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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 Third Meeting

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

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¹ 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.