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**CPPNM/AC/CoW/SR.4**

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# 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 Fourth Meeting

*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.**