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

PLENARY

Summary Record of the 2nd Meeting

Held at the Austria Center Vienna on Friday, 8 July 2005 at 10.15 a.m.

President: Mr. BAER (Switzerland)

Contents

Item of the agenda ¹		Paragraphs
–	Condolences on the London bombings	1–3
9	Consideration of the reports of the committees established by the Conference	4–11
10	Adoption of the amendments to the Convention on the Physical Protection of Nuclear Material	12–23
11	Adoption and signature of the Final Act	24–69

¹ CPPNM/AC/1

Abbreviations used in this record:

CPPNM	Convention on the Physical Protection of Nuclear Material
EFTA	European Free Trade Association
Euratom	European Atomic Energy Community
GRULAC	Latin American and Caribbean Group
NAM	Non-Aligned Movement

– Condolences on the London bombings

1. The PRESIDENT, speaking on behalf of all those present, offered sincere condolences to the people of the United Kingdom of Great Britain and Northern Ireland on the horrific bombings that had taken place the preceding day in the London transport system. All those participating in the Conference sympathized with their United Kingdom colleagues and joined them in their absolute condemnation of those barbaric acts of terrorism, whoever the perpetrators might have been. Not for the first time that century had innocent people been killed in the name of ideology, nor was it likely to be the last. In his opening remarks to the Conference, the Acting Director General of the IAEA had recalled that the horrifying events of 11 September 2001 had taken place while the Board of Governors was meeting.
2. However, such acts served only as an incentive to work towards making the world a safer place. They left no doubt as to the urgent need for better, tighter and more effective physical protection measures.
3. He invited delegates to observe one minute of silence to honour the memory of the victims.

All present rose and stood in silence for one minute.

9. Consideration of the reports of the committees established by the Conference

4. The PRESIDENT said that, since the report of the Bureau of the Conference (document CPPNM/AC/L.11) had been issued, formal credentials satisfying the requirements of Rule 3 of the Rules of Procedure had been submitted for the delegates of Austria, Kuwait, Morocco and Euratom. Those three States and Euratom should therefore be considered within paragraph 3(a) of the report of the Bureau.
5. He took it that the Conference wished to adopt the recommendation contained in paragraph 4 of the report of the Bureau.
6. It was so decided.
7. At the invitation of the PRESIDENT, the CHAIRPERSON OF THE COMMITTEE OF THE WHOLE summarized the report by the Committee of the Whole (document CPPNM/AC/COW/1) and noted that consensus had been reached on all issues except one. He thanked delegates for their constructive approach.
8. The delegate from MEXICO requested that the reservation her country had expressed during the discussions in the Committee of the Whole with regard to preambular paragraph 6 of the draft text of the amendment to the Convention be reflected in the report.
9. The delegate from FRANCE requested that the titles of the action plans adopted by the G8 summit in Evian in 2003 appear in their correct form in paragraph 5 of the report. In the French version of the report, the words “garantir la sécurité des sources radioactives” should be removed from

the title of the first action plan, and in the English text the words “Safety and” should be removed from the title of the second action plan.

10. The PRESIDENT, on the understanding that the corrections requested by the delegate from France in paragraph 5 of the report would be made, and that specific reference would be made in paragraph 10 to Mexico’s reservation, took it that the Conference wished to take note of the report by the Committee of the Whole.

11. It was so decided.

10. Adoption of the amendments to the Convention on the Physical Protection of Nuclear Material

12. The PRESIDENT noted that if consensus was not reached on any issue at that stage the Conference would have to put unresolved issues to a vote. The result of any votes would be final and binding.

13. The delegate from MEXICO said that, in a spirit of compromise, her country’s authorities had instructed her not to hamper the continuation and successful conclusion of the Conference. Therefore Mexico would not object to preambular paragraph 6, about which it had previously expressed reservations.

14. The PRESIDENT thanked the Mexican authorities for their flexibility.

15. The delegate from ALGERIA, supported by the delegate from PAKISTAN, thanked the delegates from Mexico and GRULAC for not blocking consensus.

16. The delegate from BRAZIL recalled President Lula da Silva’s message at the G8 summit in Gleneagles expressing his country’s firm condemnation of the terrorist acts committed in London on 7 July, conveying his sincere condolences to the Prime Minister of the United Kingdom, and extending solidarity to the families of the victims. Those tragic events had been a sad reminder of the need to strengthen the Convention on the Physical Protection of Nuclear Material. His delegation therefore attached great value to the consensus that had been reached on the proposed amendments to the Convention.

17. He congratulated the President and the Chairpersons of the Committee of the Whole and the Drafting Committee and commended them on having skilfully guided the Conference to a successful conclusion. He also commended the other Bureau members and the staff of the Secretariat on their competent and diligent work which had facilitated that positive outcome.

18. Brazil had actively supported the expansion of the scope of the CPPNM from the outset. The unprecedented challenges the international community had faced in recent years had demonstrated the need to reinforce the relevant legal framework, including the CPPNM. Brazil had joined the consensus on all the proposed amendments, including the provision contained in Article 2.4(b) and the inclusion of Article 2.4(c) on use of force. Brazil was particularly grateful to the delegation from China for having introduced that amendment. However, Brazil did consider that including a precise definition of the term ‘military forces’, and a reference to Protocol I of the Geneva Conventions of 1949, would have helped reinforce the principle that hostile acts against nuclear facilities used for peaceful purposes were contrary to international law, thus further strengthening the Convention. Article 2.4(b) created a loophole by establishing that the activities of armed forces were not governed by the

Convention. Those concerns had been partly allayed by the inclusion of preambular paragraphs 4 and 5 and Article 2.4(c). Those elements would be taken into account by Brazilian legislators when they considered the amendments to the Convention.

19. His delegation was prepared to adopt all the agreed amendments to the CPPNM.

20. The delegate from SPAIN requested clarification as to whether the amended Convention would be subject to the customary formalities required for an international treaty, e.g. whether final clauses would need to be added.

21. The DIRECTOR OF THE IAEA OFFICE OF LEGAL AFFAIRS replied that there was no requirement for final clauses to be added to the amendment to the Convention. Delegates' signatures to the Final Act would simply confirm their approval of the language adopted by the Conference and were not a legal treaty action. In accordance with Article 20 of the Convention, the amendment would enter into force 30 days after two thirds of the States Parties had ratified or acceded to the amendment as it stood, without final clauses.

22. The PRESIDENT said that he took it that the Conference wished to adopt the amendment to the Convention on the Physical Protection of Nuclear Material.

23. It was so decided.

11. Adoption and signature of the Final Act

24. The delegate from BOLIVIA, speaking on behalf of GRULAC, said that the Group wished to stress once again the importance it attached to the Conference as a means of strengthening the international legal framework for combating terrorism.

25. The CPPNM was one of thirteen universal instruments on counter-terrorism and had been cited in all the reports of the United Nations Secretary-General to the General Assembly on measures to eliminate international terrorism. Similarly, the Security Council and various General Assembly resolutions on terrorism had made reference to the Convention.

26. The Group had therefore hoped that the preambular paragraph 3 proposed by Mexico would be included in the text. That text, which used language taken from the preamble of the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, read as follows: "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' "

27. Those treaties enjoyed broad support globally and both the General Assembly and the Security Council had frequently urged States to accede to them. To date, 139 States had become party to the Terrorist Bombings Convention and 138 to the Financing of Terrorism Convention.

28. The delegate from MEXICO said that her Government regretted that consensus had not been reached on the inclusion in the Convention of a provision clearly stipulating that attacks during peacetime on nuclear facilities used for peaceful purposes were a violation of international law. The fact that nuclear facilities used for peaceful purposes were protected by international humanitarian law

during times of conflict made it all the more crucial that a clear commitment be made that those facilities should not be the target of attack in peacetime.

29. During the consultation process, several formulations had been examined with a view to removing the loophole introduced by Article 2.4(b). In the interests of consensus, her country had proposed including language taken from other terrorism-related conventions that enjoyed broad acceptance.

30. Mexico regretted that it had not been possible to stipulate clearly that all acts of terrorism were unjustifiable and illegal, irrespective of where and by whom they were committed. The deplorable terrorist attack in London on the preceding day should prompt the international community to redouble its efforts to eradicate terrorism. The Conference should conclude with a clear message and a firm commitment to that goal, which would require all States Parties to show flexibility, as Mexico had done throughout the negotiations.

31. In conclusion, she noted that Mexico understood Article 2.4(b) of the amended Convention to mean that the activities of States' armed forces were excluded only in so far as they were regulated by other instruments of international law.

32. The delegate from CUBA said that none of the proposed amendments to the CPPNM could be interpreted as condoning the threat or use of force in international relations, which should be strictly regulated in all cases by the principles of international law and the aims and principles enshrined in the Charter of the United Nations. Cuba was also of the opinion that no provision of the amended Convention should be interpreted as permitting the use, or threat of use, of force against nuclear facilities intended for peaceful purposes, which would constitute a grave violation of international law, the principles and aims of the United Nations Charter and the Agency's Statute. His Government fully supported the position of NAM, as expressed in the Final Document of the XIII NAM Summit held in Kuala Lumpur in 2003, which held that any attack against peaceful nuclear facilities constituted a grave violation of international law, the principles and purposes of the United Nations Charter and IAEA regulations, and which recognized the need for a comprehensive multilaterally negotiated instrument prohibiting attacks, or threats of attacks, on such facilities.

33. His country had firmly supported the process for amending the CPPNM on the understanding that its main objective was to strengthen the physical protection regime for peaceful nuclear facilities. In that connection, Cuba considered that the amendment introduced as Article 2.4(b) undermined that objective by limiting the scope of the CPPNM, which could weaken the physical protection regime. The only means of guaranteeing full achievement of the objectives of the amended CPPNM was total respect for the principle of the inviolability of peaceful nuclear facilities and the commitment enshrined in Article 2.4(c) of the amended Convention.

34. The delegate from ARGENTINA joined other speakers in offering condolences to the United Kingdom in connection with the terrorist attacks in London on the preceding day. She also associated herself with the remarks made on behalf of GRULAC regarding the proposed insertion of a preambular paragraph, and the view expressed by the delegate from Mexico. With reference to paragraphs 10 and 11 of the draft Final Act, she suggested that the Amendment and the Report by the Committee of the Whole be attached to the Final Act as Annexes 1 and 2 respectively.

35. The PRESIDENT said it was his understanding that that would be done.

36. The delegate from CANADA thanked the Mexican delegation for the spirit of compromise it had shown.

37. The delegate from PAKISTAN congratulated the President and the Chairperson of the Committee of the Whole on their able handling of the work of the Conference. He also offered

condolences to the families and victims affected by the terrorist attack in London, yet another reminder of the threat of terrorism and the need for concerted international action to combat it.

38. Pakistan's commitment to the campaign against terrorism in all its forms was unswerving. Terrorism using nuclear weapons and nuclear material was the ultimate nightmare scenario and his country therefore fully supported the strengthening of the regime for the physical protection of nuclear material and facilities.

39. All States had the right to develop and apply nuclear energy for peaceful purposes and to benefit from peaceful nuclear applications. Measures had to be taken to prevent the wrong use of nuclear technology in order to promote confidence in international cooperation and greater access to such technology for legitimate ends. As a party to the CPPNM, his country had already put in place legislative and administrative arrangements and multi-layered structures to ensure the safety and security of nuclear and radioactive material and sources. Strengthening the physical protection regime was a step in the right direction.

40. His country had been an active participant in the CPPNM amendment process and had shown flexibility on a number of issues in the interests of bringing that process to a successful conclusion. It had joined the consensus on the understanding that: the responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rested entirely with that State; strengthening the physical protection regime would prevent and deter wrong use of nuclear technology, while facilitating and promoting greater international cooperation in the area of the peaceful uses of nuclear energy without undue restrictions; certain exclusions from the scope of application of the Convention did not imply immunity from other relevant provisions of international law, including international humanitarian law, and, in cases not involving armed conflict or situations not covered by international humanitarian law, the Convention would be fully applicable and no immunity would be permitted; and none of the provisions of the CPPNM could be interpreted as condoning otherwise unlawful acts or as precluding prosecution under other laws.

41. With regard to the preamble, Pakistan fully shared some delegations' concerns regarding Article 2.4(b). Certain formulations proposed in that connection had not addressed those concerns directly or explicitly, touched upon issues already amply reflected elsewhere in the Basic Proposal and were thus repetitive, and had no bearing on the goal of achieving an effective physical protection regime. Any physical protection regime was only truly effective when it prevented all attacks on nuclear material and facilities, regardless of the nature of the attack or the perpetrator. Accordingly, the amended Convention should be interpreted and applied in a manner that was fully consistent with the purposes and objectives of the United Nations Charter and international law, including international humanitarian law.

42. The delegate from the UNITED KINGDOM thanked all those who had offered condolences in connection with the terrorist bombings in London. That sympathy and solidarity was of great comfort to the people of the United Kingdom.

43. Speaking on behalf of the members of the European Union and Euratom, the acceding countries Bulgaria and Romania, the candidate countries Croatia and Turkey, the EFTA country Norway, and Ukraine, he said that the preceding day's events in London had underlined once more the grave threat posed by terrorism, and how people with malevolent intent were still trying to cause death and destruction. The work of the Conference was extremely relevant to that problem.

44. After long negotiations, consensus had been reached on substantial amendments to the CPPNM, extending its scope to include domestic transport, storage and use of nuclear material, and nuclear facilities. The amended Convention would meet the obligations pursuant to Security Council

resolution 1540 and the objectives of the European security strategy and the European strategy against the spread of weapons of mass destruction.

45. European Union Member States had long spearheaded the ongoing efforts to strengthen the CPPNM and were grateful to Austria for its initiative in facilitating the consensus that had led to the holding of the Conference. They were also grateful to the People's Republic of China for its revision of the Austrian proposal that had facilitated the positive outcome of the Conference, and to all States Parties for the constructive and cooperative spirit they had shown. The European Union would like to place on record its thanks to the President of the Conference, the Chairperson of the Committee of the Whole, the Chairperson and members of the Drafting Committee, all officers of the Conference and the Secretariat.

46. Despite the positive outcome of the Conference, much work lay ahead. European Union Member States and Euratom would immediately start working on the ratification, acceptance or approval of the Amendment and urged all States Parties to do likewise. They also urged all States not party to the Convention to accede to it as soon as possible.

47. The PRESIDENT said that in his country, Switzerland, people had learned to live by consensus on important issues when it was in the general interest. He was pleased to see that the same spirit had prevailed at the Conference.

48. The delegate from the REPUBLIC OF MOLDOVA associated himself with the final statements made by other delegations.

49. The delegate from ALGERIA thanked the President for his able handling of the Conference's work and the Chairpersons of the Drafting Committee and the Committee of the Whole for their patience, which had contributed to the success of the Conference. She also thanked China for its highly constructive proposal, and all other delegations that had worked to improve the physical protection of nuclear material, especially nuclear facilities, in order to protect the use of nuclear energy for peaceful purposes and thus accelerate social and economic development.

50. The delegate from AZERBAIJAN offered his country's sincere condolences to the people of the United Kingdom and the families of those killed in the terrorist attacks in London. His country supported the international community's efforts to combat terrorism in all its manifestations, especially involving the use of nuclear material. It welcomed the consensus reached on the Amendment to the CPPNM, which was an important instrument in that fight.

51. The delegate from the REPUBLIC OF KOREA welcomed the consensus achieved on the landmark Amendment, which was a vital step forward in the efforts to strengthen the international regime for enhancing physical protection of nuclear material and combating terrorism. It would certainly contribute significantly to achieving and maintaining worldwide effective protection of nuclear material and facilities and preventing related crimes. Physical protection of nuclear material and facilities was a core issue in fighting terrorism. Success in achieving the Convention's objectives would depend on wider accession to it and its thorough implementation. His country encouraged all States Parties to expedite their internal processes for the early entry into force of the amendments and urged States not yet party to the Convention to accede to it as soon as possible. It welcomed the decision of Egypt to accede to the CPPNM.

52. His country had 20 nuclear power plants in operation and the sixth largest civilian nuclear power industry in the world. It was therefore aware of the importance of physical protection and was ready to implement the amended Convention. In May 2003 it had enacted legislation on physical protection and radiological emergencies which contained measures to strengthen such protection, as well as punishment for related crimes. The Republic of Korea was a party to all 12 anti-terrorism

conventions and looked forward to participating in efforts to strengthen international mechanisms for fighting terrorism.

53. In conclusion, he thanked the President, the Chairperson of the Committee of the Whole, the Chairperson of the Drafting Committee and the Secretariat for their excellent work, as well as all delegations, especially China and Mexico, for their very worthwhile contributions.

54. The delegate from COLOMBIA commended the President of the Conference and the Chairperson of the Committee of the Whole on their successful efforts and offered condolences to the people of the United Kingdom.

55. Her country considered it important to strengthen legal mechanisms for the physical protection of nuclear material and was committed to the fight against all forms of terrorism. It had expressed doubts about the inclusion of military aspects in a Convention that applied to peacetime activities, which was why it had favoured the Chinese proposal and had supported the amendments proposed by Mexico. Her delegation had therefore been opposed to the inclusion of Article 2.4(b) and interpreted the amended text in the sense of Article 2.4(c), i.e. in the sense of the Chinese proposal.

56. The delegate from CHINA expressed condemnation for the terrorist acts in London and offered condolences to the victims' families.

57. China had participated actively in the amendment process and appreciated the efforts of all parties to achieve consensus and their constructive attitude. His delegation also appreciated the support its proposal had received from all sides in the conviction that it would strengthen the physical protection of nuclear material and facilities and make a significant contribution to the fight against terrorism.

58. In conclusion, he thanked the President, the Chairpersons of the Committee of the Whole and the Drafting Committee and the Secretariat for their hard work, and the Austrian Government for its contribution to the success of the Conference.

59. The delegate from SERBIA AND MONTENEGRO expressed condemnation for the terrorist attacks in London and offered his country's condolences to the United Kingdom. Those attacks were yet another reason to strengthen efforts to fight terrorism. His delegation also associated itself with the statement made by the United Kingdom on behalf of the European Union.

60. The delegate from JAPAN joined his Prime Minister in condemning the savage act of terrorism that had been perpetrated in London and offered condolences to the Government of the United Kingdom, the victims and their families. He also associated himself with other speakers in their expressions of renewed determination to fight terrorism.

61. The consensus on the Amendment was a step in the right direction. He thanked the President, the Chairpersons and other officers, the delegation of China and the Austrian Government for their valuable contributions, and all other participants for the spirit of cooperation they had shown. Japan would accelerate the ratification process and encouraged other countries to do likewise. His country would also cooperate with the Secretariat's activities which were important for the process of ratification not only of the amended CPPNM but also of other anti-terrorism conventions.

62. The delegate from NEW ZEALAND joined previous speakers in their expressions of sympathy on the London bombings. Those attacks reinforced the relevance of the task undertaken by the Conference.

63. He commended the Mexican delegation on its flexibility and the constructive approach shown by other delegations.

64. The CPPNM was an important part of the international regime to combat terrorism. The aim of the Amendment was to ensure its full effectiveness in covering the kind of terrorist threats that had become more evident since the original Convention had entered into force.

65. The delegate from INDONESIA said that acts such as the terrorist attacks in London, which his country condemned, could be prevented only through concerted action by democratic and civilized countries. His delegation supported the Amendment and was ready to sign the Final Act.

66. The delegate from the PHILIPPINES, having expressed sympathy for the victims of the terrorist attacks in London, said it was gratifying that the Amendment had been adopted by consensus, which his country was happy to join in order to make the world a more secure and safe place.

67. The delegate from KUWAIT, after thanking the President, the other officers and the Secretariat for the part they had played in making the Conference a success, said that his country condemned all acts of terrorism. He extended his sympathy to the victims of the terrorist attacks in London and their families, and to the Egyptian Ambassador to Iraq and his family.

68. The PRESIDENT, noting that the third line of paragraph 10 of the draft Final Act would be amended to read “by consensus and will be circulated” pursuant to the decision just taken, invited the Conference to adopt the Final Act which would be ready for signature later that day.

69. The Final Act was adopted.

The meeting rose at 11.35 a.m.