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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

Record of the Sixth Meeting

Held at the Austria Center Vienna on Thursday, 7 July 2005 at 6.20 p.m.

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¹ 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 red.

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 Proliferation 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.