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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 First Meeting

*Held at the Austria Center Vienna on Monday, 4 July 2005 at 10.45 a.m.*

**Temporary President:** Mr. WALLER (Acting Director General, IAEA)

**President:** Mr. BAER (Switzerland)

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**Abbreviations used in this record:**

CPPNM	Convention on the Physical Protection of Nuclear Material
Euratom	European Atomic Energy Community
IAEA	International Atomic Energy Agency
NPT	Treaty on the Non-Proliferation of Nuclear Weapons



## 1. Opening of the Conference

1. The TEMPORARY PRESIDENT declared open the Conference to Consider and Adopt Proposed Amendments to the Convention on the Physical Protection of Nuclear Material.

2. In addition to Euratom, there were currently 111 States Parties to the CPPNM, 89 of which were participating in the Conference. A further 17 States not yet party to the Convention were also attending as observers.

3. The CPPNM, together with the recently adopted International Convention for the Suppression of Acts of Nuclear Terrorism, marked milestones in international efforts to strengthen the physical protection of nuclear materials and facilities. Not only were those Conventions essential to nuclear security, but they also stood among the thirteen legal instruments that collectively embodied the international legal framework for combating, preventing, prosecuting and punishing terrorist offences generally.

4. It had, however, been acknowledged that the scope of the CPPNM was not sufficiently comprehensive for today's world. Most importantly, it covered neither the physical protection of nuclear material in peaceful domestic use, storage and transport, nor nuclear facilities themselves. The proposed amendments would remedy those shortcomings. They would also provide for expanded cooperation between and among States regarding rapid measures to locate and recover stolen or smuggled nuclear material, to mitigate any radiological consequences of sabotage, and to prevent and combat related offences. The amendments before the Conference were vitally important and, if adopted, would constitute another significant step towards reducing the vulnerability of States Parties and the entire world.

5. The CPPNM had originally been adopted in 1979 and had entered into force in 1987. In 1999, a number of countries had begun expressing concern that the Convention was incomplete and should be reviewed. Experts had reassessed the Convention and recommended that suitable amendments be prepared by a group of legal and technical experts. Such a group had been convened by the Director General of the IAEA in early September 2001. Just a few days later, the events in New York had left no doubt about the increased vulnerability faced by all.

6. In March 2004, the group of experts had adopted by consensus its final report. Subsequently, at the request of the Government of Austria and 24 co-sponsoring States, the Director General had circulated the group's proposed amendments to all States Parties for consideration. A majority of the States Parties had requested the convening of an amendment conference.

7. Any amendments adopted during the Conference by a two-thirds majority would, under Article 20 of the CPPNM, be circulated by the Director General to all States Parties. They would enter into force on the thirtieth day after the date on which two thirds of the States Parties had deposited their instruments of ratification, acceptance or approval with the depositary.

8. There were still some open issues before the Conference. However, given the gravity of the subject and the determination of States Parties, he trusted that they would be resolved during the course of the week. There was an obligation to succeed.

9. Lastly, having urged those States not party to the Convention attending the Conference as observers to accede to the Convention as soon as possible, he wished the Conference every success.

## 2. Election of the President

10. The TEMPORARY PRESIDENT said that it was his understanding that there was general agreement among delegations that Mr. Baer (Switzerland) be elected President of the Conference.

11. Mr. Baer (Switzerland) was elected President by acclamation.

12. The TEMPORARY PRESIDENT congratulated Mr. Baer on his election.

### **Mr. Baer (Switzerland) took the Chair.**

13. The PRESIDENT thanked delegations for the trust that they had placed in him and assured them that he would do his utmost not to disappoint them. He commended the Agency's Secretariat on their preparations for the Conference and the work undertaken over a number of years in support of the CPPNM amendment process.

14. International agreements were seldom ideal texts. The CPPNM represented what had been achievable in terms of political acceptability at the time of its adoption. However, times changed and the international political scene evolved with the result that international agreements either became obsolete or had to be modified — the NPT was a case in point. The CPPNM would be 26 years old in October, and the time for its modernization had come.

15. Physical protection as a goal in itself was not controversial, particularly in a world confronted daily with acts of terrorism. It would not serve any useful purpose to review the reasons why knowledgeable experts had taken almost six years to develop a revised text. What was important was the fact that the text before the Conference represented a consensus of technical and legal experts. It amended the earlier Convention in several respects, in particular broadening its scope to cover the physical protection of nuclear material used for peaceful purposes in domestic use, storage and transport, and it provided for physical protection against the sabotage of nuclear material and nuclear facilities used for peaceful purposes. The hard but fair debate had culminated in a 'package', an achievement of which the participants in the preparatory meeting should be proud. There were some points on which agreement had not been reached and, accordingly, various proposals in addition to the so-called 'Basic Proposal' were before the Conference. During the final attempts to resolve the outstanding differences, many delegations had expressed the view that the proposed 'package' text should not be modified at the last minute. In their opinion, the 'package' reflected a balanced perspective, which could meet with consensus and should not be tampered with.

16. It was for the Conference to decide whether, under the present circumstances, the proposed amendments to the CPPNM were the best that could be achieved. Caution should be exercised before deciding to open the 'package' since it would probably be extremely difficult, if not impossible, to wrap it up again. On the other hand, there was a possibility that the Conference might actually be able to improve the text. The issue was a delicate one and all participants knew what was at stake. Physical protection had become essential in today's world and the importance of an updated and efficient Convention could not be overemphasized.

17. Lastly, he was pleased to announce that Egypt had informed the Secretariat of its decision to accede to the CPPNM.

### **3. Adoption of the agenda**

18. The PRESIDENT invited the Conference to adopt the provisional agenda contained in document CPPNM/AC/L.2, which had been the subject of extensive consultations during the preparatory meeting.

19. The agenda was adopted.

### **4. Adoption of the Rules of Procedure**

20. The PRESIDENT said that the provisional Rules of Procedure, contained in document CPPNM/AC/L.3, had been discussed and modified at the preparatory meeting.

21. He took it that the Conference wished to adopt the provisional Rules of Procedure.

22. It was so decided.

### **5. Election of Vice-Presidents and other officers of the Conference**

23. The PRESIDENT said that, in accordance with Rule 10 of the Rules of Procedure, the Conference was required to elect eight Vice-Presidents, a Chairperson and Vice-Chairperson of the Committee of the Whole and a Chairperson of the Drafting Committee.

24. In the course of informal discussions among heads of delegations, there had been general agreement that the following representatives be elected as Vice-Presidents of the Conference: for North America, Mr. Stratford (United States of America); for Latin America, Ms. Espinosa Cantellano (Mexico); for Western Europe, Mr. Niewenhuys (Belgium); for Eastern Europe, Mr. Matveev (Russian Federation); for Africa, Ms. Feroukhi (Algeria); for the Middle East and South Asia, Mr. Sharma (India); for South East Asia and the Pacific, Mr. Sriwidjaja (Indonesia); for the Far East, Mr. Wu Hailong (China).

25. He proposed that the persons whose names he had just read out be elected as Vice-Presidents of the Conference.

26. It was so decided.

27. The PRESIDENT then proposed that Mr. McIntosh (Australia) and Mr. Gil (Spain) be elected as Chairperson and Vice-Chairperson, respectively, of the Committee of the Whole.

28. It was so decided.

29. The PRESIDENT further proposed that Mr. Amégan (Canada) be elected as Chairperson of the Drafting Committee.

30. It was so decided.

31. The PRESIDENT said that, in accordance with Rule 17 of the Rules of Procedure, the Conference should elect not more than 18 members of the Drafting Committee and that the Committee should elect a Vice-Chairperson from among its members. He proposed that a representative from each of the following countries: Argentina, Australia, Belarus, Brazil, Canada, China, France, Germany, India, Israel, Japan, Mexico, the Netherlands, the Russian Federation, Spain, Sweden and the United States of America be elected as members of the Drafting Committee. A representative from an Arab country had yet to be elected.<sup>2</sup>

32. He took it that his proposal was acceptable.

33. It was so decided.

## **6. Organization of work of the Conference**

34. The PRESIDENT said that the Rules of Procedure provided for a Plenary, a Committee of the Whole and a Drafting Committee. In accordance with the agenda just adopted, he proposed that the work in the Plenary at the beginning of the Conference be devoted to the incorporation of the proposal contained in document CPPNM/AC/L.1/2 into the Basic Proposal, contained in document CPPNM/AC/L.1/1. At the end of the Conference, the work of the Plenary would be to consider the reports of the Committees and to adopt the proposed amendments to the Convention and the Final Act.

35. Consideration of the text of draft proposed amendments and of the Final Act, and any other matter of substance referred to it by the Plenary, would take place in the Committee of the Whole, which would take up the proposed amendments in a manner to be decided by that Committee. The Committee of the Whole would transmit all drafting matters such as linguistic and editorial proposals to the Drafting Committee, which would subsequently report back to the Committee. The Committee of the Whole, after completing its work, would report to the Plenary by Friday, 8 July at the latest. Issues on which consensus had not been reached would be referred to the Plenary for consideration.

36. Sufficient interpretation would be provided to enable the Committee of the Whole and the Drafting Committee to meet in parallel if necessary. The presentation of national statements was not foreseen during the opening Plenary session. Such statements should be submitted to the Secretariat in writing for circulation to all States Parties. At the request of the delegation concerned, those statements would be included in the summary records of the Conference.<sup>3</sup>

37. He took it that the programme of work that he had outlined was acceptable to the Conference.

38. It was so decided.

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<sup>2</sup>Subsequently a representative from Algeria was elected and a representative from the United Kingdom took the place of the representative of Germany in the Drafting Committee

<sup>3</sup> See Annex.



## **7. Introduction of the proposed amendments to the Convention on the Physical Protection of Nuclear Material**

39. The PRESIDENT said that the preparatory meeting had not enjoyed the right to consolidate the Basic Proposal (CPPNM/AC/L.1/1) with the modification to that Proposal submitted by China (CPPNM/AC/L.1/2) prior to consideration by the Conference. Hence the inclusion of an agenda subitem 7(c) to incorporate the latter into the former as a single revised Basic Proposal.

40. The delegate from MEXICO said that under item 7 of the agenda, her delegation could not accept any proposal until the other proposals had been discussed. It would, however, agree to proceed on the understanding that the Chinese proposal had not been accepted, nor had the Basic Proposal been approved. Only once all proposals had been discussed under item 8 of the agenda could the Conference state its position on the substance, on the amendments to be adopted.

41. The PRESIDENT said that there was a clear distinction between the wording of items 7 and 8 of the agenda. Under item 7 the amendments were being introduced, whereas under item 8 the substance of those amendments would be considered and debated. Agreeing to incorporate the Chinese proposal into the Basic Proposal would not involve agreeing with the substance of either document. The procedure would result in having only one document to consider and any item of the revised document would then be open for discussion.

42. He asked whether he could take it that the Conference wished to incorporate the proposal contained in document CPPNM/AC/L.1/2 into the Basic Proposal contained in document CPPNM/AC/L.1/1.

43. It was so decided.

44. The PRESIDENT informed the Conference that the Basic Proposal, as revised, would be issued as document CPPNM/AC/L.1/1/Rev.1.

45. He took it that the Plenary requested the Committee of the Whole to begin its work on the consideration of the proposed amendments, and that the Plenary agreed to refer to the Committee for its consideration the proposed amendments, including those contained in document CPPNM/AC/L.1/1/Rev.1.

46. It was so decided.

**The meeting rose at 11.25 a.m.**



The following national statements were submitted by delegations to the Secretariat for inclusion in the summary records:

### **Statement by Australia**

Australia welcomes the Diplomatic Conference to adopt amendments to the Convention on the Physical Protection of Nuclear Material (CPPNM). The state and complexity of international security has changed considerably since conception of the CPPNM. In the light of these changes, the CPPNM is in need of urgent revision. As one of the 13 international counter-terrorism instruments, a revised CPPNM will strengthen, inter alia, defences worldwide against the insidious threat of terrorism. It is essential that the CPPNM's mandate is extended to include domestic use, storage and transport and, inter alia, criminalize sabotage and trafficking with respect to nuclear facilities and material.

Australia supports the Basic Proposal as modified by China (CPPNM/AC/L.1/Rev. 1). Australia is willing to consider at the Diplomatic Conference other amendments which might further strengthen the Convention.

Australia urges all States Parties to the CPPNM to work for their common good and the strengthening of international security, leading to adoption of an amendment to the CPPNM. Early ratification of the amended Convention is essential for its full benefits to be realised. Australia urges those countries which are not States Parties to accede to and ratify the CPPNM as soon as possible.

### **Statement by Belarus**

The Convention on the Physical Protection of Nuclear Material (CPPNM) is an important international legal instrument aimed at combating the most serious challenge to modern civilization — international terrorism. The process to develop and adopt amendments to the Convention, broadening its scope of application, is an important step both in terms of the establishment of a system of universal jurisdiction for crimes of a terrorist nature, and in ensuring nuclear non-proliferation.

A successful Conference will help to strengthen considerably a basic international legal instrument for the physical protection of nuclear material and nuclear facilities used for peaceful purposes. Clearly, a Convention with a broader scope will create the necessary conditions for States to join their efforts in the fight against the threat of nuclear terrorism and open up further possibilities for the development of international cooperation to enhance the reliability of the physical protection of nuclear facilities.

The Republic of Belarus has taken an active part in the process to develop amendments to the Convention on the Physical Protection of Nuclear Material that is in force. Our country attaches great importance to the successful outcome of the Conference to Consider and Adopt Amendments to the Convention.

Belarus considers that the Basic Proposal to amend the Convention put forward by 25 States, taking into account the proposal of the People's Republic of China, constitutes a good basis for achieving consensus. Our delegation is willing to discuss other proposals as well. However, we think that these proposals should not distract us from our main objective — the adoption of a Final Act which constitutes an effective instrument for international cooperation against terrorism and also meets the interests of all States Parties to the Convention.

This event, which is intended to make a significant contribution to strengthening international security and stability, must not be allowed to become a repeat performance of the unfortunate experience of the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

In conclusion, our delegation is grateful to the Director General of the IAEA, Dr. ElBaradei, and to the Secretariat, for their active and highly professional work with respect to the development of the amendments to the Convention and organization of this Conference.

#### **Statement by Brazil**

My delegation is pleased to see you chairing this important Conference aimed to Consider and Adopt Proposed Amendments to the Convention on the Physical Protection of Nuclear Material. In assuring you of our full support we are confident that, under your very able and wise leadership, the participating States Parties will be able to adopt consensual amendments to strengthen the Convention.

Brazil attaches special importance to nuclear physical protection and has a solid regulatory framework in this field, based on INFCIRC 225/Rev. 4. Our commitment to the CPPNM dates back to the drafting of the Convention. In fact, the Drafting Committee for the Convention, which met in Vienna between 1977 and 1979, was chaired by a Brazilian diplomat, Mr. Luiz Augusto de Castro Neves, who is currently the Ambassador of Brazil to China. Brazil signed the CPPNM in 1981 and ratified it in 1985 without reservations.

Brazil has actively supported the process to expand the scope of the Convention from its beginning. The unprecedented challenges that the international community has faced over the past years have made it clear that the legal framework to deal with those challenges, including the CPPNM, had to be strengthened. In this context, we had a very active participation in the open-ended Group of Legal and Technical Experts to prepare a draft amendment of the Convention, convened by the Director General in 2001. This notwithstanding, my country notes that in March 2003, when the Group completed the task for which it had been established and adopted by consensus its Final Report, it had not been able to agree on consensual language for some of the proposed amendments, which remained in square brackets.

In this context, my delegation wishes to recall that in document WP 130, of March 2003, a group of countries, including Brazil, clearly expressed their difficulty to accept the language proposed then for Article 2.4 (b) and reproduced now in the so-called basic proposal. In this respect, in view of the importance Brazil attaches to the amendment process of the CPPNM, even though my delegation would have preferred to see only consensual language included in the basic proposal, it is ready to work constructively with other delegations in order to achieve consensus on all the proposed amendments.

#### **Statement by Cuba**

The Republic of Cuba wishes to state that none of the proposed amendments to the Convention on the Physical Protection of Nuclear Material may be construed as encouraging or condoning the threat or use of force in international relations, which, under all circumstances, should be strictly governed by the principles of international law and the purposes and principles enshrined in the Charter of the United Nations.

Cuba is also of the firm conviction that none of the provisions of the amended Convention should be interpreted as a loophole for the use of or threat to use force against nuclear facilities intended for peaceful purposes. That would be a grave violation of international law, the purposes and principles of the Charter of the United Nations and the Statute of the International Atomic Energy Agency.

The Government of Cuba fully endorses the firm and clear position of the countries of the Non-Aligned Movement in this regard, as expressed in paragraph 91 of the Final Document of the 13th Non-Aligned Summit Conference, held in Kuala Lumpur, Malaysia in February 2003, which states "The Heads of State or Government reaffirmed the inviolability of peaceful nuclear activities and that any attack or threat of attack against peaceful nuclear facilities — operational or under construction — poses a great danger to human beings and the environment, and constitutes a grave violation of

international law, principles and purposes of the United Nations Charter and regulations of the International Atomic Energy Agency. They recognized the need for a comprehensive multilaterally negotiated instrument, prohibiting attacks, or threat of attacks on nuclear facilities devoted to peaceful uses of nuclear energy.”

Our country has firmly supported the process to amend the CPPNM, on the understanding that its basic objective is to strengthen the regime for the physical protection of nuclear material and facilities used for peaceful purposes. For that reason, Cuba believes that the amendment introduced as Article 2.4(b), of the amended Convention has, to a certain extent, undermined that objective by actually limiting the scope of the CPPNM, which could result in weakening the abovementioned physical protection regime.

The only way to avoid that, and to ensure the full implementation of the objectives of the amended Convention on the Physical Protection of Nuclear Material, is by fully respecting the principle of inviolability of nuclear facilities intended for peaceful purposes, and the undertaking pursuant to Article 2.4(c) which clearly states, “Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.” In that regard, Cuba believes that this undertaking includes the abstention from the threat or the use of force by the armed forces of a State against such facilities in another State.

### **Statement by France**

Allow me at the outset to congratulate you on your election as President of this Diplomatic Conference for Amendment of the Convention on the Physical Protection of Nuclear Material. I would like to assure you of the unreserved support of the French delegation in your work. My delegation will spare no effort in ensuring that, under your leadership, the Conference culminates in the adoption of a clearly defined amendment to the Convention.

I would also like to say that France fully associates itself with the statement made by the head of the United Kingdom delegation on behalf of the European Union.

In recent years unprecedented events have taken place. The nuclear non-proliferation regime has been affected by several problems concerning respect for commitments calling its credibility into question, in particular revelations of the existence of clandestine networks for trafficking in technologies, equipment and associated material related to weapons of mass destruction and their vectors, or which could be used in their manufacture. Regarding security, the events of 11 September 2001 in New York, in Madrid in 2004, and others in Asia and elsewhere, not to mention any others, have brought to light the emergence of a new threat — that of international terrorism, which stops at nothing to achieve its aims. In particular, the threat that would be posed by the possession by terrorists of nuclear, chemical or biological weapons or radiological dispersion devices as well as the potential consequences of their use must be given serious attention.

The international community has of course reacted very quickly and resolutely to these new threats and several initiatives have been launched. To mention just a few: the adoption of United Nations Security Council Resolution 1373, establishment of the IAEA programme to prevent nuclear and radiological terrorism, establishment of the G8 Global Partnership with the adoption of action plans against the spread of weapons of mass destruction and NRBC terrorism, adoption of the European strategy to combat the spread of weapons of mass destruction and their vectors, adoption of Security Council Resolution 1540, the Proliferation Security Initiative (PSI), the Global Threat Reduction Initiative (GTRI), strengthening of national and export controls on dual use or sensitive goods, and most recently, the adoption by the United Nations General Assembly of the International Convention for the Suppression of Acts of Nuclear Terrorism. All of these initiatives are in the right direction and should be encouraged and developed.

Regarding the security of nuclear material, amendment of the Convention on the Physical Protection of Nuclear Material (CPPNM) has been under discussion since 1999. Among the instruments identified as contributing to the fight against terrorism, the CPPNM is the only multilateral legally binding instrument which relates to the physical protection of nuclear material. Let

us be frank: at the time, not everyone was convinced that amendment was called for. The 1979 Convention, supplemented by the physical protection recommendations laid down by the IAEA, seemed sufficient for implementing security measures for nuclear material at national level, particularly during international transport. However, the terrorist threat changed things; while the responsibility for implementing physical protection lies primarily with States, collective security issues in the new context that I have just referred to make strengthening the Convention particularly necessary, especially in order to deal with activities involving nuclear material on national territory and nuclear facilities containing such material.

Between 1999 and 2001, the first group of technical and legal experts formed by the IAEA Director General considered the shape the revised Convention should take. The primary responsibility of States that I just mentioned, the highly sensitive and confidential nature of the measures taken nationally to evaluate and confront a threat directed against nuclear material or facilities, and the existence — in a State such as France, particularly — of military nuclear activities justified provisions we could not contemplate introducing into an amended Convention. The working group thus ultimately recommended that certain types of provisions should be excluded, including: application of the amended Convention to military nuclear materials and activities; regular reports by States Parties on the implementation of the Convention; peer review of the level of physical protection applied in a State Party; the legally binding nature of INFCIRC/225. What was envisageable for conventions on nuclear safety was not the case for nuclear security.

On the other hand, strengthening of the Convention was desirable on several counts. Specifically, several elements considered important by all had to be taken into account: the fundamental objectives and principles to be used as the basis for developing and maintaining national physical protection arrangements; extending the scope of the Convention to nuclear material used on national territory, including during the transport phases, as well as to facilities containing such material; criminalization of serious offences, particularly the sabotage of a nuclear facility.

Once these outlines had been defined and duly considered and the course for the work had been set, France contributed actively to drafting an amendment to the Convention with a view to strengthening it. In particular, it chaired the second group of experts convened by the Director General of the Agency, and participated fully in its work from December 2001 to March 2003. Six meetings of that group under the leadership of Mr. Denis Flory of the Institute for Radiological Protection and Nuclear Safety, each with representatives from around 50 States Parties, resulted in the preparation of a very detailed draft amendment to the Convention. The lack of consensus on some of the proposed provisions, preventing the convening of a diplomatic amendment conference from being requested, should not obscure the general agreement obtained at the time on over 90% of the draft amendment resulting from the group's work. Several States Parties, eager to achieve a consensual amendment proposal, were not deterred and conducted intensive consultations with a view to finding an acceptable text. In this regard, France would like to thank all the States Parties which contributed to finding a compromise solution, particularly Austria and China.

It is this compromise solution which the delegations participating in this Conference will be examining during the week. The proposed amendment before the Conference in fact consists of a Basic Proposal, submitted by Austria and 24 other States Parties, and a proposal submitted by China, designed to satisfy the serious objections raised by several States Parties. For technical reasons, including time, it was not possible to combine these two proposals into one before holding the Conference. However, one of the first decisions the Conference will have to make will be to merge the two texts into one for consideration. France believes that these two texts are inseparable and form the basis of the consensus it desires. With this consolidated proposal, we will have a considerably strengthened Convention: introduction of the principles and fundamental objectives of physical protection, a new requirement for the protection of nuclear facilities and material used in activities conducted on national territory, criminalization of offences such as the sabotage of nuclear facilities or trafficking in materials, strengthening of international cooperation in the event of offences.

France will not seek to improve the amendment proposed by Austria and China, which it considers satisfactory as it stands. Other amendment proposals have however been submitted to the

Conference, and may be submitted during the week. In a constructive spirit, my delegation will consider the merits of each proposed amendment with all the objectivity required, while keeping in mind the main objective, which we believe to be the adoption of a clearly defined amendment to the Convention.

The French authorities are convinced of the importance of strengthening the Convention on the Physical Protection of Nuclear Material. They do not doubt that all the States Parties to this Convention represented here are equally convinced of this. The responsibility of the French delegation, the responsibility of all of us this week, is to finish the work started almost six years ago. I do not doubt for a moment that under your effective leadership, Mr. President, the Conference will be able to exercise reason and compromise, and that in the end we will have an effective multilateral instrument for the protection of nuclear material and facilities, for the prevention and suppression of malignant or terrorist acts, and for the strengthened international cooperation demanded of the international community under the relevant Security Council resolutions.

### **Statement by Japan**

The physical protection of nuclear materials is a vital element of nuclear security and a highly important issue that needs to be tackled together by the international community. Japan places great value on this diplomatic conference to consider and adopt proposed amendments to strengthen the Convention on the Physical Protection of Nuclear Material.

As we already know, Professor Alec Baer is someone with extensive experience, having acted as chairman of the diplomatic conference to adopt a Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, the preparatory meeting for this conference. In this connection, Japan warmly welcomes his election as president of the conference. We would also like to express our gratitude for all the positive efforts made by State Parties. In particular, we thank the Government of Austria who created the basic proposal, putting the different ideas together, with the cooperation of Dr. ElBaradei and the IAEA Secretariat.

Since the terrorist attacks on September 11 2001, the international community has, with a sense of urgency, reviewed and strengthened measures against terrorism in a wide range of areas. Conversely, terrorist organizations have been increasing their capabilities to carry out activities such as acquiring funds and weapons, crossing over international borders, making use of advanced science and technology and implementing outreach campaigns. Nuclear terrorism, should it happen, could cause immeasurable damage and psychological impact on our whole society. Therefore, we should make the utmost efforts to take the necessary extensive measures to protect our society from nuclear terrorism. Considering the relative ease of access to radioactive sources and their possible diversion to creating a dirty bomb, the management and control of radioactive sources is no less urgent than the protection of nuclear materials. In this respect, Japan appreciates the efforts made by the IAEA in formulating the Code of Conduct on the Safety and Security of Radioactive Sources as well as the Guidance on the Import and Export of Radioactive Sources.

Let me now turn to the various counter-terrorism measures that my Government has undertaken.

With regard to the international conventions and protocols aimed at curtailing terrorist activities, Japan has already concluded and implemented all of the twelve Counter-Terrorism Conventions and Protocols. In addition, Japan has been making stringent efforts to fully implement United Nations Security Council resolutions 1373, 1540, and other relevant UN Security Council resolutions. Japan is also aiming for the early conclusion of the International Convention for the Suppression of Acts of Nuclear Terrorism, which was first adopted after the terrorist attacks on September 11, 2001.

Japan recognizes the importance of adding the physical protection of nuclear facilities to the Convention and extending the scope of physical protection to cover domestic use, storage and transport of nuclear materials. Japan has consistently participated in the negotiations on amendments

to the Convention on the Physical Protection of Nuclear Material, in an effort to maintain and enhance motivation towards carrying out these amendments. As we know, a revision of the guideline on physical protection has been considered; INFCIRC225/Rev.4 is a valuable guideline for each State, and includes setting the Design Basis Threat. Making this guideline effective is an important duty for each State. Setting and responding to the Design Basis Threat specifically depends on the category of the nuclear facility and the current status of each State. It goes without saying that the strict management of confidential information is a prerequisite to the measures. However, it is very important to take measures that meet the needs and the current situation of each State while sharing with the experiences of other States.

The domestic implementation of rules and regulations in the field of physical protection of nuclear material and nuclear facilities for Japan, were approved at a Diet in May of this year. We are also in the process of strengthening the regulatory framework by introducing the Design Basis Threat (DBT) approach and an inspection system to verify continued compliance, together with the creation of inspector posts. In addition, a legal confidentiality obligation for operators and their employees, who are engaged in physical protection measures, will be established.

The basic proposal that is before this diplomatic conference is the result of discussions among experts that have taken place since 1999. These discussions have aimed at creating a proposal that would gain the broadest possible acceptance among the State Parties. Japan has become a co-sponsor to the proposal made by the Government of Austria. As a result of discussions at the Preparatory Meeting for this conference in April, there are some points that need to be adjusted. While Japan is proposing a technical correction to Article 7, we very much hope that the amendment is adopted at this conference in its optimum form.

It is clear that ongoing efforts will need to be made by the international community to ensure that nuclear security measures are effectively applied. Once the amendment of the Convention on the Physical Protection of Nuclear Material has been adopted, each State will be asked to ratify and implement the Convention as soon as possible. Furthermore, it is essential that the various measures adopted at the IAEA be extensively implemented, such as the Code of Conduct on the Safety and Security of Radioactive Sources and the Guidance on the Import and Export of Radioactive Sources. An increase in the number of countries concluding the Additional Protocol would also contribute to strengthening the base of nuclear security. Additionally, it is necessary to coordinate nuclear safety approaches, including the safety of nuclear facilities. Bearing all this in mind, it is very clear that the IAEA has an important role to play in implementing international measures for nuclear security, including physical protection.

Article 18 of the International Convention for the Suppression of Acts of Nuclear Terrorism, which was adopted in New York recently, also refers to the role of the IAEA. Japan believes that enhancing the effectiveness of nuclear security will continue to be an important activity in future, as well as considering how to organically coordinate those legal instruments as a whole through the IAEA. Japan supports and will continue to support these approaches made by the IAEA's initiative.

In concluding my statement, I would like to express Japan's commitment to contributing to future approaches by the Member States and the IAEA towards strengthening nuclear security. Japan looks forward to contributing to constructive discussions at this diplomatic conference to ensure the further effectiveness of the Convention on the Physical Protection of Nuclear Material.



### **Statement by New Zealand**

New Zealand welcomes the proposed amendments to the Convention on the Physical Protection of Nuclear Material. We are confident that they will strengthen the Convention and help prevent nuclear material falling into the hands of those who may use it to threaten international peace and security. Let me reassure you of New Zealand's full support in the week to come.

The Convention when opened for signature in 1980 served a useful purpose in establishing key minimum safety standards particularly relating to the transport of nuclear material and storage incidental to transport. The international landscape of global peace and security has, however, evolved markedly since the Convention was first adopted.

In today's environment, where we face a real and continual risk from terrorist's activities, nuclear material, in all its forms and wherever it is, must be protected. The broadening of the Convention is timely and one that recognises that nuclear material stored or produced at nuclear facilities is as vulnerable to misuse by terrorists as nuclear material in international nuclear transport is.

As a strong advocate of multilateralism and the rule of law, New Zealand lends its full support to international efforts to strengthen disarmament regimes and to develop robust verification measures to ensure compliance. Accordingly New Zealand can fully support amendments to introduce more effective measures to account for nuclear material whether in production, use, storage or transport. We also endorse the amendments that oblige States to introduce regimes to physically protect nuclear facilities from acts of theft or sabotage.

But, the Convention will not succeed in its aim without the support and acceptance of Member States of appropriate amendments to achieve these goals. We fully support the Basic Proposal, together with the proposed Chinese amendment to it.

Additionally, we encourage State Parties to support Canada's amendment which reflects, importantly, the principle that claims of political motivation must not be recognised as grounds for refusing requests for the extradition of alleged terrorists. Other international conventions reflect this principle and this Convention should be no different.

We also urge State Parties to support Norway's proposal to reinsert a reference to the environment in Article 7, which would make damage to the environment a punishable offence under this Convention. This amendment further supports the increased recognition of the potential risks to the environment through its being targeted by terrorist or other criminal acts as evidenced by the inclusion of a similar provision to that proposed here in the International Convention for the Suppression of Acts of Nuclear Terrorism.

Finally, we express our thanks to the Group of Legal and Technical Experts who have worked hard to draft these very comprehensive and effective proposed amendments to the Convention. We appreciate that the amendments do not meet the concerns of all State Parties but believe they go a long way to protecting all States.

### **Statement by Norway**

On behalf of my delegation, I would like to express appreciation to the Secretariat for its preparation of this Diplomatic Conference to revise the Convention on the Physical Protection of Nuclear Material, and to applaud Austria for its commendable and enduring work to facilitate a majority amongst the States Parties on a revision of the Convention. Norway reiterates its full support for adopting the Basic Proposal, and we are certain that, guided by your wise Chairmanship, a spirit of

cooperation can prevail during the Conference. The outcome can lead to an enhancement of the global regime of physical protection.

In light of this important objective my delegation would like to explain why we regard our proposal - to insert a reference to the environment - as complementary to the Basic Proposal. Our amendment proposal has been kindly circulated in Note N5.92.Circ by the Secretariat of the International Atomic Energy Agency (IAEA) in accordance with Rule 20 of the Rules of Procedure, adopted at the Preparatory Meeting.

Our proposal is consistent with the text in the Basic Proposal of the recommendations made by Mr. Denis Flory, at its last meeting 3-14 March 2003, when it surveyed possibilities for revising the Convention. An inclusion of damage to the environment among the punishable offences listed in Article 7 is further necessary to enhance the consistency of the text.

Paragraph 3 of the Preamble, as contained in the Basic Proposal, makes a reference to the protection of public health, safety, the environment and national and international security. Also, Article 1 Ltr. d of the Basic Proposal defines the word sabotage as an act which can endanger the health and public safety of personnel, the public and the environment.

The group of countries supporting an environmental reference in the text understands why it at the time was necessary to omit this inclusion from the Basic Proposal, given that delegations were on the whole equally split on the issue at the last intersessional meeting. However, it is important to note that delegations from less than half of the States Parties to the Convention were present at that meeting. This Diplomatic Conference therefore offers an opportunity for States Parties to consider the proposal in a more representative frame.

Moreover, a similar inclusion in the International Convention for the Suppression of Acts of Nuclear Terrorism which was adopted by consensus by the UN General Assembly on 13 April this year provides a strong reason to believe that several delegations have reconsidered their previous opposition on the issue. This belief has in the past month been confirmed through démarches in several capitals and a range of bilateral consultations here in Vienna. Consequently, we have good reason to hope for our amendment proposal's adoption at this Conference.

It is our view that it is not sufficient that a revised Convention merely includes a reference to damage to property, as this will leave externalities and common goods unprotected. Legal developments during the past years have taken advantage of the pronounced acceleration in the field of environmental economics. It is no longer impossible to quantify, through selected indicators, damage to air, water, land or sea, or to devise national and international legislation with reasonable implementation mechanisms.

Regarding the protection of the environment as intrinsic to the safety of public health as well as to national and international security my delegation and the delegations of Columbia, Finland, Greece, Iceland, Ireland, Italy, Mexico, New Zealand, Slovenia, Sweden and Switzerland urges all States Parties to positively consider our proposal, in the merit of the importance of the issue at hand.

**Statement by Peru with respect to Article 7.1(e) of the Convention (Paragraph 9.1(e) of the Basic Proposal).**

Peru understands that the exception contained in this proposed amendment, that “unless the act is undertaken in conformity with national law of the State Party in whose territory the nuclear facility is situated” refers, for example, to situations in which the forces of law and order of the State Party perceive the need to intervene in order to prevent or repel an act directed against a nuclear facility or interfering with its operation, or if an emergency response team of that State has to take certain measures to prevent such an act from causing major damage.

## Statement by the Philippines

First of all, allow me to express my delegation's heartfelt thanks and congratulations to you upon your election as President of our Conference. Your demonstrated wisdom and considerable skill, I am sure, will propel us to a successful conclusion at this Conference. At the outset, let me pledge to you our full support and cooperation in your goal of seeking consensus on the issues we will be facing.

We gather during these four days to consider and adopt various amendments to the two decades old Convention on the Physical Protection of Nuclear Material (CPPNM). Since its adoption in 1979 and its entry into force in 1987, 112 States have become Parties to the Convention, demonstrating the vital importance of the security need it seeks to address. The Philippines signed the Convention on 19 May 1980.

Ambassador Domingo Siazon, Philippine Permanent Representative to the IAEA from 1979-1986, chaired the negotiations, which went on for a few years, leading to the 1979 meeting of governmental representatives to consider the drafting of a convention on the physical protection of nuclear material. Since its adoption, the Philippines has actively implemented the Convention.

Today, we have before us the basic proposal encompassing amendments from various countries who have sought to strengthen and update the Convention, bringing it into the 21st century. The basic proposal is the direct result of the hard work of the open-ended group of legal and technical experts convened by the Director General to consider ways of strengthening the Convention. May we also congratulate Austria for its fruitful work in the "Friends of the CPPNM amendment".

Before I go into the amendments themselves, allow me to highlight a few of the latest developments in my country in pursuit of the goals of the Convention.

On September 24, 2003, H.E. President Gloria Macapagal Arroyo created a *cabinet-level task force for the security of critical infrastructure (TFSCI)*, tasked with protecting vital national facilities. By "critical infrastructure", it includes nuclear as well as other radioactive sources in nuclear and radiation facilities.

The TFSCI formulated the national critical infrastructure security plan within the framework of the government's 16 pillars on counter-terrorism. Subsequently, the government has formed a *national committee on counter-terrorism*, charged with the formulation of a strategic and integrated national security plan, among others, for the protection of critical infrastructure. The Philippine Nuclear Research Institute (PNRI), our national competent authority, is a member of this committee.

The PNRI, in collaboration with national law enforcement, intelligence and security agencies and the office of civil defense, is drafting the *Philippine nuclear security plan*, which aims to prevent and detect malevolent acts against nuclear and other radiation sources and facilities, and to mitigate effects of radiation arising from these acts. The task force is also revising the present national radiological emergency preparedness and response plan (RADPLAN) to enable it to respond adequately to potential terrorist threats.

The Philippines subscribes to the role of international cooperation in ensuring the safety and security of nuclear and other radioactive materials.

From the IAEA, we continue to receive technical assistance; for example, in the form of an International Physical Protection Advisory Service (IPPAS) mission which was received in 2003. The Agency recently conducted a design basis threat (DBT) seminar-workshop in Manila. Knowledge gained from this workshop enabled the PNRI and the national law enforcement, intelligence and security agencies to undertake a DBT-based assessment of the threat against nuclear material and radioactive sources in the country.

This year, the PNRI conducted an awareness seminar on the detection of nuclear and radioactive materials at borders, with the assistance of experts from the Agency.

The PNRI is also implementing a technical assistance project under the US Department of Energy radiological threat reduction program. The project facilitates the provision of security upgrades of PNRI's critical radiation facilities and Category 1 and Category 2 sources in 23 hospitals throughout the country.

On the safe transport of radioactive materials, the Philippines is pleased to report that it has adopted the IAEA Safety Standard on the Transport of Radioactive Material, TS-R-1. PNRI has formulated and approved the code of PNRI regulations (CPR) Part 4, on the safe transport of radioactive material, to conform to TS-R-1. Consultations with the relevant agencies in the transport sector have resulted in enhanced cooperation among these agencies in the implementation of CPR Part 4.

Finally, the Philippines stands ready to implement Security Council resolution 1540 to respond effectively to the threat of proliferation due to nuclear material falling into the hands of malevolent non-State actors.

Focusing on the proposed amendments to the CPPNM, allow us to make a few comments. At the outset, the Philippines stands ready to join the consensus on the Basic Proposal as a whole. We support the expansion of the scope of the Convention to include all nuclear materials and not limited to those in transit, and to include nuclear facilities.

However, we believe there are some proposed amendments outside of the Basic Proposal that merit serious consideration. The reference to exclusion of activities of military forces in Article 2.4 should be mitigated by a reference to the illegality, under international law, of acts of violence against a nuclear facility used for peaceful purposes. Hence, the Philippine delegation supports the proposal from China for a new paragraph 2.4(c) which states, "nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes."

We hope that consensus would result in the deliberations during the Conference, in order to enable us to sign the Final Document adopting the proposed amendments to the CPPNM. The amendments, we believe, will strengthen the Convention in order to adapt to new realities and imperatives for safety and security of nuclear materials and facilities in the 21st century.

#### **Statement by the Russian Federation**

The Russian delegation welcomes the holding of the Diplomatic Conference to Adopt Amendments to the Convention on the Physical Protection of Nuclear Material. The whole world is interested in increasing the reliability of the global nuclear security system. The Russian Federation is completely committed to the principles underlying this Convention. A reliable mechanism to prevent the illicit seizure and use of nuclear material for criminal purposes is essential if States are to enjoy the inalienable right to develop and use atomic energy for peaceful purposes in accordance with the Treaty on the Non-Proliferation of Nuclear Weapons and the IAEA's Statute. This Convention fulfils that end. It lays down a firm legal basis for international cooperation with a view to developing effective measures for the physical protection of nuclear material both at the national and multilateral level, which is of the utmost importance now when the problem of proliferation of sensitive nuclear material and technologies is becoming increasingly acute and the threat of terrorism involving the use of weapons of mass destruction is becoming increasingly real.

Russia has always actively supported all means of strengthening the nuclear non-proliferation regime, and the fight against nuclear terrorism. Extremely important steps have been taken to this end in recent times. The United Nations Security Council adopted resolution 1540, aimed at preventing weapons of mass destruction and their components from falling into the hands of non-State actors; the Russian Federation was one of the initiators of this resolution. The adoption by the United Nations General Assembly in April this year of the International Convention for the Suppression of Acts of Nuclear Terrorism was a notable event. Russia, which for its part submitted a draft of this convention to the United Nations for consideration, firmly supports its earliest possible entry into force and calls on all States to sign the Convention as soon as possible.

We think that this Conference is a further major step on the road to strengthening nuclear security. The current Convention on the Physical Protection of Nuclear Material is a key instrument in this area which is of crucial significance for mankind. Increasing its effectiveness is a task of enormous importance.

Mention should be made of the very positive outcome of the long and difficult work undertaken by the experts from the States Parties to the Convention to draw up correct, effective and balanced draft amendments.

The changes aimed at strengthening the physical protection of nuclear material in storage, use and transport within a State, and at protecting nuclear facilities against diversion, are particularly important to combat the rise of nuclear terrorism. As one of the 13 universal anti-terrorist conventions, the Physical Protection Convention should strengthen the emerging regime of international cooperation on combating terrorism and, in particular, on improving the effectiveness of criminal prosecution of persons involved in terrorist activities and the means of bringing them to justice. All the most recent anti-terrorist conventions — on terrorist bombings, the financing of terrorism, and the aforementioned Convention for the Suppression of Acts of Nuclear Terrorism — are based on this approach reflected in United Nations Security Council resolution 1373.

Agreement on the draft amendments to the Convention has become possible primarily thanks to the proposal put forward by the People's Republic of China, which eliminates ambiguity in the key issue of the inadmissibility of the use of force against nuclear facilities.

The Russian Federation is in favour of the rapid adoption of the package of amendments to the Convention.

We are counting on the success of this Diplomatic Conference. We believe that the rapid entry into force of the amended Convention on the Physical Protection of Nuclear Material will be in the interests of all States.

### **Statement by Spain**

At the outset, I would like to express my delegation's satisfaction with your appointment as President of this Conference, and wish you all the best in carrying out the difficult task conferred upon you that you have so graciously accepted. Be assured that my delegation will do its utmost to bring this Conference to a successful conclusion.

Spain attaches great importance to the physical protection of nuclear material and believes that the International Convention on the Physical Protection of Nuclear Material has given the international community a common language on the protection of nuclear material and has undoubtedly served as a key reference for the establishment of a solid regulatory framework within the national legal frameworks of the States Parties.

Almost twenty years after the current Convention entered into force in 1987, the Director General of the Agency in 1999 gave the international community the opportunity to revise its provisions in order to strengthen the regime for the physical protection of nuclear material agreed upon years earlier. Many things had happened in the world since then, and many more were still to come. There is no doubt today that the initiative of the Director General of the Agency to amend the Convention was premonitory of the growing international concern to prevent nuclear material from falling into the wrong hands as a result of failings in our protection systems.

The meetings of the expert group, from the time it was formed in 2001 until it was disbanded in 2003, managed to produce the closest one could come to a consensus text and, although it has not attracted full agreement, it is only fair to recognize the enormous value of the ground which has been covered. We have now met in this forum to complete together the journey begun six years ago, and we

should not settle for less than the successful achievement of the goal that the international community, at the initiative of the Director General of the Agency, set at that time.

Austria, supported by 25 other States including Spain, has submitted a draft amendment to the Convention to the Director General of the Agency for consideration at the Diplomatic Conference. This proposal, which was later supplemented by the proposal of the distinguished delegation of the People's Republic of China, constitutes a solid point of departure for the commencement of our work, and a firm path from which we must not stray too far if we do not wish to run the risk of missing the goal we have set for ourselves.

I would like to end my statement by stressing once again the importance that my country attaches to the physical protection of nuclear material, and our complete readiness to reach a consensus that will allow us to strengthen the current International Convention on the Physical Protection of Nuclear Material, to the benefit of the international community.