) of a definition of the term ‘military forces of a State’ that would be consistent with the definition of that term in other, similar conventions, such as the International Convention for the Suppression of Terrorist Bombings. Article 1.4 of that convention defines the ‘military forces of a State’ as ‘the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.’ This proposal received broad support during the discussions on Article 2.4 in the Committee of the Whole.

“Some other States, however, indicated that the proposal was not consistent with their national law regulating the system of physical protection of nuclear material and the status of specialized forces performing tasks in this area. The proposal, if accepted, could have led to substantial difficulties in the implementation of the Convention by those States, thus impeding their ratification of the amendment to the Convention.

“Can I take it that the Committee of the Whole has concluded that consensus could not be reached on including a definition of ‘military forces of a State’ in the Convention, but that the Committee decided to include in the records of the Diplomatic Conference the proposal by Argentina as set forth above, together with this brief description of the discussion and the conclusion of the Committee?”

44. The Committee accepted the statement.

**The meeting was suspended at 4.25 p.m. and resumed at 5.25 p.m.**

The Preamble (consolidated draft version)

45. The CHAIRPERSON, drawing attention to a consolidated draft version of the Preamble which had just been circulated<sup>2</sup>, said that paragraph (5) should read “DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and the threats posed by international terrorism and organized crime”.

46. The representative of MEXICO, referring to paragraph (3 tor), recalled paragraph (3) of Mexico’s new proposal, which quoted from the Declaration on Measures to Eliminate International Terrorism. She would send paragraph (3 tor) to the Mexican authorities and provide their response the next day.

47. The CHAIRPERSON said that he had no objection to delegations sending new proposals to their capitals for comment. However, the Drafting Committee would be meeting that evening, and he would therefore like to refer a complete text – albeit ad referendum – to the Drafting Committee.

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<sup>2</sup> The consolidated draft version of the Preamble is attached to this summary record.

48. The representative of AUSTRALIA said that he thought paragraph (3 ter) had been accepted in place of paragraph (3 bis). He asked whether the inclusion of both paragraphs in the consolidated draft version of the Preamble was intentional.
49. The CHAIRPERSON said that it was intentional. In light of discussions which he had had during the suspension of the meeting, he believed that the inclusion of both paragraphs offered the best chance of reaching agreement.
50. The representative of SPAIN, referring to the change to paragraph (5) which the Chairperson had just read out, recalled the suggestion made by the representative of Italy that paragraph (5) read “..., and by the threats posed by international organized crime”.
51. The CHAIRPERSON said that the wording which he had read out had been proposed by the representative of France following the suggestion made by the representative of Italy.
52. The representative of FRANCE said that the purpose of his proposal had been to respond to all concerns regarding paragraph (5). However, he was flexible about the exact wording to be chosen.
53. The representative of GERMANY said that his delegation, which had been ready to accept the Basic Proposal (Revised), believed that some of the new formulations before the Committee were shifting the focus away from physical protection towards other matters. In a spirit of compromise, however, his delegation could agree to those formulations being referred ad referendum to the Drafting Committee.
54. The representative of ALGERIA said that she also thought that paragraph (3 ter) had been accepted in place of paragraph (3 bis).
55. The CHAIRPERSON said that in his discussions during the suspension of the meeting it had become clear that both paragraph (3 bis) and paragraph (3 ter) would have to be included if the reference to part of the contents of the Declaration on Measures to Eliminate International Terrorism contained in paragraph (3) in Mexico’s new proposal was to be dropped.
56. The representative of ALGERIA said that there had been no objections to the suggestion that paragraph (3 bis) be replaced by paragraph (3 ter). In a spirit of compromise, however, her delegation could agree to the consolidated draft version of the Preamble being referred ad referendum to the Drafting Committee.
57. The CHAIRMAN said that he would refer the consolidated draft version of the Preamble and Article 2.4 to the Drafting Committee.
58. The representative of ALGERIA, referring to Annex II (Table: Categorization of Nuclear Material) to the CPPNM, pointed out that in footnotes b/ and e/ the radiation level was expressed in rads/hour. However, the unit of absorbed dose in the International System of units was now the gray (Gy), and those two footnotes should be adjusted accordingly.
59. The representative of the UNITED KINGDOM drew attention to the fact that in the Agency document INFCIRC/225/Rev.4 (The Physical Protection of Nuclear Material and Nuclear Facilities) the radiation level was expressed as “1Gy/hr (100 rad/hr)”. He suggested that the Committee recommend that formulation.

60. The CHAIRPERSON – following interventions by the representatives of AZERBAIJAN, LUXEMBOURG, JAPAN, FRANCE and SPAIN – took it that the Committee wished to recommend the formulation “1Gy/hr (100 rad/hr)”.

**The meeting rose at 5.45 p.m.**

The Preamble of the 1979 Convention on Physical Protection should be replaced by the following text:

- (1) RECOGNIZING the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,
- (2) CONVINCED of the need to facilitate international cooperation and the transfer of nuclear technology for the peaceful application of nuclear energy,
- (3) BEARING IN MIND that physical protection is of vital importance for the protection of public health, safety, the environment and national and international security,
- (3 bis) HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighborliness and friendly relations and cooperation among States,
- (3 ter) CONSIDERING that under the terms of Article 2, paragraph 4, of the Charter of the United Nations, "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations",
- (3 tor) RECALLING also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994,
- (4) DESIRING to avert the potential dangers posed by illicit trafficking, the unlawful taking and use of nuclear material and the sabotage of nuclear material and nuclear facilities, and noting that physical protection against such acts has become a matter of increased national and international concern,
- (5) DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and the threats posed by organized crime,
- (6) BELIEVING that physical protection plays an important role in supporting nuclear non-proliferation and counter-terrorism objectives,
- (7) DESIRING through this Convention to contribute to strengthening worldwide the physical protection of nuclear material and nuclear facilities used for peaceful purposes,
- (8) CONVINCED that offences relating to nuclear material and nuclear facilities are a matter of grave concern and that there is an urgent need to adopt and/or to strengthen appropriate and effective measures to ensure the prevention, detection and punishment of such offences,
- (9) DESIRING to strengthen further international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material and nuclear facilities,
- (10) CONVINCED that this Convention should complement the safe use, storage and transport of nuclear material and the safe operation of nuclear facilities,
- (11) RECOGNIZING that there are internationally formulated physical protection recommendations that are updated from time to time which can provide guidance on contemporary means of achieving effective levels of physical protection,

(12) RECOGNIZING that effective physical protection of nuclear facilities and nuclear material used for military purposes is a responsibility of the State possessing such nuclear facilities and nuclear material, and understanding that such material and facilities are and will continue to be accorded stringent physical protection,

# SUMMARY RECORD OF THE SIXTH MEETING OF THE COMMITTEE OF THE WHOLE OF THE CONFERENCE TO CONSIDER AND ADOPT PROPOSED AMENDMENTS TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

Held at the Austria Center Vienna on Thursday, 7 July 2005 at 6.20 p.m.

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<sup>1</sup> CPPNM/AC/L.1

**Abbreviations used in this record:**

CPPNM	Convention on the Physical Protection of Nuclear Material
GRULAC	Latin American and Caribbean Group



**– The terrorist bombings in London**

1. The CHAIRPERSON offered the Committee's commiserations to the Government and people of the United Kingdom on the injuries and loss of life incurred during the terrorist bombings earlier that day. Such events underscored the importance of the work being done by the Committee.
2. The representative of BOLIVIA, speaking on behalf of the Latin American and Caribbean Group (GRULAC), expressed sorrow and repugnance for the events that had occurred in London earlier that day and assured the delegation of the United Kingdom of GRULAC's sympathy.
3. The representative of the REPUBLIC OF KOREA expressed his delegation's condolences to the victims of the terrorist bombings in London and his Government's condemnation of such acts. The tragedy highlighted the need for strengthened international cooperation in the fight against terrorism.

**8. Consideration of proposed amendments to the Convention on the Physical Protection of Nuclear Material (resumed)**

**– The Preamble, consolidated draft version (resumed)**

4. The representative of BOLIVIA, speaking on behalf of GRULAC, said that paragraph (3) in Mexico's new proposal was virtually identical with a preambular paragraph of the International Convention for the Suppression of Terrorist Bombings and a preambular paragraph of the International Convention for the Suppression of the Financing of Terrorism, both of which enjoyed wide support globally. Paragraph (3) as proposed by Mexico was consistent with the nature of the CPPNM, and GRULAC would therefore like to see it included in its entirety in the amended CPPNM.
5. The representative of PAKISTAN said that his delegation, which fully endorsed the consolidated draft version of the Preamble circulated during the Committee's previous meeting, was concerned about GRULAC's position regarding paragraph (3) in Mexico's new proposal. In his view, the inclusion of that paragraph in the amended CPPNM would weaken the document's focus on physical protection. His delegation would prefer that paragraph (3 tor) in the consolidated draft version of the Preamble be used.
6. The representative of ALGERIA urged GRULAC to accept paragraph (3 tor) in the consolidated draft version of the Preamble.
7. The CHAIRPERSON proposed that the wording of the consolidated draft version of the Preamble remain as it stood and that a reference to the concerns of GRULAC be included in the report of the Committee of the Whole.
8. The representative of MEXICO said that the argument that the inclusion in the amended CPPNM of the complete text of paragraph (3) in her country's new proposal would place undue emphasis on terrorism was baseless, particularly since only two of the 15 paragraphs in the consolidated draft version of the Preamble related to terrorism. Moreover, incidents such as the terrorist bombings in London emphasized the need to keep the spotlight on terrorism and for the international community to condemn such abhorrent acts in the clearest terms.

**The meeting was suspended at 6.35 p.m. and resumed at 6.45 p.m.**

9. The CHAIRPERSON said that, if the proposal made by him just before the suspension of the meeting proved unacceptable, he would refer the issue to which that proposal related to the Plenary for its consideration.

10. The representative of the REPUBLIC OF KOREA, referring to paragraph 9 of document CPPNM/AC/L.1/1/Rev.1, recalled that he had already spoken about the text of Article 7.1 proposed in the Basic Proposal (Revised). He would now like to elaborate on what he had said previously. His delegation would have preferred it if subparagraph (j) in the Basic Proposal (Revised) had been kept unchanged. It believed that, from the viewpoint of criminal law, organizing or directing others to commit an offence under the revised CPPNM should be punishable without reservation. Accordingly, it might be illogical or unnecessary for an attempt to commit such an offence — as envisaged in subparagraph (h) — to be included as a separate offence. Under criminal law, the punishment of crimes such as organizing or directing others to commit an offence should not depend on the accomplishment of the offence being organized or directed.

11. Moreover, the criminal intent (*mens rea*) of an offender under subparagraph (j) would not be the same as in the case of an attempt to commit the crime. In extreme cases, if the offender under subparagraph (j) knew, at the time when the offence which he/she had organized or directed others to commit was about to be committed, that the offence would be merely attempted and not accomplished, he/she might escape punishment under the relevant general principles of criminal law. His delegation was of the opinion that subparagraph (j) in the Basic Proposal (Revised) sufficiently covered accomplice situations.

12. Furthermore, given the gravity of offences involving nuclear material and facilities, impunity should be avoided to the maximum extent possible. Even if an offence described in subparagraphs (a) to (g) resulted in failure, organizing it or directing others to commit it should be subject to severe punishment. For example, from the viewpoint of counter-terrorism policy, terrorist group masterminds operating in the background should be more severely punished than perpetrators operating in the field. It would be clearly against counter-terrorism policy for such masterminds to be punished only for an attempt to commit an offence as envisaged in subparagraph (h). Since there could be a milder punishment or no punishment at all for attempted crimes under certain jurisdictions, great care should be taken with regard to the possible consequences of the inclusion of a reference to subparagraph (h) in subparagraph (j).

13. Regarding the issue of consistency with the existing counter-terrorism conventions, in his delegation's view it was not desirable to systematically reproduce wording just because it was contained in them. Provisions in those conventions might give rise to problems if simply incorporated into the amended CPPNM, so efforts should be made to improve on them so as to properly cover all the types of offences which the amended CPPNM provided against. If the offence being organized/directed was not accomplished, it should still be possible to punish the terrorist mastermind behind the attempt for having committed the offence of organizing or directing others.

14. Progress had been made in international criminal law through conventions broadening the scope of incrimination of terrorist acts and narrowing the scope for impunity of the perpetrators. His delegation had hoped that the amended CPPNM would reflect further progress, so that terrorist group masterminds who organized or directed others to commit an offence described in subparagraphs (a) to (g) would be punished for committing an offence and not just for attempting to commit one.

15. His delegation hoped that its concerns would be reflected in the report of the Committee of the Whole.

16. The CHAIRPERSON said that the concerns of the delegation of the Republic of Korea would be reflected in the Committee's report.

## **9. Consideration of the reports of the committees established by the Conference**

17. The CHAIRPERSON invited the Chairperson of the Drafting Committee to introduce the Drafting Committee's report, contained in document CPPNM/AC/DC/1.

18. The CHAIRPERSON OF THE DRAFTING COMMITTEE, introducing the report, drew attention to Annex I and said that there was an error in paragraph 9, relating to Article 7.1: in subparagraph (k), where the words “of this” were deleted, the word “article” should also have been deleted. He further noted that in paragraph 14 there should be an additional footnote, corresponding to footnote e/ in Annex II to the original CPPNM, with use made of the gray as well as the rad.
19. The CHAIRPERSON invited comments on Annex I to the report of the Drafting Committee.
20. Having noted that there were no comments on paragraph 1, relating to the title of the CPPNM, he proposed that the Committee temporarily set aside paragraph 2, relating to the Preamble, and consider paragraph 3, relating to the proposed addition of two definitions in Article 1.
21. The representative of POLAND asked why the Drafting Committee had, in the definition of “sabotage”, changed the word “and” after “the public” to “or.”
22. The CHAIRPERSON said that in his view the change was consistent with the addition of the phrases “or to the environment” and “or substantial damage to the environment” in Article 7.1 proposed by Norway and 12 other countries in document CPPNM/AC/L.9.
23. The CHAIRPERSON OF THE DRAFTING COMMITTEE said that, in reviewing the definition of “sabotage”, the Drafting Committee had felt that it would be better — especially for purposes of translation — to use “or” rather than “and”. In the definition of “sabotage” in the French version of document INFCIRC/225/Rev.4, the French equivalent of English “or” was used.
24. In the Drafting Committee’s view, with either word the definition would cover endangering the health and safety of personnel, endangering the public and endangering the environment. The Drafting Committee had not considered the replacement of “and” by “or” to be a substantive change.
25. The CHAIRPERSON noted that the representative of POLAND was satisfied with the explanation given by the Chairperson of the Drafting Committee.
26. Having noted there were no further comments on paragraph 3 and no comments on paragraphs 4–8, he invited comments on paragraph 9, relating to a new Article 7.1.
27. The representative of the RUSSIAN FEDERATION asked whether the Drafting Committee had considered the idea of combining the beginning of the proposed new Article 7.1 (“The intentional commission of”) and the end (“shall be made a punishable offence by each State Party under its national law”) to make a chapeau reading something like “The intentional commission of any of the following shall be made a punishable offence by each State Party under its national law”.
28. The CHAIRPERSON OF THE DRAFTING COMMITTEE said that the Drafting Committee had considered the idea but had decided that, as the original CPPNM had already been in force for more than 25 years and had been incorporated into the national legislation of States Parties, such structural changes should be avoided. They might be taken to indicate changes in substance.
29. If the structure of the proposed Article 7.1 created difficulties for certain countries, they could raise the matter with the relevant translators. However, the structure in question existed in the original CPPNM not only in English but also in translations into other languages.

30. The representative of the RUSSIAN FEDERATION said that the retention of that structure would ensure that the services of lawyers would be necessary at all stages of implementation of the amended CPPNM.
31. The CHAIRPERSON, having noted that there were no further comments on paragraph 9 and no comments on paragraphs 10–13, said, with regard to paragraph 14, relating to Annex II of the amended CPPNM, that, pursuant to what had been pointed out by the Chairperson of the Drafting Committee, the text submitted to the Plenary would include a footnote corresponding to footnote e/ in Annex II to the original CPPNM, with use made of the gray as well as the red.
32. He then invited the Committee to consider paragraph 2, relating to the Preamble.
33. The representative of MEXICO said that she had informed her country's authorities of the position regarding the consultations which had been taking place on the Preamble, and particularly the sixth paragraph ("RECALLING the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994"). Regrettably, she was not yet in a position to accept the text contained in the report of the Drafting Committee. However, the text could perhaps be transmitted to the Plenary pending the receipt by her of instructions from her country's authorities.
34. The CHAIRPERSON said that he would include a note regarding Mexico's position in the report of the Committee to the Plenary.
35. The observer from EGYPT, referring to paragraph 9 of the Drafting Committee's report, suggested that in subparagraph (e) of Article 7.1 the word "substantial" appearing before "damage" be deleted as, in his view, it could give rise to confusion about what damage was substantial and what damage was not substantial.
36. The representative of NEW ZEALAND said that, when talking about a punishable offence, it was not unusual to use a word such as "serious" or "substantial" to qualify "damage". He did not think that the word "substantial" should be deleted.
37. The CHAIRPERSON, agreeing with the representative of New Zealand, said that the Vienna Convention on Civil Liability for Nuclear Damage and the Convention on Third Party Liability in the Field of Nuclear Energy (the Paris Convention) talked about significant damage to the environment.
38. Inviting the Committee to consider the draft of its report contained in document CPPNM/AC/COW/L.1, he said that he would add some text about the Republic of Korea's concerns relating to Article 7.1 of the amended CPPNM and also some text about the concerns relating to the Preamble.
39. The representative of JAPAN, referring to paragraph 4 of the draft report, said that in emergency situations a great variety of people responded. He suggested that the second sentence be changed to read "In this context, States agreed that this phrase should be understood as covering acts of authorized persons (e.g. police, firemen, other authorities and operators) carried out in the fulfilment of their duties, ...".
40. The CHAIRPERSON took it that the suggested change was acceptable to the Committee.
41. The representative of GERMANY, referring to paragraph 5, suggested that the last sentence include a reference to the Code of Conduct on the Safety and Security of Radioactive Sources. Also, he said that two action plans had been adopted by the G-8 at its Evian Summit and suggested that the last sentence read "The relevance of the Code of Conduct on the Safety and Security of Radioactive Sources, of the International Conference on the Safety and Security of Radioactive Sources held last week in Bordeaux, France, of the Action Plan on Non Prolifer-

ation of Weapons of Mass Destruction and of the Action Plan on Safety and Security of Radioactive Sources, both adopted by the G-8 at its Evian Summit in June 2003, were also mentioned.”

42. The representative of LUXEMBOURG suggested that the words “and nuclear facilities” be added after “confined to nuclear material” at the end of the second sentence of paragraph 5.

43. The CHAIRPERSON took it that those suggestions were acceptable to the Committee and invited it to consider paragraph 6 of the draft report.

44. The representative of ARGENTINA said her delegation hoped that the report of the Committee of the Whole would be attached to the Final Act.

45. The CHAIRPERSON said that such a matter was for the Plenary to decide.

46. The representative of ARGENTINA said it was essential that paragraph 6 of the Committee’s report appear in some way in the Final Act. She would like her delegation’s views to be conveyed to the President of the Conference.

47. The representative of the RUSSIAN FEDERATION, expressing support for the comments made by the representative of Argentina, said he thought that an agreement had been reached on attaching the Committee’s report to the Final Act. However, he recognized that the matter was one for the Plenary to decide.

48. The representative of MEXICO, referring to paragraph 7, said that it related to a proposal made by her country. Her delegation had accepted the text of Article 2.4(b) on the understanding that the report of the Committee of the Whole would state that there was a substantive difference between the words “inasmuch” and “insofar” and on the understanding that the report would indicate that it was the Spanish text which her country considered acceptable. Her delegation would like paragraph 7 to reflect those understandings.

49. The CHAIRPERSON agreed to Mexico’s concerns being reflected more fully in the report of the Committee.

50. Having noted that there were no comments on paragraphs 8 and 9 of the draft Committee’s report, he invited the Committee to consider the draft Final Act — contained in Annex II to the report of the Drafting Committee (document CPPNM/AC/DC/1).

51. He said it was his understanding that the report of the Committee of the Whole would be attached to the Final Act, although — as he had already indicated — that was ultimately a matter for the Plenary to decide.

52. Noting there were no comments on the draft Final Act, he said he assumed that it was acceptable to the Committee of the Whole subject to the possible addition of a paragraph about attaching the Committee’s report to it.

53. He thanked the members of the Committee of the Whole for their cooperation.

**The meeting rose at 8 p.m**



## **REPORT OF THE DRAFTING COMMITTEE**

1. In accordance with a decision on 4 July 2005 by the Plenary of the Conference to consider proposed amendments to the Convention on the Physical Protection of Nuclear Material (“the Convention”), a Drafting Committee, composed of representatives from the following States Parties, was established: Algeria, Argentina, Australia, Belarus, Brazil, Canada, China, France, India, Israel, Japan, Mexico, Netherlands, Russian Federation, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland and United States of America.
2. The Committee met from 5 to 7 July 2005 under the chairmanship of Mr. K. Amégan of Canada. Mr. N. Singh of India was elected as Vice-Chairman.
3. The Committee reviewed all proposals to amend the Convention that were referred to it by the Committee of the Whole, for the purpose of editing and facilitating authentic translation. The revised text of the draft Amendment proposed by the Committee is reproduced in Annex I.<sup>1</sup>
4. The draft Final Act prepared by the Committee is reproduced in Annex II.<sup>1</sup>

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<sup>1</sup> Not included in this publication





## REPORT BY THE COMMITTEE OF THE WHOLE

1. The Committee of the Whole was established pursuant to Rule 16 of the Rules of Procedure of the Conference.
2. The Committee held six sessions between 4 and 8 July under the Chairmanship of Mr. S. McIntosh of Australia; Mr. E. Gil of Spain served as Vice-Chairperson of the Committee.
3. The Committee examined the Basic Proposal contained in Document CPPNM/AC/L.1/1/Rev.1 referred to it by the Plenary under item 8 of the Agenda of the Conference.
4. During the discussion of paragraph 9 of the Basic Proposal, some States indicated that the following part of the proposed subparagraph 1(e) of Article 7 of the Convention "..., unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated" could be misinterpreted. In this context, States agreed that this phrase should be understood as covering acts of authorized persons (e.g. police, firemen, other authorities and operators) carried out in the fulfilment of their duties, so as to ensure that such acts would not constitute an offence, as described in the same article.
5. The Committee of the Whole discussed a proposal submitted by Paraguay to amend the Convention to apply to all radioactive material and associated facilities. The Committee of the Whole, while noting the value of an international legally binding instrument on the safety and security of such material and facilities, agreed that the Paraguayan proposal went well beyond the scope of the Convention, which is confined to nuclear material and nuclear facilities. Some States noted that the issue of security of radioactive material and associated facilities was being discussed by the IAEA Board of Governors and General Conference. The relevance of the Code of Conduct on the Safety and Security of Radioactive Sources, of the International Conference on the Safety and Security of Radioactive Sources, held last week in Bordeaux, France, of the Action Plan on Non Proliferation of Weapons of Mass Destruction, and of the Action Plan on Security of Radioactive Sources, both adopted by the G-8 at its Evian Summit in June 2003, were also mentioned.
6. During the discussion of paragraph 4 of Article 2 of the Basic Proposal, which deals *inter alia* with the military forces of a State in the exercise of their official duties, Argentina proposed the introduction into Article 1 (definitions) of a definition of the term "military forces of a State" that would be consistent with the definition of that term in other similar conventions, such as the International Convention for the Suppression of Terrorist Bombings. Paragraph 4 of Article 1 of that Convention defines the "military forces of a State" as "the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility." This proposal received broad support during the discussions on paragraph 4 of Article 2 in the Committee of the Whole. Some other States, however, indicated that the proposal was not consistent with their national law regulating the system of physical protection of nuclear material and the status of specialized forces performing tasks in this area. The said proposal, if accepted, could have led to substantial difficulties in the implementation of the Convention by those States, thus impeding their ratification of the amendment to the Convention. The Committee of the Whole concluded that consensus could not be reached on including a definition of "military forces of a State" in the amendment of the Convention, but the Committee decided to include in the record of the Committee of the Whole the proposal by Argentina as set forth above, as well as this brief description of the discussion and the conclusion of the Committee.
7. During the discussion of the proposed subparagraph 4(b) of Article 2 Mexico proposed to replace the word "inasmuch" with the word "insofar". In the broad exchange that took place, it was recognized that there is a

substantive difference between both terms. Some delegations made it clear that the phrase “inasmuch” has at least two meanings in English, one of them is “to the extent that” and a second meaning is “because”. The delegation of Mexico accepted the wording of subparagraph 4(b) of Article 2 on the understanding that the text it considers acceptable is the text in Spanish.

8. The delegation of the Republic of Korea expressed a preference for paragraph (1) of Article 7 as contained in the Basic Proposal. In particular, their concern centred on including a reference to subparagraph (h) into subparagraph (j) as it could impact on the punishment of those involved in directing or organizing the acts described in this article.

9. The Committee referred the text of the Basic Proposal, with agreed amendments, to the Drafting Committee for its review pursuant to Rule 17.

10. The Committee examined the draft text of the Amendment to the Convention on Physical Protection of Nuclear Material as proposed by the Drafting Committee. Consensus was achieved on all provisions in the text, with the exception of the sixth preambular paragraph. The delegation of Mexico expressed a reservation on preambular paragraph six which is duly reflected in the summary records of the Conference. That paragraph was accordingly, referred to the Plenary for decision. With this exception, the Committee recommends the attached text of the Amendment to the Plenary for adoption.

11. The Committee examined and approved the draft Final Act submitted by the Drafting Committee, and it recommends the attached text of the draft Final Act for adoption by the Plenary.

# FINAL ACT

1. At the request of Austria and 24 co-sponsoring States, the Director General of the International Atomic Energy Agency (IAEA) circulated to all States Parties on 5 July 2004 proposed amendments to the Convention on the Physical Protection of Nuclear Material (“the Convention”). At the same time, the Director General requested confirmation as to whether he should, as depositary, call for a diplomatic conference to consider the proposed amendments. By 19 January 2005 the Director General had received requests to convene a conference to consider the proposed amendments from 55 States Parties, which represented the majority of States Parties to the Convention. Accordingly, pursuant to paragraph 1 of Article 20 of the Convention, on 3 February 2005 the Director General invited all States Parties to attend such a conference.
2. The Conference met in Vienna at the Headquarters of the IAEA from 4 to 8 July 2005.
3. Representatives of the following 88 States Parties and of one organization party to the Convention participated in the Conference: Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kenya, Korea Republic of, Kuwait, Latvia, Lebanon, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mexico, Monaco, Mongolia, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Senegal, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sudan, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and the European Atomic Energy Community (EURATOM).
4. Representatives of the following States and intergovernmental organizations participated in the Conference as observers: Cambodia, Egypt, Ethiopia, Haiti, Iran, Iraq, Jordan, Kazakhstan, Malaysia, Myanmar, Nigeria, Saudi Arabia, South Africa, Syrian Arab Republic, Venezuela, Yemen, Zambia, Zimbabwe, the United Nations, the IAEA and the League of Arab States.
5. The Conference was formally opened by Mr. David Waller, Acting Director General of the IAEA, who served as the Secretary-General of the Conference. Mr. Waller also addressed the Conference.
6. The Conference elected Mr. A. J. Baer (Switzerland) as President, and Mr. R. J. K. Stratford (United States of America), Ms. P. Espinosa-Cantellano (Mexico), Mr. P. Nieuwenhuys (Belgium), Mr. A. A. Matveev (Russian Federation), Ms. T. Feroukhi (Algeria), Mr. S. K. Sharma (India), Mr. T. A. Samodra Sriwidjaja (Indonesia) and Mr. Wu Hailong (China) as Vice-Presidents.
7. The Conference established a Committee of the Whole consisting of all States Parties, and one organization party to the Convention, that participated in the Conference. The Conference elected Mr. S. McIntosh (Australia) as Chairman of the Committee of the Whole, and Mr. E. Gil (Spain) as Vice-Chairman.
8. The Conference established a Drafting Committee composed of representatives of the following States Parties: Algeria, Argentina, Australia, Belarus, Brazil, Canada, China, France, India, Israel, Japan, Mexico, Netherlands, Russian Federation, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland and United States of America. The Conference elected Mr. K. Amégan (Canada) as Chairman of the Drafting Committee. Mr. N. Singh (India) was elected as Vice-Chairman by the Drafting Committee.

9. The Conference had before it as the basis for its discussions the following documents: the Basic Proposal (Document CPPNM/AC/L.1/1) and the proposal contained in Document CPPNM/AC/L.1/2. At its first meeting, the Conference decided to incorporate the latter proposal into the Basic Proposal to form a revised Basic Proposal (CPPNM/AC/L.1/1/Rev.1).

10. On the basis of its deliberations, the Conference adopted on 8 July 2005 the Amendment to the Convention, which is attached to this Final Act<sup>1</sup>. The Amendment was adopted at the Conference by consensus and will be circulated by the depositary to all States Parties and EURATOM. The Amendment is subject to ratification, acceptance, or approval, and will enter into force, in accordance with paragraph 2 of Article 20 of the Convention.

11. The Conference decided to attach the Report of the Committee of the Whole<sup>2</sup> without its attachments to this Final Act.

12. The Conference adopted this Final Act. The original of this Final Act, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, is deposited with the Director General of the IAEA.

IN WITNESS WHEREOF the undersigned have affixed their signatures to this Final Act.

DONE at Vienna this 8 July 2005.

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<sup>1</sup> See p. 1.

<sup>2</sup> See p. 151.

**Signed by the delegations of:**

Albania

Algeria

Argentina

Armenia

Australia

Austria

Azerbaijan

Belarus

Belgium

Bolivia

Bosnia and Herzegovina

Brazil

Bulgaria

Burkina Faso

Cameroon

Canada

Chile

China

Colombia

Croatia

Cuba

Cyprus

Czech Republic

Denmark

Ecuador  
Estonia  
Finland  
France  
Germany  
Greece  
Guatemala  
Honduras  
Hungary  
India  
Indonesia  
Ireland  
Israel  
Italy  
Japan  
Kenya  
Korea, Republic of  
Kuwait  
Latvia  
Libyan Arab Jamahiriya  
Liechtenstein  
Lithuania  
Luxembourg  
Madagascar  
Mali

Malta  
Mexico  
Monaco  
Mongolia  
Namibia  
Netherlands  
New Zealand  
Nicaragua  
Norway  
Oman  
Pakistan  
Paraguay  
Peru  
Philippines  
Poland  
Portugal  
Republic of Moldova  
Romania  
Russian Federation  
Senegal  
Serbia and Montenegro  
Slovakia  
Slovenia  
Spain  
Sweden

Tunisia

Turkey

Turkmenistan

Ukraine

United Kingdom of Great Britain and Northern Ireland

United States of America

Uruguay

EURATOM



**This publication brings together in a more convenient format the official records and other relevant documents relating to the negotiations on the Amendment to the Convention on the Physical Protection of Nuclear Material. The Amendment makes it legally binding for States Parties to protect nuclear facilities and material in peaceful domestic use, storage and transport. It also provides for expanded cooperation between and among States regarding rapid measures to locate and recover stolen or smuggled nuclear material, mitigate any radiological consequences of sabotage, and prevent and combat related offences. The Amendment constitutes an important milestone in the global efforts to combat nuclear terrorism.**

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