



IAEA

الوكالة الدولية للطاقة الذرية
國際原子能机构
International Atomic Energy Agency
Agence internationale de l'énergie atomique
Международное агентство по атомной энергии
Organizacj3o Międzynarodowej Energii Atomowej

Atoms For Peace

Wagramer Strasse 5, P.O. Box 100, A-1400 Wien, Austria
Phone: (+43 1) 2600 • Fax: (+43 1) 26007
E-mail: Official.Mail@iaea.org • Internet: <http://www.iaea.org>

In reply please refer to:
Dial directly to extension: (+431) 2600-

CPPNM/AC/CoW/SR.5

Issued: December 2005

Original: English

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 Fifth Meeting

Held at the Austria Center Vienna on Wednesday, 6 July 2005 at 3.15 p.m.

Contents

Item of the agenda ¹		Paragraphs
8	Consideration of proposed amendments to the Convention on the Physical Protection of Nuclear Material (<i>continued</i>)	1–60

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
Terrorist Bombings Convention	International Convention for the Suppression of Terrorist Bombings

8. Consideration of proposed amendments to the Convention on the Physical Protection of Nuclear Material (continued)

Paragraph 9 (Article 7) of CPPNM/AC/L.1/1/Rev.1

1. The representative of the REPUBLIC OF KOREA said that his delegation would agree to the Japanese proposal contained in document CPPNM/AC/L.7 being referred to the Drafting Committee provided that he could subsequently explain the position of the Republic of Korea for the record.
2. The CHAIRPERSON said that Article 7 would be referred to the Drafting Committee, together with the amendments proposed by Norway and others in document CPPNM/AC/L.9 and the Japanese proposal.

Mexico's new proposal

3. The representative of INDIA said that there did not appear to be consensus on Mexico's new proposal and that, in her delegation's view, the reference to terrorism in preambular paragraph (5) in document CPPNM/AC/L.1/1/Rev.1 was sufficient.
4. The representative of MEXICO said that her country had particularly wanted the amended CPPNM to state explicitly that attacks during peacetime on facilities for the peaceful utilization of nuclear energy contravened international law, including the Charter of the United Nations.
5. A strong focus on terrorism in the amended CPPNM would not be out of place, as it was the increase in terrorist activities in recent years which had led to the review of the CPPNM.
6. Her delegation could accept the proposed combining of preambular paragraph (5) in document CPPNM/AC/L.1/1/Rev.1 with paragraph (2) in Mexico's new proposal.
7. The representative of HONDURAS expressed support for the suggestion made by the representative of the United States towards the end of the Committee's previous meeting and said that it was important to take account of the situation of the Russian Federation.
8. The representative of LUXEMBOURG said that the effectiveness of the amended CPPNM would not depend on whether it contained a definition of "armed forces", but it might be compromised if the inclusion of such a definition prevented the accession of the Russian Federation to the amended CPPNM.
9. The representative of TURKEY expressed support for the combining of paragraph (2) in Mexico's new proposal with preambular paragraph (5) in document CPPNM/AC/L.1/1/Rev.1.
10. A definition of "armed forces" should be omitted if its inclusion would prevent universal accession to the amended CPPNM.
11. The representative of ALGERIA said that, as she had indicated during the Committee's previous meeting, many delegations considered that paragraph (3) in Mexico's new proposal should simply refer to the Declaration on Measures to Eliminate International Terrorism without citing it.
12. She requested further clarification of the Russian Federation's reasons for opposing the inclusion in the amended CPPNM of a definition of "armed forces".
13. The CHAIRPERSON said that the definition of "military forces of a State" in conventions such as the Nuclear Terrorism Convention created difficulties for the Russian Federation because the

nuclear facilities in that country were protected by forces belonging to the Ministry of the Interior, not by State military forces.

14. Recalling the suggestion made by the representative of Italy, he read out the following proposed wording for preambular paragraph (5): “DEEPLY CONCERNED about the worldwide escalation of acts of terrorism in all its forms and manifestations, and the threats posed by organized crime”.

15. The representative of ITALY recalled that he had used the expression “international organized crime”.

16. The representative of ALGERIA noted that the United Nations Office on Drugs and Crime used the expression “transnational organized crime”.

17. The representative of TURKEY, supported by the representative of BRAZIL, suggested that “organized crime” be used without qualification.

18. The representative of FRANCE proposed the following wording: “DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and by the threats posed by international terrorism and organized crime”.

19. The representative of MEXICO said that the wording proposed by the representative of France would meet Mexico’s aims and was in line with the purposes of the amended CPPNM.

20. The CHAIRPERSON asked for comments on the idea that paragraph (3) in Mexico’s new proposal simply refer to the Declaration on Measures to Eliminate International Terrorism without citing it.

21. The representative of MEXICO said that the Declaration was cited in the International Convention for the Suppression of the Financing of Terrorism, in the Nuclear Terrorism Convention and in the Terrorist Bombings Convention, and that citing it was appropriate given the contents of subparagraph (b) of Article 2.4 in document CPPNM/AC/L.1/1/Rev.1.

22. The representative of ALGERIA said that it would be better to cite something more recent than the Declaration on Measures to Eliminate International Terrorism, which dated from 1994.

23. The representative of CANADA said that, in her view, there was no legal difference between the full paragraph (3) in Mexico’s new proposal and a shortened version ending with “9 December 1994”. However, she would prefer to see the full paragraph (3) included in the amended CPPNM, because its inclusion would save time for future readers of the CPPNM text and because the same language was used in the recently adopted Nuclear Terrorism Convention even though the Declaration on Measures to Eliminate International Terrorism dated back more than ten years.

24. The representative of PAKISTAN said that he was not in favour of quoting selectively from a particular declaration.

25. The representative of MEXICO said that, in her view, quoting from the Declaration on Measures to Eliminate International Terrorism rather than just referring to it was more likely to underline the Declaration’s continuing significance.

26. The CHAIRPERSON suggested a formulation along the following lines: “BEARING IN MIND the Convention for the Suppression of Acts of Nuclear Terrorism, and particularly its sixth preambular paragraph, referring to the Declaration on Measures ...”.

27. The representative of MEXICO said that such a formulation would be acceptable to her delegation.

28. The representative of ALGERIA said that such a formulation would be acceptable to her delegation also.
29. The representative of PAKISTAN said that his delegation would prefer the short version — ending with “of December 1994” — of paragraph (3) in Mexico’s new proposal. He did not think that there should be a reference to the Nuclear Terrorism Convention, which was not yet open for signature.
30. The representative of NEW ZEALAND expressed support for the Chairperson’s suggestion.
31. The observer for EGYPT said that, in his view, paragraph (3) in Mexico’s new proposal should not be included in the Preamble of the amended CPPNM.
32. The CHAIRPERSON proposed that the Committee defer further consideration of paragraph (3) in Mexico’s new proposal and focus on paragraph (1). He recalled that, during the Committee’s previous meeting, the representative of Italy had said that in his view that paragraph was superfluous. However, there had been no objections to the paragraph.
33. The representative of INDIA, supported by the representative of ITALY, said that she would not like paragraph (1) in Mexico’s new proposal to become the first preambular paragraph of the amended CPPNM. That would unduly affect the orientation of the document.
34. The CHAIRPERSON asked whether the delegation of India could accept the text of paragraph (1) if it appeared later in the Preamble of the amended CPPNM.
35. The representative of INDIA said that her delegation could perhaps go along with that.
36. The representative of ARMENIA said that her delegation could go along with the approach envisaged by the Chairperson, although it would prefer that paragraph (1) be omitted.
37. The representative of BRAZIL said that it was important for his delegation that the Charter of the United Nations be referred to and that his delegation would like both paragraph (1) in Mexico’s new proposal and paragraph 3(bis) proposed by Mexico in document CPPNM/AC/L.6 to be included in the Preamble of the amended CPPNM.
38. The CHAIRPERSON suggested that paragraph (1) be included as the fourth preambular paragraph of the amended CPPNM.
39. The representative of ARGENTINA said that, in her view, paragraph (1) was not as appropriate as paragraph 3(bis) in document CPPNM/AC/L.6.
40. The representative of ALGERIA supported the view expressed by the representative of Argentina.
41. The representative of MEXICO recalled that paragraph (1) had resulted from consultations in a working group whereas paragraph 3(bis) had been proposed by Mexico alone. However, if a consensus emerged in favour of paragraph 3(bis), her delegation would not mind at all.
42. The CHAIRPERSON concluded that there might be strong support for including paragraph 3(bis) — rather than paragraph (1) — as the fourth preambular paragraph.

Article 2.4

43. The CHAIRPERSON read out the following statement:

“During the discussion of Article 2.4, which deals with, inter alia, the military forces of a State in the exercise of their official duties, there was a proposal by Argentina for 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. Article 1.4 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 Article 2.4 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 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.

“Can I take it that the Committee of the Whole has concluded that consensus could not be reached on including a definition of ‘military forces of a State’ in the Convention, but that the Committee decided to include in the records of the Diplomatic Conference the proposal by Argentina as set forth above, together with this brief description of the discussion and the conclusion of the Committee?”

44. The Committee accepted the statement.

The meeting was suspended at 4.25 p.m. and resumed at 5.25 p.m.

The Preamble (consolidated draft version)

45. The CHAIRPERSON, drawing attention to a consolidated draft version of the Preamble which had just been circulated,² said that paragraph (5) should read “DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and the threats posed by international terrorism and organized crime”.

46. The representative of MEXICO, referring to paragraph (3 ter), recalled paragraph (3) of Mexico’s new proposal, which quoted from the Declaration on Measures to Eliminate International Terrorism. She would send paragraph (3 ter) to the Mexican authorities and provide their response the next day.

47. The CHAIRPERSON said that he had no objection to delegations sending new proposals to their capitals for comment. However, the Drafting Committee would be meeting that evening, and he would therefore like to refer a complete text — albeit ad referendum — to the Drafting Committee.

48. The representative of AUSTRALIA said that he thought paragraph (3 ter) had been accepted in place of paragraph (3 bis). He asked whether the inclusion of both paragraphs in the consolidated draft version of the Preamble was intentional.

49. The CHAIRPERSON said that it was intentional. In light of discussions which he had had during the suspension of the meeting, he believed that the inclusion of both paragraphs offered the best chance of reaching agreement.

50. The representative of SPAIN, referring to the change to paragraph (5) which the Chairperson had just read out, recalled the suggestion made by the representative of Italy that paragraph (5) read “..., and by the threats posed by international organized crime”.

² The consolidated draft version of the Preamble is attached to this summary record.

51. The CHAIRPERSON said that the wording which he had read out had been proposed by the representative of France following the suggestion made by the representative of Italy.
52. The representative of FRANCE said that the purpose of his proposal had been to respond to all concerns regarding paragraph (5). However, he was flexible about the exact wording to be chosen.
53. The representative of GERMANY said that his delegation, which had been ready to accept the Basic Proposal (Revised), believed that some of the new formulations before the Committee were shifting the focus away from physical protection towards other matters. In a spirit of compromise, however, his delegation could agree to those formulations being referred ad referendum to the Drafting Committee.
54. The representative of ALGERIA said that she also thought that paragraph (3 ter) had been accepted in place of paragraph (3 bis).
55. The CHAIRPERSON said that in his discussions during the suspension of the meeting it had become clear that both paragraph (3 bis) and paragraph (3 ter) would have to be included if the reference to part of the contents of the Declaration on Measures to Eliminate International Terrorism contained in paragraph (3) in Mexico's new proposal was to be dropped.
56. The representative of ALGERIA said that there had been no objections to the suggestion that paragraph (3 bis) be replaced by paragraph (3 ter). In a spirit of compromise, however, her delegation could agree to the consolidated draft version of the Preamble being referred ad referendum to the Drafting Committee.
57. The CHAIRMAN said that he would refer the consolidated draft version of the Preamble and Article 2.4 to the Drafting Committee.
58. The representative of ALGERIA, referring to Annex II (Table: Categorization of Nuclear Material) to the CPPNM, pointed out that in footnotes b/ and e/ the radiation level was expressed in rads/hour. However, the unit of absorbed dose in the International System of units was now the gray (Gy), and those two footnotes should be adjusted accordingly.
59. The representative of the UNITED KINGDOM drew attention to the fact that in the Agency document INFCIRC/225/Rev.4 (The Physical Protection of Nuclear Material and Nuclear Facilities) the radiation level was expressed as "1Gy/hr (100 rad/hr)". He suggested that the Committee recommend that formulation.
60. The CHAIRPERSON — following interventions by the representatives of AZERBAIJAN, LUXEMBOURG, JAPAN, FRANCE and SPAIN — took it that the Committee wished to recommend the formulation "1Gy/hr (100 rad/hr)".

The meeting rose at 5.45 p.m.

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 cooperation 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,

(3 bis) HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighborliness and friendly relations and cooperation among States,

(3 ter) CONSIDERING that under the terms of Article 2, paragraph 4, of the Charter of the United Nations, "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations",

(3 tor) RECALLING also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994,

(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) DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and the threats posed by 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,