

Report by the Committee of the Whole

1. The Committee of the Whole was established pursuant to Rule 16 of the Rules of Procedure of the Conference.
2. The Committee held six sessions between 4 and 8 July under the Chairmanship of Mr. S. McIntosh of Australia; Mr. E. Gil of Spain served as Vice-Chairperson of the Committee.
3. The Committee examined the Basic Proposal contained in Document CPPNM/AC/L.1/1/Rev.1 referred to it by the Plenary under item 8 of the Agenda of the Conference.
4. During the discussion of paragraph 9 of the Basic Proposal, some States indicated that the following part of the proposed subparagraph 1(e) of Article 7 of the Convention “..., unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated” could be misinterpreted. 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, so as to ensure that such acts would not constitute an offence, as described in the same article.
5. The Committee of the Whole discussed a proposal submitted by Paraguay to amend the Convention to apply to all radioactive material and associated facilities. The Committee of the Whole, while noting the value of an international legally binding instrument on the safety and security of such material and facilities, agreed that the Paraguayan proposal went well beyond the scope of the Convention, which is confined to nuclear material and nuclear facilities. Some States noted that the issue of security of radioactive material and associated facilities was being discussed by the IAEA Board of Governors and General Conference. 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 Security of Radioactive Sources, both adopted by the G-8 at its Evian Summit in June 2003, were also mentioned.
6. During the discussion of paragraph 4 of Article 2 of the Basic Proposal, which deals *inter alia* with the military forces of a State in the exercise of their official duties, Argentina proposed the introduction into Article 1 (definitions) of a definition of the term “military forces of a State” that would be consistent with the definition of that term in other similar conventions, such as the International Convention for the Suppression of Terrorist Bombings. Paragraph 4 of Article 1 of that Convention defines the “military forces of a State” as “the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.” This proposal received broad support during the discussions on paragraph 4 of Article 2 in the Committee of the Whole. Some other States, however, indicated that the proposal was not consistent with their national law regulating the system of physical protection of nuclear material and the status of specialized forces performing tasks in this area. The said proposal, if accepted, could have led to substantial difficulties in the implementation of the Convention by those States, thus impeding their ratification of the amendment to the Convention. The Committee of the Whole concluded that consensus could not be reached on including a definition of “military forces of a State” in the amendment of the Convention, but the Committee decided to include in the record of the Committee of the Whole

the proposal by Argentina as set forth above, as well as this brief description of the discussion and the conclusion of the Committee.

7. During the discussion of the proposed subparagraph 4(b) of Article 2 Mexico proposed to replace the word “inasmuch” with the word “insofar”. In the broad exchange that took place, it was recognized that there is a substantive difference between both terms. Some delegations made it clear that the phrase “inasmuch” has at least two meanings in English, one of them is “to the extent that” and a second meaning is “because”. The delegation of Mexico accepted the wording of subparagraph 4(b) of Article 2 on the understanding that the text it considers acceptable is the text in Spanish.

8. The delegation of the Republic of Korea expressed a preference for paragraph (1) of Article 7 as contained in the Basic Proposal. In particular, their concern centred on including a reference to subparagraph (h) into subparagraph (j) as it could impact on the punishment of those involved in directing or organizing the acts described in this article.

9. The Committee referred the text of the Basic Proposal, with agreed amendments, to the Drafting Committee for its review pursuant to Rule 17.

10. The Committee examined the draft text of the Amendment to the Convention on Physical Protection of Nuclear Material as proposed by the Drafting Committee. Consensus was achieved on all provisions in the text, with the exception of the sixth preambular paragraph. The delegation of Mexico expressed a reservation on preambular paragraph six which is duly reflected in the summary records of the Conference. That paragraph was accordingly, referred to the Plenary for decision. With this exception, the Committee recommends the attached text of the Amendment to the Plenary for adoption.

11. The Committee examined and approved the draft Final Act submitted by the Drafting Committee, and it recommends the attached text of the draft Final Act for adoption by the Plenary.