



IAEA

الوكالة الدولية للطاقة الذرية
國際原子能机构
International Atomic Energy Agency
Agence internationale de l'énergie atomique
Международное агентство по атомной энергии
Organizacjo Międzynarodowa ds. Energii Atomowej

Atoms For Peace

Wagramer Strasse 5, P.O. Box 100, A-1400 Wien, Austria
Phone: (+43 1) 2600 • Fax: (+43 1) 26007
E-mail: Official.Mail@iaea.org • Internet: <http://www.iaea.org>

In reply please refer to:
Dial directly to extension: (+431) 2600-

CPPNM/AC/CoW/SR.1

Issued: December 2005

Original: English

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

COMMITTEE OF THE WHOLE

Summary Record of the First Meeting

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

Contents

Item of the agenda ¹		Paragraphs
8	Consideration of proposed amendments to the Convention on the Physical Protection of Nuclear Material	1–111

¹ 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.

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.