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

Vienna, 4 to 8 July 2005

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.