

# **Convention on the Physical Protection of Nuclear Material**

**LEGAL SERIES No.12**



INTERNATIONAL ATOMIC ENERGY AGENCY, VIENNA, 1982







CONVENTION  
ON THE PHYSICAL PROTECTION  
OF NUCLEAR MATERIAL

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The Agency's Statute was approved on 23 October 1956 by the Conference on the Statute of the IAEA held at United Nations Headquarters, New York; it entered into force on 29 July 1957. The Headquarters of the Agency are situated in Vienna. Its principal objective is "to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world".

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## FOREWORD

This publication brings together in a more convenient format the official records of the negotiation of the Convention on the Physical Protection of Nuclear Material.

The Convention is one result of the widespread recognition in recent years of the need for co-operation between States to ensure adequate physical protection of potentially hazardous nuclear materials and for an appropriate legal instrument to provide for such co-operation.

This need was reflected in the declaration of the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons on 30 May 1975, which urged that action be pursued to elaborate further, within the IAEA, concrete recommendations for the physical protection of nuclear material in use, storage and transit. The declaration called upon all States engaging in peaceful nuclear activities to enter into such international agreements and arrangements as may be necessary to ensure such protection. It was also evidenced in the Resolution of the IAEA General Conference in September 1975 (GC(XIX)RES/328), calling on Member States and the Director General to consider ways and means of facilitating international co-operation in dealing further with problems of physical protection of nuclear facilities and materials which are common in Member States.

Further, the Agency's publication "The Physical Protection of Nuclear Material" (INFCIRC/225/Rev.1) envisages the establishment of agreements and conventions on co-operation among States for the protection of international transport of nuclear material, the transfer of responsibility for physical protection from the sending State to the receiving State, and assistance in recovery of that material in the event such assistance is needed. The Advisory Group on Physical Protection of Nuclear Material, which met in February 1977, also agreed that international agreements and conventions dealing with international transport of nuclear material were needed. It invited the Director General to consider, in consultation with Member States as appropriate, the initiation of a process for the preparation of an international convention on the physical protection of nuclear materials during international transport.

Consequently, a meeting of Governmental Representatives was convened at the IAEA Headquarters from 31 October to 11 November 1977 to consider the preparation of a convention on the physical protection of nuclear material. The Governmental Representatives subsequently met in Vienna in April 1978, and in February and October 1979. Informal consultations between the

Governmental Representatives took place in September 1978 and September 1979. After nearly two years of negotiations in which representatives of fifty-eight States and the European Atomic Energy Community participated, the text of the Convention on the Physical Protection of Nuclear Material as annexed to the Final Act was adopted on 26 October 1979.

The Convention is the first multilateral agreement in the area of physical protection of nuclear material and is viewed as a significant step forward in international co-operation for the peaceful application of nuclear energy.

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**PRELIMINARY DOCUMENTATION  
AND  
OPENING STATEMENT**



**RESOLUTION ADOPTED DURING THE 183rd PLENARY MEETING  
OF THE GENERAL CONFERENCE AT ITS  
NINETEENTH REGULAR SESSION  
ON 26 SEPTEMBER 1975  
(GC(XIX)/RES/328)**

**THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL**

**The General Conference,**

(a) **Recognizing** the accelerated and widespread growth in the peaceful uses of nuclear energy throughout the world and the consequent increase in the number of facilities and quantities of nuclear materials involved in these uses,

(b) **Conscious** of the potential hazards to the health, safety and welfare of the public and to the environment that could arise from interference with nuclear facilities or the unauthorized use of nuclear materials as a result of acts of theft, vandalism, terrorism and hijacking,

(c) **Mindful** of the urgent need to minimize the possibility of sabotage of nuclear facilities and of clandestine or overt theft or of unauthorized use of nuclear materials during storage, use or transit, and

(d) **Aware** that the responsibility for the adoption and implementation of physical protection systems rests with the authorities of individual Member States and that the specific measures to be applied may vary according to particular circumstances in different States,

1) **Commends** the Director General for his timely action in dealing with the matter of the physical protection of nuclear facilities and materials;

2) **Notes with satisfaction** the publication of the booklet entitled "The Physical Protection of Nuclear Material"<sup>1</sup> which contains recommendations and explanations as to what can be done by Member States to establish their national systems for the physical protection of nuclear facilities and materials or to improve the quality and effectiveness of such systems;

3) **Welcomes** the intention of the Director General to review and bring up to date those recommendations regularly to reflect advances made in the state of the art or the introduction of new types of facilities;

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<sup>1</sup> INFCIRC/225, IAEA, Vienna.

- 4) **Endorses** the intention of the Director General to assist Member States at their request in the development and strengthening of their national systems for physical protection;
- 5) **Urges** all Member States to take appropriate steps to review and, if necessary, strengthen their physical protection systems for nuclear facilities and materials to assure that the measures employed will be effective against the full range of potential threats; and
- 6) **Calls upon** Member States and the Director General to consider ways and means of facilitating international co-operation in dealing further with problems of the physical protection of nuclear facilities and materials which are common to Member States, such as those relating to the international transfer of nuclear materials.

**OPENING STATEMENT BY THE ACTING DIRECTOR GENERAL  
AT THE MEETING OF GOVERNMENTAL REPRESENTATIVES  
TO CONSIDER DRAFTING A CONVENTION  
ON PHYSICAL PROTECTION OF NUCLEAR MATERIALS**

Vienna, 31 October 1977, 9:30 a.m.

Boardroom

(CPNM/5)

On behalf of the Director General of the International Atomic Energy Agency, I have the honour to welcome all delegates to this Meeting.

The general purpose of this Meeting is to consider the drafting of a Convention on the Physical Protection of Nuclear Material.

For some considerable time there has been growing and widespread recognition of the need for co-operation between States to ensure adequate physical protection of potentially hazardous nuclear materials. It has been suggested also that it would be necessary for there to be an appropriate international legal instrument regulating such co-operation even although the main responsibility in this area rests with the States concerned.

This need was reflected in the declaration of the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons in May 1975, which called upon all States engaging in peaceful nuclear activities to enter into such international agreements and arrangements as may be necessary to ensure the proper protection of nuclear material.

Recognition of the importance of this subject was also given in the Resolution of the IAEA General Conference in September 1975 (GC/XIX/RES/328), which called upon Member States and the Director General to consider ways and means of facilitating international co-operation in dealing further with problems of physical protection of nuclear facilities and materials which are common to Member States.

It may also be recalled that the Agency's publication "The Physical Protection of Nuclear Material" (INFCIRC/225) and the report of an Advisory Group on Physical Protection of Nuclear Material recommended the conclusion of international agreements or conventions on co-operation among States in particular for the protection of nuclear material in international transport.

In the light of the growing importance of this subject and the attention being paid to it, the Director General circulated in June this year to all Member States of the Agency the text of a "Draft Convention on Physical Protection of Nuclear Facilities, Material and Transports", which had been prepared by the United States, asking for comments.

The comments received from 16 Member States have been incorporated into the Conference working paper CPNM/2 and have been circulated to Member States. You will find these comments together with other working papers prepared by the Secretariat in the folders in front of you.

The recent XXI session of the General Conference of the Agency endorsed the initiative being taken by the IAEA in this area. In Resolution GC(XXI)/RES/350 the General Conference noted with satisfaction the recent efforts by the Director General to assist Member States in the development and strengthening of their national systems for the physical protection of nuclear facilities and materials and the circulation to all Member States of the draft to which I have already referred. It urged the Director General to continue his efforts, in consultation with Member States, to promote international co-operation in this area and to facilitate the development of an appropriate legal instrument to provide for such co-operation on as broad a scale as possible taking into account that physical protection is primarily a national responsibility.

The General Conference called further upon all Member States of the Agency to support the Director General's efforts to facilitate the development of a convention which would be suitable for adoption by as many States as possible. The Conference requested him to report back at its next regular session on the progress made in this matter.

The objective of this meeting is important and ambitious. I wish you every success in achieving this objective and declare the meeting opened.



**DRAFT CONVENTION ON THE PHYSICAL PROTECTION  
OF NUCLEAR MATERIALS  
FACILITIES AND TRANSPORTS**

(CPNM/1)

August 1977

**PREAMBLE**

**The States Parties to the Convention**

**Recognizing** the legitimate interests of all States in the potential benefits to be derived from the peaceful application of atomic energy,

**Concerned** over the grave dangers posed by the potential of theft and misuse of nuclear materials,

**Convinced** of the need for effective measures to provide for the physical protection of nuclear material,

**Determined** to cooperate and coordinate efforts designed to effect the speedy recovery of lost or stolen nuclear material,

**Have agreed** as follows:

**ARTICLE 1**

For the purposes of this Convention:

(a) "Nuclear material" means plutonium, uranium 233, uranium enriched in the isotopes 233 or 235, and any material containing one or more of the foregoing. "Nuclear material" does not include source material.

(b) "Source material" means uranium containing the mixture of uranium isotopes contained in nature; uranium depleted in the isotope 235; thorium; or any of the foregoing in the form of metal, alloy, chemical compound or concentrate.

(c) "Nuclear facility" means any equipment, installation, or plant which stores or uses nuclear material in any way, including but not limited to the use for production, enrichment, separation, or other processing of nuclear material, the production of energy through nuclear fission, or research on or with nuclear material.

(d) "Nuclear transport" means any vehicle, vessel or aircraft while it is engaged in the transport of nuclear material.

(e) "Offender" means the perpetrator of an offense set forth in Article VI.

## ARTICLE 2

This Convention shall apply to all nuclear facilities, nuclear material, and nuclear transports, other than those facilities, materials, or transports used for military purposes.

## ARTICLE 3

1. Each State Party to the Convention shall take appropriate measures consistent with its domestic law to prevent the loss, theft, misuse, or damage of nuclear material within its territory, under its jurisdiction or under its control anywhere.

2. In this regard, the document INFCIRC/225 (corrected) of the International Atomic Energy Agency, entitled "The Physical Protection of Nuclear Material", and similar documents which are prepared from time to time by international groups of experts and updated as appropriate to account for changes in the state of the art and state of knowledge with regard to physical protection of nuclear material are a useful basis for guiding States Parties in designing a system of physical protection measures and procedures.

3. States Party to the Convention shall cooperate and consult with each other directly and, as appropriate, through international organizations, with a view to improving techniques of physical protection.

## ARTICLE 4

1. Each State Party to the Convention agrees not to import or export or permit the import or export of nuclear material unless such material will at all times during international transfer be subject to the precautions described in paragraphs 2, 3 and 4 of this Article.

2. Prior to shipment, nuclear material designated or intended for international transfer shall be categorized for purposes of physical protection as specified in the Annex to this Convention.

3. During holding or storage incident to the international transfer of nuclear material the levels of physical protection applied to such material shall at a minimum include the following:

(a) For Category III materials, holding or storage within an area to which access is controlled;

(b) For Category II materials, holding or storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control, or any area with an equivalent level of physical protection;

(c) For Category I material, holding or storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

4. During international transportation of nuclear material such material shall at a minimum be subject to the following:

(a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing states, specifying time, place, and procedures for transferring transport responsibility.

(b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and, in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces.

5. In the event an international shipment of nuclear material will transit the territory of any State other than a State Party to the Convention, the State Party in whose territory the shipment originates shall identify and notify such States, including the State in which the shipment terminates, and shall receive assurances in advance of their cooperation and assistance in recovering such material in the case of loss or theft of the material during transfer. If such a shipment originates in the territory of a State not Party to the Convention, the State Party in whose territory such shipment shall terminate shall identify and notify such States, including the State in which the shipment originates, and shall receive assurances in advance of their cooperation and assistance in recovering such material in the case of loss or theft of the material during transfer.

## ARTICLE 5

1. States Party to the Convention shall identify and make known to each other their national agencies or authorities having responsibility for establishing and maintaining physical protection of nuclear materials, nuclear facilities and nuclear transports and for coordinating recovery and response operations in the event of loss, theft, misuse or damage of nuclear material. States Party to this Convention shall also designate and make known to each other points of contact within their national agencies or authorities to cooperate on matters related to the international transfer of nuclear materials and on other matters of mutual concern.

2. In the case of loss or theft of nuclear material, or in the event of threats to nuclear materials, a nuclear facility or transport, States Party to the Convention shall cooperate and assist one another to the maximum feasible extent in the recovery or protection of such material. In particular:

(a) A State Party that knows of, or has reason to know that there has been, a loss or theft of nuclear material or risk thereof, or a threat to nuclear material, a nuclear facility or transport shall immediately notify other concerned States and, as appropriate, international organizations.

(b) The States Parties concerned shall exchange information with each other and, as appropriate, international organizations, with a view to protecting threatened nuclear material, nuclear facilities or transports or recovering lost or stolen nuclear material, and shall, as appropriate:

- (i) coordinate their efforts through diplomatic, police or other technical channels;
- (ii) offer assistance to other States Parties;
- (iii) accept assistance offered by other States Parties; and
- (iv) expedite the return of lost or stolen nuclear material to the State or persons suffering the loss.

3. States Parties shall further cooperate and consult with each other and, as appropriate, with international organizations with a view to improving the ability to detect the loss or theft of nuclear materials and to recover such material.

## ARTICLE 6

1. Consistent with its domestic law, each State Party to this Convention shall take such steps as are necessary to make the following punishable offenses under its criminal law:

- (a) Any theft of nuclear material;
- (b) Intentional misuse, damage or destruction of nuclear material;
- (c) Any intentional entry into that area of a nuclear facility or nuclear transport containing such material, with the intent to do any of the acts described in paragraphs (a) or (b) above;

(d) Intentionally causing physical damage to, destruction of, or seizing a nuclear facility or a nuclear transport;

(e) A conspiracy to commit, attempt to commit or threat to commit any of the offenses described in this Article.

2. "International offense" means an offense set forth in paragraph 1 of this Article if it is directed against nuclear material or a nuclear transport while the material or transport is in international transfer. Articles 9, 10 and 11 apply only to international offenses.

## ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present, shall take the appropriate measures under its internal law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be made known without delay to the other states concerned, and, as appropriate, international organizations.

2. Any person regarding whom the measures referred to in paragraph 1 of this Article are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights, or, if he is a stateless person, which he requests and which is willing to protect his rights; and,

(b) To be visited by a representative of that State.

## ARTICLE 8

The State Party in whose territory the alleged offender is present, shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution through proceedings in accordance with the laws of that State.

## ARTICLE 9

1. To the extent that international offenses are not listed as extraditable offenses in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those offenses as extraditable offenses in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a Treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite consider this Convention as the legal basis for extradition in respect of those offenses. Extradition shall be subject to the procedural provisions and other conditions of the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize these offenses as extraditable offenses between themselves subject to the procedural provisions and other conditions of the law of the requested State.

4. Each of the offenses shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in

which it occurred but also in the territory of the State of which the alleged offender is a national and in the territories of the exporting, importing and transitted States Parties.

## ARTICLE 10

Any person regarding whom proceedings are being carried out, in connection with an international offense, shall be guaranteed fair treatment at all stages of the proceedings.

## ARTICLE 11

1. The States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of international offenses, including the supply of evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

## ARTICLE 12

1. Each State Party shall communicate to the Director General of the International Atomic Energy Agency the laws and regulations promulgated to give effect to this Convention. The Agency shall communicate periodically laws and regulations so provided to all States Parties to the Statute of the International Atomic Energy Agency.

2. The State Party where an alleged offender is prosecuted for an international offense shall communicate the final outcome of the proceedings to the Director General of the International Atomic Energy Agency, who shall transmit the information to all parties to the Statute of the International Atomic Energy Agency.

## ARTICLE 13

1. Any dispute between two or more State Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this Article. The other States Parties shall not be bound by paragraph 1 of this Article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this Article may at any time withdraw that reservation by notification to the Director General of the International Atomic Energy Agency.

#### ARTICLE 14

This Convention shall be open for signature by all States Parties to the Statute of the International Atomic Energy Agency, until \_\_\_\_\_ at the headquarters of the Agency in Vienna.

#### ARTICLE 15

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Director General of the International Atomic Energy Agency.

#### ARTICLE 16

This Convention shall remain open for accession by any State Party to the Statute of the International Atomic Energy Agency. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.

#### ARTICLE 17

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification or accession with the Director General of the International Atomic Energy Agency.

2. For each State ratifying or acceding to the Convention, after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

## ARTICLE 18

The Director General of the International Atomic Energy Agency shall inform all States Parties to the Statute of the International Atomic Energy Agency, *inter alia*:

(a) Of signatures to this Convention, of the deposit of instruments of ratification or accession in accordance with Articles 12, 13 and 14, and of any other communications received under this Convention for circulation in accordance with the terms of this Convention;

(b) Of the date on which this Convention will enter into force in accordance with Article 15.

## ARTICLE 19

1. The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all State Parties to the Statute of the International Atomic Energy Agency.

2. The Director General of the International Atomic Energy Agency shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

In witness whereof the undersigned, being duly authorized thereto by their respective governments, have signed this Convention, opened for signature at \_\_\_\_\_  
Vienna on



# ANNEX

Material	Form	Category		
		I	II	III
1. Plutonium <sup>a</sup>	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less
2. Uranium-235	– Unirradiated <sup>b</sup>			
	– Uranium enriched to 20% <sup>235</sup> U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less
	– Uranium enriched to 10% <sup>235</sup> U but less than 20%	–	10 kg or more	Less than 10 kg <sup>c</sup>
	– Uranium enriched above natural, but less than 10% <sup>235</sup> U <sup>d</sup>	–	–	10 kg or more
3. Uranium-233	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less
4. Irradiated fuel			Depleted or natural uranium, thorium or low enriched fuel (less than 10% fissile content)	

<sup>a</sup> All plutonium, except that with an isotopic content exceeding 80 percent of plutonium-238.

<sup>b</sup> Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one meter unshielded.

<sup>c</sup> Less than a radiologically significant quantity should be exempted.

<sup>d</sup> Natural uranium, depleted uranium and thorium and quantities of uranium enriched to less than 10 percent not falling in Category III should be protected in accordance with prudent management practice.

<sup>e</sup> Although this level of protection is recommended, it would be open to states upon evaluation of the specific circumstances, to assign a different category of physical protection.

<sup>f</sup> Other fuel which by virtue of its original fissile material content is classified as Category I or II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one meter unshielded.

## ANNOTATION TO DRAFT CONVENTION

Article 1 expands the definition of nuclear material so that all plutonium is covered. This is in line with the current realization that all plutonium is potentially dangerous. Definitions of nuclear material are otherwise consistent with the IAEA statute.

Article 2 is intended to limit the scope of the convention to civilian nuclear materials, facilities and transports.

Article 3 recognizes that implementation of measures of physical protection is primarily an internal responsibility of each country. The Article requires each State party to enact appropriate laws and regulations as are necessary to ensure the physical protection of nuclear materials and transports. It takes into account that specific measures are up to particular countries while at the same time, recognizing the utility of INFCIRC/225 and similar documents. The phrase "under its jurisdiction or control anywhere" is intended to cover vessels and aircraft registered in a State or companies incorporated in a State while they are abroad.

Article 4 commits importing and exporting States parties to get certain minimal assurances of physical protection from States in which the nuclear material will be stored during transit and from States which are to be transitted. The Article also puts responsibility on originating and terminating States parties, as appropriate, to get assurances of assistance in recovery operations.

Article 5 implements one sentence in Para.6.2.11.3. of INFCIRC/225 and goes substantially further in setting up procedures for the recovery of lost nuclear materials. These procedures involve, in essence, exchanges of information concerning loss or theft and coordination of measures concerning recovery.

Article 6 commits States parties to criminalize certain offenses involving nuclear facilities, transports of materials. Although specifically defined for the purposes of this convention, the offenses are nuclear variants of standard theft, burglary and conspiracy offenses. However, crimes akin to sabotage are also defined. The Article also defines international offenses.

Articles 7 through 13 are inspired by the provisions of the Hague (hijacking), Montreal (sabotage) and UN Protection of Diplomats conventions and to a significant extent modeled on the latter convention which was adopted by consensus in the UN General Assembly.

Article 7 parallels Article 6 of the diplomats convention; Article 8 parallels Article 7 of the diplomats convention; Article 9 parallels Article 8 of the diplomats convention; Article 10 parallels Article 9 of the diplomats convention; Article 11 parallels Article 10 of the diplomats convention; Article 13 parallels Article 12 of the diplomats convention but covers laws and regulations promulgated under Article 3 as well as under Article 6. Article 9 incorporates the analogue of Article 3(1) of the diplomats convention.

The mechanism established by Articles 6, 7, 8, 9, seeks to ensure that no person who has committed one of the international offenses listed in Article 6 can find safe haven in another State party's territory. When the alleged offender is present in a State party, it must either extradite him (to one of the States referred to in Para.4 of Article 9) or submit the case to its competent authorities for prosecution.

Articles 14–19 are fairly standard final Articles.



## RAPPORTEUR'S REPORTS



**AGENDA**  
**for the**  
**Meeting of governmental representatives**  
**to consider drafting a convention**  
**on physical protection of nuclear material**

Vienna, 31 October–11 November 1977  
(CPNM/13)

1. Opening statement by the Director General of the IAEA
2. Election of the Chairman
3. Adoption of the Agenda
4. Adoption of the Rules of Procedure
5. Election of the Vice-Chairmen and Rapporteur
6. General discussion
7. Consideration of a draft Convention
8. Adoption of the report and fixing of further meetings
9. Closing of the meeting

## DAILY REPORTS 1-5

(CPNM/27)

### Rapporteur's Report on Meetings Held on 31 October 1977

#### OPENING STATEMENT BY THE ACTING DIRECTOR GENERAL

The Acting Director General, Prof. Zheludev, opened the meeting with welcoming remarks, reproduced as CPNM/5.

#### ELECTION OF THE CHAIRMAN

Prof. Zheludev, acting as a temporary Chairman then proposed that the order of items on the draft agenda, CPNM/3, be changed to permit election of the Chairman before adoption of the draft agenda and draft rules of procedure, CPNM/4. It was so agreed.

After consultation between delegations, the representative of India, supported by the representatives of Japan and Ecuador, speaking on behalf on the Latin American group, proposed that Ambassador Siazon of the Philippines be elected Chairman. Ambassador Siazon was elected by acclamation and assumed the chair.

The meeting adopted the agenda as contained in CPNM/13.

#### ADOPTION OF THE RULES OF PROCEDURE

The representative of Ecuador, speaking for the Latin American group, stated that the draft rules circulated as CPNM/4 raised a number of points which would lead to time-consuming discussion and suggested using instead the Board of Governors' Rules of Procedure, GOV/INF/60, as appropriate.

The Chairman pointed out that those Rules were not entirely appropriate, since they provided e.g. for election of only two Vice-Chairmen, and made no provision for election of a Rapporteur or preparation of a report.

The representative of the United States had no objections, subject to the Chairman's observations. The Board Rules were thus adopted.

The representative of Argentina suggested that notwithstanding the adoption of the Board Rules the consensus procedure followed by the Board should obtain, and the Secretariat should prepare reports of the proceedings.

The Chairman noted that the Board sometimes took votes but always made every effort to arrive at a consensus.



Mr. Edwards, the Legal Director, referred to Rules 55 and 56 of the Board Rules and stated that the Secretariat was not in a position to provide summary records, which are very expensive. If the Meeting elected a Rapporteur, his report might be sufficient; otherwise governments would have to make voluntary contributions to cover the cost of summary records.

The representative of Romania agreed that decisions should be reached by consensus, but also was of the view that any subsidiary groups of the Meeting should be open to all delegates unless the Meeting agreed otherwise.

## ELECTION OF VICE-CHAIRMEN AND RAPPOREUR

The Meeting elected Messrs. Estrada Oyuela of Argentina, Willuhn of the German Democratic Republic and Harry of the Netherlands as Vice-Chairmen, and Mr. Herron of Australia as Rapporteur.

The Chairman requested the Rapporteur to prepare a summary of the deliberations on a day-to-day basis, which would be circulated the following day to the delegations and would form part of the report. He also stated his understanding that the Meeting was prepared to work without summary records on the understanding that statements in the general debate, which will be submitted in writing, will form part of the working documents, as will any other statements submitted in writing.

Mr. Herron, the Rapporteur, understood the desire of the delegations to have adequate records and thought a daily record could be provided with the help of the Secretariat. He would be available to any delegate for consultation.

## GENERAL DISCUSSION

The Chairman then invited delegations to make statements.

General Statements were made by the representatives of the United States (text contained in CPNM/15), France (CPNM/8), the Federal Republic of Germany (CPNM/6), Italy (CPNM/10), Australia (CPNM/16), Austria (CPNM/7), Japan (CPNM/12), Finland (CPNM/14), Brazil (CPNM/9), India (CPNM/19), Argentina (CPNM/11), Sweden (CPNM/17) and the Union of Soviet Socialist Republics (CPNM/18) respectively.

The Chairman identified two points of view on the scope of the convention: one supporting a convention for physical protection of nuclear material and facilities wherever located, and the second supporting a convention limited to physical protection of nuclear material in international transportation.

The Chairman adjourned the meeting until 2:30 p.m. on 1 November 1977.

## **Rapporteur's Report on Meetings held on 1 November 1977**

### **CONTINUATION OF GENERAL DISCUSSION**

General statements were made by the representatives of the German Democratic Republic (CPNM/24), Belgium (CPNM/22), Panama (CPNM/20), Netherlands (CPNM/21), Italy (CPNM/10), Romania (CPNM/23), Czechoslovakia (CPNM/26), and Mexico (CPNM/25).

### **ARTICLE BY ARTICLE CONSIDERATION**

The Chairman proposed that delegates consider the draft convention article by article. He considered that the understandings of representatives needed to be clarified by general discussion before a consensus could be reached on the intended coverage of the Convention. He proposed that the question of the scope of the Convention be set aside for the present. After a general review it should be possible to move on to drafting possibly using ad hoc working groups. The Chairman invited the representative of the United States to explain the policy considerations in regard to individual articles, taking into account the comments made by Member States of the Agency and contained in CPNM/2 and CPNM/2/Add.1 and Add.2.

#### **Article 1**

The representative of the United States having explained the background of Article 1, representatives of the Netherlands, Belgium, Ecuador, Italy, Australia, Egypt, Argentina, Peru, Japan, United Kingdom, France, India, USSR, Austria and Sweden intervened.

The following major points were made in the discussion:

- The definitions in Article 1 of the draft were intended to be functional and were specific to the purposes of this Convention;
- The definitions were closely bound up with the question of the scope of the Convention and could not be made definitive until that question was settled;
- Definitions in the Agency's Statute and other relevant documents should be utilized. However, it was indicated that there existed several different definitions for some terms in different documents according to the purposes of each document;

- Additional terms which might need consideration when formulating definitions were suggested: “international transport”; “strategic special nuclear material”; “fissionable material”; “special nuclear material”; “irradiated fuel”; “vehicles”; “international transportation”; “international shipment”; “alleged offender”; “international transfer”;
- It was undesirable to mix technical and legal definitions in one article;
- Definitions should be concerned with nuclear material and it might be possible to do away with the definition of nuclear facility contained in sub-paragraph (c) of this article.

Several delegations made specific drafting suggestions. The Chairman requested that these be submitted in writing as working papers.

## Article 2

Interventions in regard to Article 2 were made by the representatives of Panama, France, Netherlands, Finland, Australia, Belgium, United States, Argentina, Japan, Philippines and Italy.

The following points were made during the discussion:

- The words in the last two lines of the article “other than those facilities, materials or transports used for military purposes” should be deleted;
- The words “used for military purposes” should be replaced by “within the competence of military authorities”;
- An undertaking should be included to apply at least as stringent measures of physical protection as defined in the Convention to military activities, even if these activities would not otherwise be subject to the Convention;
- When civilian material is transported by military transport the Convention would apply;
- Civilian nuclear transport is more vulnerable than military nuclear transport and in those few States where military nuclear material is transported the standards of physical protection are higher than those for civilian transport;
- Vulnerability of military, as opposed to civilian, nuclear transport is relative, and risks in regard to military nuclear transport should not be discounted;
- In answer to a question whether “military purposes” was intended to mean only weapons purposes or was intended to cover also use as fuel for nuclear submarines, it was explained that Article 2 was drafted to exclude general military applications as well as explosives.

### Article 3

At the invitation of the Chairman the representative of the United States responded to written comments of Governments. He made a number of points as follows:

- It might be preferable to replace “misuse” with “unauthorized use”;
- The reference to “material within its territory, under its jurisdiction or under its control anywhere” paralleled the usage of terms in the NPT;
- It would be preferable to include a reference to “destruction” as well as to “use” and “damage” and to qualify all three by “unauthorized”;
- With regard to paragraph 2, no obligation was implied and the draft reflected the simple fact that INFCIRC/225 (corrected) provided a useful basis for guiding States in designing a system of physical protection.

### Rapporteur's Report on Meetings held on 2 November 1977

#### Article 3 continued

The Chairman invited further discussion on Article 3.

Interventions in regard to Article 3 were made by Belgium, Finland, India, Ecuador, France, Italy, Australia, Japan, Netherlands, Federal Republic of Germany, United Kingdom, Spain, Romania, Egypt, Czechoslovakia, Union of Soviet Socialist Republics, United States, Argentina and Peru.

The following points were made during the discussion:

- Article 3(1) of the draft did not define a minimum commitment in regard to measures to be taken. Such a minimum commitment was desirable;
- Minimum measures should be included in a technical annex based on INFCIRC/225;
- The reference to loss, theft, misuse or damage of nuclear material in paragraph 1 was too open; an additional reference to destruction was desirable; “misuse” should be deleted and “unauthorized use” substituted;
- Paragraph 1 should contain not only the provisions dealing with prevention, but also a posteriori provisions to deal with recovery of material;
- Paragraph 1 should provide also for protection of nuclear facilities;

- The words “under its control anywhere” should be either deleted or clarified; it was noted that the Committee which drafted INFCIRC/153 had been unable to agree on the meaning of “control” as used in the similar phrase in the NPT;
- It was difficult to imagine a practical situation where a State would have control of nuclear material without having jurisdiction;
- The obligations of developing countries under Article 3 should take into account the resources of those countries as against the resources of developed countries;
- In paragraph 1, the words “within the framework of national legislation” should be substituted for “consistent with its domestic law”, and “within its competence” should be substituted for “under its jurisdiction”;
- In regard to paragraph 2, views of representatives ranged from favouring deletion to favouring strengthening of the obligations expressed. Some delegations questioned the appropriateness of referring to unofficial and non-legal documents (INFCIRC/225) as well as documents to be prepared in the future. The reference to “international groups of experts” was considered imprecise;
- INFCIRC/225, if not referred to in the operative part of the Convention, should be referred to in the Preamble;
- INFCIRC/225 was not a document of a permanent nature and it had been developed without the participation of the Latin American group;
- INFCIRC/225 was an important document and the only international document on the subject;
- In regard to paragraph 3 it was suggested that “as appropriate” should be transposed to follow “shall co-operate and consult”;
- Paragraph 3, as drafted was intended to oblige consultation between States, but to give States a discretion regarding co-operation and consultation through international organizations;
- Some wording should be added to the end of paragraph 3 to provide that States would not be required to disclose details of their security measures when consulting and co-operating with other States or international organizations;
- Deletion of paragraph 3 was suggested; on the other hand, some delegations found no difficulty with the provision as drafted;
- The IAEA was the only relevant international organization for purposes of paragraph 3 and should be identified; if, in fact, there were other organizations, they should be specified.

#### Article 4

In discussion of Article 4, interventions were made by representatives of the United States, India, Brazil, Canada, Federal Republic of Germany, Romania, Egypt, France, Italy, Australia, Argentina, Czechoslovakia, Netherlands, United Kingdom, Japan, Union of Soviet Socialist Republics. The following points were made:

- Greater precision was needed in defining import and export activities and in the wording in regard to granting permission for such activities;
- The idea of including reference to imports needed close examination since the present draft could have the effect of inhibiting transfers of nuclear material from a less secure situation to a more secure situation;
- Paragraph 1 should be elaborated to cover loading and unloading of nuclear material;
- Paragraph 1 should be redrafted in a manner which would not discourage imports and exports of nuclear material;
- The references in paragraph 4(b) to escorts and appropriate response forces should be explained or defined;
- The Article should regulate only transportation of nuclear material through States not party to the Convention, and between a State Party and a State not party to it;
- Further clarification was needed of the division of responsibility between States engaged in international transfer of material;
- The words “designated or intended” in the English language text had not been correctly reflected in the French translation of that text;
- Not all nuclear material falls within categories I, II and III; it was desirable that the Convention cover all radiologically significant nuclear material;
- The possibility of refusal of export or import inherent in paragraph 1 was potentially disruptive of the development of peaceful uses of nuclear energy;
- Paragraph 1 raised the possibility that a State Party would be put in the position of judging the adequacy of precautions applicable in other States;
- Paragraph 3 was at once too precise and too ambiguous; it should be revised to provide simply for obligations of effective surveillance;
- It would be necessary to reconcile inconsistencies in the extent to which the Convention incorporated the systems of the Regulations for the Safe Transport of Radioactive Material and INFCIRC/225;

- Since Article 3 purported to fix levels of physical protection generally, much of Article 4 was superfluous;
- Further attention was desirable in regard to the content of assurances and the consequences of failure to receive assurances under paragraph 5;
- The Article should impose direct obligations on States Parties to ensure protection of nuclear material during international transfer;
- It would be desirable to add requirements for communications systems in regard to category II material;
- Categorization of nuclear materials should be provided for independently of the question of regulating transfer; measures of physical protection should then be prescribed according to whether material was in use, storage or being transported;
- The IAEA might be given a functional role in supervising international transport of nuclear material;
- INFCIRC/225 might be annexed to the Convention as a statement of minimum measures, but if not annexed, careful attention should be given to the selection of measures from that document for incorporation into the Convention;
- The possibility was raised that two shipments of category II material might physically come together, posing heightened attractiveness as an object of terrorist attack, and it was suggested that provision be made to guard against this possibility.

The Chairman invited discussion of paragraph 5 of Article 4. Interventions were made by the United States of America, Canada and Egypt. The following points were made in discussion of paragraph 5 of Article 4:

- The importance was emphasized of notification of transit of shipments of nuclear material through the territory of a State so that adequate protection can be given;
- It would be necessary to consider the situation of a State Party surrounded by States not parties to the Convention;
- A mechanism should be specified for making notifications under paragraph 5; the mechanism might be the use of diplomatic channels;
- The paragraph should also provide for situations where the shipment was transported through the territory of a State Party, but neither originated nor terminated in the territory of a State Party.

## Article 5

The Chairman invited discussion of Article 5. Interventions were made by the United States of America, Finland, Egypt, Federal Republic of Germany, Italy, Argentina, France, Japan, Czechoslovakia, Belgium, Romania, the United Kingdom, Austria, Union of Soviet Socialist Republics, Denmark, India and Panama. The following points were made during the discussion:

- The obligations in paragraph 2 of Article 5 were significantly modified by the phrases “as appropriate” and “to the maximum feasible extent”;
- A number of representatives queried the content of paragraph 5.2(b), especially sub-paragraphs (ii) and (iii); deletion of these sub-paragraphs was suggested; some representatives who favoured retention of the sub-paragraphs suggested that they be qualified by a phrase such as “at the request of the State responsible for the physical protection of lost or stolen material” or “if so requested”;
- It was suggested that sub-paragraph (iv) contained too high an obligation and like sub-paragraphs (ii) and (iii), could be abused. It was suggested that it be qualified by “if so requested” and that provision be made for responsibility for costs and risks in returning lost or stolen nuclear material. It was also asked whether this sub-paragraph constituted a binding obligation to return material;
- Article 5 raised questions of confidentiality of information which should be dealt with in a separate article;
- Several delegations canvassed textual amendments to Article 5;
- There should be a central mechanism, which might be the IAEA, for diffusing the information required to be provided in relation to national authorities with responsibility for physical protection and points of contact within them;
- National authorities might be listed in an annex of the Convention;
- Paragraph 3 was not compulsory and could be deleted;
- The scope of Article 5 should be reduced and the measures for which it provided should be more flexible; in particular, repetition of obligations already provided in paragraph 3 of Article 3 was unnecessary;
- In Article 5.2(b)(i), reference to police and technical channels could simply be covered by “other channels”.



## Article 6

The Chairman invited discussion of Article 6. Interventions were made by the United States of America, Sweden, Romania, India, Netherlands, Japan, Peru, France, Ecuador, Italy, Egypt, Argentina, Austria, Australia, the United Kingdom and Belgium. The following points were made during the discussion:

- It was suggested that “legislation” be substituted for “criminal law” in paragraph 1 to make it clear that not only provisions in the criminal code of a country were relevant;
- Several delegations queried the appropriateness of the term “international offence”. It was suggested that a different term might be used such as “serious offence” or that only one category of offences should be distinguished rather than the two categories of the draft. One delegation proposed redrafting paragraph 1 to eliminate the need for paragraph 2.
- It was necessary to confine paragraphs 1(b), (c) and (d) to illegitimate or unlawful actions;
- It was questioned whether national law should apply normally or whether States Parties should be obliged to give some extraterritorial application to their laws in respect of offences created;
- It was undesirable that theft of military material be not within the provisions of the Convention;
- On the example of the Hague and Montreal Conventions, States should establish criminal jurisdiction in regard to the offences described in Article 6 when committed outside their territorial jurisdictions;
- Sub-paragraph 1(b) should extend to diversion of nuclear material in the sense of diversion en route of a shipment of nuclear material;
- Several representatives foresaw a need for a small working group of experts to consider the provisions of the Convention relating to penal law;
- A new provision should be introduced obliging States Parties under no circumstances to release nuclear material under threat;
- The limitation of paragraph 2 to Articles 9, 10 and 11 was undesirable;
- Paragraph 2 appears to leave a discretion to States whether or not to make offences extraditable if the offences are in relation to international transfer;
- The provision of conspiracy as an offence posed difficulties which might be avoided by reference instead to complicity or attempt.

The Chairman indicated that he envisaged that an ad hoc working group to deal with the legal provisions of the Convention would be established early in the coming week and would report its results to a plenary session.

### Articles 7–13

The Chairman invited discussion of Article 7. It was noted that Articles 7–13 were closely related and discussion proceeded on these Articles as a whole. Interventions were made by representatives of the United States of America, Argentina and the United Kingdom. The following points were made during the discussion:

- It was suggested that Article 7.2, which deals in fact with consular visits, was not within the competence of the Convention;
- In the same paragraph the provision in regard to a stateless person was seen to raise difficulties of proof of the status of a person claiming to be stateless;
- In regard to Article 9.1. the efficacy of deeming offences to be included in extradition treaties was questioned; it was considered the provision would not be effective for purposes of some systems of national law;
- The offences listed in Article 6 did not seem to be sufficiently international in character to warrant the inclusion of such extradition provisions modelled on those in conventions dealing with attacks against aircraft; the offences covered are in any case likely to be extraditable offences under the laws of most countries.

### FORMAT OF THE RAPPORTEUR'S DRAFT REPORT

In response to the Chairman's enquiry, delegations expressed general satisfaction with the format given to the daily report of the Rapporteur. A suggestion was made that a document in tabular form summarizing the positions of delegations in regard to particular articles would be helpful.

## **Rapporteur's Report on Meetings held on 3 November 1977**

### **Articles 7–13 continued**

The Chairman invited representatives to continue discussion of Articles 7–13. Interventions in regard to these articles were made by Finland, Denmark, Belgium, Netherlands, Italy, Japan, Sweden.

The following points were made during the discussion:

- There was a possible inconsistency between Articles 8 and 9; while Article 8 provides an equal choice between extradition and prosecution, the effect of Article 9 in some circumstances might be to oblige extradition, thus excluding the possibility of prosecution by the requested State;
- Article 8 should provide that a State be obliged to prosecute an offender only when it had rejected a valid request for extradition (this is the approach taken in the European Convention on the Suppression of Terrorism);
- The last sentence of Article 7.1 should be deleted;
- In Article 9.4 it appeared unnecessary to include the reference to the territory of the transitted State Party;
- Article 11 should follow the similar provisions in the Hague and Montreal Conventions by providing that the “law of the State requested shall apply in all cases”.

### **Articles 13–19**

The Chairman invited discussion of Articles 13–19. Interventions in regard to these Articles were made by the United States of America, Austria, Argentina, the Netherlands, Egypt and Belgium. The following points were made during the discussion:

- References in Article 18(a) to Articles 12, 13 and 14 should be to Articles 14, 15 and 16; in Article 18(b), “Article 15” should read “Article 17”;
- Provision should be made for denunciation, amendment and periodic review of the Convention;
- It should be open to all States to become party to the Convention; this change would necessitate consequential amendments of the final clauses wherever references to “all States Parties to the Statute of the IAEA” appear;

- In Article 17 there appears to be some confusion between the role of the IAEA as depository and its role when acting for its Member States;
- In regard to Article 19.1, the possibility was raised that Arabic might be added as a sixth language.

#### STATEMENT BY PHILIPPINES REPRESENTATIVE

The Chairman, speaking as the representative of the Philippines, outlined his Government's position in regard to the Convention as a whole. He made the following points:

- The definition of “nuclear material” used in the Convention should take into account all recent technological developments;
- The Convention should apply to the totality of nuclear material;
- The Convention should prescribe a minimum of measures of physical protection of nuclear material to be applied within States but the choice of measures should be within the discretion of each State Party;
- All nuclear material whether peaceful or military should be covered by effective physical protection measures;
- Inclusion of “control anywhere” in Article 3.1 would have significance in the event of application of Article 5 of the NPT;
- In regard to Article 4: (a) It might be appropriate to exclude application to military nuclear material; (b) The IAEA might be involved in the consultations that would precede export and import of nuclear material; (c) The cost of physical protection of nuclear material in international transfer might become part of the budget of the IAEA;
- In Article 4, the conditioning of imports and exports on the adequacy of physical protection measures would infringe Article 3 of the NPT and impose additional obligations on NPT Parties without the review procedure being followed.

#### ESTABLISHMENT OF AD HOC WORKING GROUPS

The Chairman proposed adjournment of the meeting to allow consultations preparatory to the establishment of ad hoc working groups on technical issues and on legal issues. He proposed that the working group on technical issues be chaired by the Vice-Chairman from the Netherlands — Mr. Harry — and

the working group on legal issues be chaired by the Vice-Chairman from Argentina — Mr. Estrada Oyuela. The Chairman suggested that the working groups should preferably have a maximum membership of about 15 delegations but that they should be open-ended and open to observers, including non-members of the working group.

The Chairman adjourned the meeting accordingly.

Upon resumption, the meeting decided to establish:

- (a) An ad hoc working group on technical issues under the chairmanship of the Vice-Chairman from the Netherlands, Mr. Harry. The following delegations indicated that they wished to participate in this working group: the Netherlands, Canada, the United States of America, Italy, the United Kingdom, Sweden, Australia, Belgium, India, the Union of Soviet Socialist Republics, Finland, Switzerland, Japan, Romania, Norway, the Federal Republic of Germany, the German Democratic Republic, Czechoslovakia, France, Mexico, Brazil, Austria, Israel, Spain and Colombia;
- (b) An ad hoc working group on legal issues, chaired by the Vice-Chairman from Argentina, Mr. Estrada-Oyuela. The following delegations indicated that they wished to participate in this working group: Argentina, Australia, Austria, Belgium, Chile, Egypt, Finland, Brazil, Romania, France, the German Democratic Republic, Italy, India, Japan, Mexico, Peru, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America, Denmark, the Netherlands, Sweden, and the Federal Republic of Germany.

The meeting decided that the Working Group on Technical Issues would consider Articles 1, 3, 4 and 5, as appropriate, and the Annex of the draft Convention circulated as CPNM/1. It was decided that the Working Group on Legal Issues would consider Articles 6 to 12 inclusive of that draft.

The Chairman indicated his intention that the meeting should reconvene in plenary on Thursday, 10 November 1977, to consider the results of the Working Groups' deliberations; nevertheless, arrangements would be flexible and should the need arise in the meantime, either Working Group could ask to have the plenary reconvened.

## Rapporteur's Report on Meetings held on 10 November 1977

### PRESENTATION OF WORKING GROUP REPORTS

The Chairman invited the Chairman of the Working Group on Legal Issues, Mr. Estrada Oyuela to introduce his report on the work of that Group. Mr. Estrada Oyuela introduced document CPNM/WP.21/Corr. 1 and 2. He made the following points in explanation:

- As noted in the introductory statement of the report of the Working Group on Legal Issues, the report was on a preliminary basis;
- The text was a consolidation of the main points of view expressed within the Group. It contained some footnotes and square brackets to indicate those clauses pointed out by delegates in which there were more firm doubts in regard to provisions affected;
- The Group had worked mainly on the basis of the draft text contained in CPNM/1 but had drawn also on other conventions, especially on “The Hague Convention for the Suppression of Unlawful Seizure of Aircraft”;
- Article 6 footnote: Some members of the Group had considered that in order to protect nuclear material it was not necessary to refer specifically in Article 6 to nuclear facilities. Other delegates had a different viewpoint. The positions of delegations in regard to nuclear facilities would need further consideration in the light of the definition of nuclear facilities when established;
- In considering paragraph 2 of Article 6, the Working Group had decided to develop a definition that would avoid doctrinal difficulties not concerned with the implementation of the Convention;
- Article 6 bis represented a carefully worded compromise seen by the Group as necessary to be included in the Convention;
- Article 7, paragraph 3: Some delegates favoured inclusion of this provision even though the principle expressed was also contained in the Vienna Convention on Consular Relations because not all Parties to this Convention would be Parties to the Consular Convention;
- The square brackets around the reference to stateless persons indicated that some delegations believed that the case of stateless persons was basically different from that of other aliens. There were possible difficulties in regard to proof of the status of a stateless person;

- Article 8: This provision draws on the precedents in The Hague Convention and the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents. The footnote indicated that some delegations required clarification of whether a State would be obliged to submit the case for prosecution in all cases or only when a request for extradition had been made and rejected. In this context, delegates had referred to The European Convention on the Suppression of Terrorism;
- For Article 9 the Working Group had taken as a basis the text of The Hague Convention;
- Article 11 as now drafted refers to all cases covered by Article 6, paragraph 1;
- The square brackets around “all” in Article 11 paragraph 1 indicated that some delegations considered that the inclusion of the word might oblige a State Party to reveal classified information;
- Provisions relating to the identity and functions of the depository would need to be considered at a later stage. The second footnote in WP.21/Corr.1 indicated that in the view of some delegations, legal technical considerations would ensure that mere deposit of an instrument of ratification would entail that the ratifying State had made all necessary provisions for the application of the Convention in its territory. Other delegations considered that it would be useful to have additional information on the laws and regulations requisite to implementation of the Convention.

The Chairman invited the Chairman of the Working Group on Technical Issues to introduce the report of that Working Group.

Mr. Harry of the Netherlands introduced the Report CPNM/WP.22/Rev.1. He explained that several corrections to CPNM/WP.22/ were being circulated. Mr. Harry made the following points in explanation:

- The texts in the report integrated delegations’ views on a preliminary basis;
- There had been unanimous agreement in the Working Group that the Convention should encompass nuclear transport;
- Most delegations would like the Convention additionally to cover other nuclear activities. The square brackets in the text ensured that the scope of the Convention in any of these aspects was not prejudiced;
- In the light of the square brackets and footnotes affecting nuclear material the coverage in respect of nuclear material would need to be further considered on an article by article basis;

- There was a need for the text produced on technical issues to be considered from a legal point of view.

The Chairman indicated that the International Atomic Energy Agency would be in a position to make facilities available from 10 to 21 April 1978 for a further meeting. The meeting decided, subject to approval of Governments, that the next meeting would be held on those dates.

The Chairman indicated that the work of the proposed meeting would be to consider the scope, preamble and final Articles of the Convention as well as to reconsider the Articles already reported on by the two Working Groups.

The Chairman invited comment on the report of the Working Group on Legal Issues. Mr. Estrada Oyuela (Argentina) explained that the final report of the Working Group on Legal Issues would incorporate, as part of Article 6, the text of paragraph 2 of that Article set forth in paragraph 3 of CPNM/WP.21/Corr.2.

The meeting accepted that the word “punishable” should be substituted for the word “sanctioned” in Article 6.2.

Some delegations considered in regard to Article 6 bis that it was of primary importance to establish a system which permits the exercise of jurisdiction wherever an offence as mentioned in the Convention is committed. Article 6 bis, however, does not, as drafted cover the situation where a vessel or aircraft is not registered in any of the States Parties but is operated by the national of a State Party. This is, the text did not cover the situation where a national belonging to a State Party is operating a means of conveyance of a country not party to the Convention. This loophole should be closed by inclusion of specific wording prohibiting States Parties from using means of conveyance for international nuclear transport other than those registered in their States. –

The meeting approved the report of the Working Group on Legal Issues.

The Chairman invited comments on the report of the Working Group on Technical Issues, CPNM/WP.22/Rev.1.

Several delegations proposed, and the meeting agreed, to insert square brackets around the words “or permit the export of” in Article 4(1).

In regard to Article 5(0), one delegation noted that the term “sub-national groups” usually connoted ethnic minorities. The meeting decided to substitute the words “groups of individuals” for the words “sub-national groups”.

In regard to Article 5(2), the meeting decided to substitute the words “protection and recovery” for the words “recovery and protection”.

The meeting decided to insert square brackets around the word “holding” in sub-paragraphs 1(a), (b) and (c) of Annex II.

It was explained that Annex IV was intended to be an alternative to Annex I. The meeting decided to amend the title of Annex IV accordingly.



The meeting approved the report of the Working Group on Technical Issues.

The meeting considered and approved the report of the Rapporteur.

The meeting decided to request the Director General of the International Atomic Energy Agency to transmit to all interested States the report of the meeting comprising Daily Reports 1–5 of the Rapporteur, the report of the Working Group on Legal Issues as approved and the report of the Working Group on Technical Issues as approved and in the transmittal letter to invite interested governments to submit comments on the documents transmitted by a certain date. The meeting further requested the Director General to invite or encourage other States to participate in the work of drafting the Convention.

## DAILY REPORTS 6-8

(CPNM/50)

### Rapporteur's Report on Meetings held on 10 April 1978

The Chairman opened the meeting and said that he proposed to invite delegations to speak on any aspect of the Convention during the opening sessions after which the Working Groups on Legal Issues and on Technical Issues should reconvene. He envisaged that the Working Group on Legal Issues should consider draft articles 13-19 of the Draft Convention as in Document CPNM/1 and in addition should consider the texts emerging from the Working Group on Technical Issues to ensure that they were in appropriate legal language.

The Chairman called for general discussion on any subject relating to the Convention. He requested, however, that delegations pay particular attention to Article 2 in relation to the scope of the Convention. The Chairman suggested that wherever possible delegates should provide the Secretariat with texts of their statements for printing as part of the official record.

Interventions were made by Panama, India, Argentina, Peru, Netherlands, Philippines, the United States of America, the Federal Republic of Germany, Japan, France, Brazil, Italy, Belgium, Romania, Australia, Finland, Ecuador, Spain, Mexico and Hungary. Statements submitted are reproduced as CPNM/31 to 45.

Delegations identified as major outstanding issues:

- (1) The scope of the Convention including coverage of:
  - matters within national jurisdiction/matters in regard to international transportation;
  - nuclear material/nuclear facilities;
  - civilian nuclear material/military nuclear material;
  - the possibility of IAEA verification of national measures for physical protection.
- (2) The nature of the linkage between the Convention and INFCIRC/225/Rev.1;
- (3) The significance for the Convention of developments since the last meeting in relation to communications received from certain Member States regarding guidelines for the export of nuclear material, equipment

or technology, circulated by the Agency as INFCIRC/254 and INFCIRC/254/Add.1; in particular the relationship of multilateral arrangements to bilateral requirements of individual supporters of the guidelines and problems of verification of compliance with physical protection obligations.

The Chairman suggested that delegations meeting in regional groups should pay particular attention to the linkage between INFCIRC/225 and the Convention. He said that there had been indications that some delegations would find it difficult, in the absence of an opportunity to re-examine the substance of INFCIRC/225, to accept an open-ended commitment in the Convention to observe the requirements of INFCIRC/225. He suggested that if re-examination proved necessary it might be effected by a sub-group during the course of the meeting. He hoped that there could be an answer to this difficulty before the two Working Groups resumed.

The Chairman noted the views of several delegations that agreement on the scope of the Convention should be reached before the Working Groups were reconvened. He urged delegations to make every effort to reach agreement on the matter.

The Chairman adjourned the meeting until 10 a.m. on 11 April 1978.

### **Rapporteur's Report on Meetings held on 11 April 1978**

#### **CONTINUATION OF THE GENERAL DISCUSSION**

The Chairman opened the meeting and invited further general discussion. Statements were made by the Federal Republic of Germany and the German Democratic Republic.

#### **ESTABLISHMENT OF WORKING GROUP ON OBJECTIVES AND SCOPE**

Following an adjournment for informal discussions the meeting, on the proposal of Ecuador and Spain, decided to constitute a third ad-hoc Working Group to consider the Objectives and Scope of the Convention. In discussion of procedural matters, interventions were made by representatives of India, Peru, United States, Tunisia, Argentina, Netherlands, Brazil, United Kingdom and Panama. The representative of Spain proposed the text of an Article to define the Objectives and Scope of the Convention and indicated that it would be submitted as a Conference paper.

On the proposal of the Chairman the meeting agreed that the Working Groups should be convened as follows: (1) the Working Group on Technical Issues would deal with all outstanding technical issues; (2) the Working Group on Objectives and Scope, under the chairmanship of Mr. Willuhn of the German Democratic Republic, would consider all aspects of the objectives and scope of the Convention; (3) the Working Group on Legal Issues would deal with Articles 6–12 as previously considered and the final clauses (Articles 13–19) of the Draft Convention. Meetings of the three Working Groups should commence on the afternoon of 11 April and should be co-ordinated by the three Vice-Chairmen. The Vice-Chairmen, at their discretion, might arrange for two working groups to meet as one. The Chairman adjourned the meeting to allow for the Working Groups to be convened.

#### **Rapporteur's Report on Meetings held on 20 April 1978**

In the absence of Ambassador Siazon the Vice Chairman from the German Democratic Republic, Mr. Willuhn, assumed the chair.

The Chairman opened the meeting and said that the Working Group on Scope and Objectives had discussed the substance of Article 2, attempting to solve the problem of whether or not nuclear material used for military purposes should be covered by the Convention. However, no agreement had been reached and the decision on the matter had been deferred until the next meeting.

Nor had the Group reached agreement, in regard to Article 3, whether or not to restrict work on drafting a convention to international nuclear transport. Decisions as to whether national transports and nuclear material in facilities should be covered by the Convention as well as international transport were also deferred until the next session.

The Chairman invited the Chairman of the Working Group on Technical Issues, Mr. Harry, to introduce his report on the work of that Group. Mr. Harry introduced document CPNM/46. He made the following points in explanation:

- Discussion in the Group had focused mainly on Articles 4 and 5 referring to international and nuclear transport. Annexes and definitions relevant to these articles were also discussed. On these points almost full agreement had been reached.
- Article 4 had been reformulated with very few square brackets although some reservations had been recorded.

- It had been possible, on the understanding that physical protection is mainly concerned with the threat of application of nuclear material for nuclear explosive devices, to define lower quantitative limits of nuclear materials in Category III of the table in Annex I on Categorization of Nuclear Material.
- A distinction was apparent between **measures** of physical protection and **levels** of physical protection. Annex II specifies the levels of physical protection that have to be established for nuclear material in international nuclear transport.
- A distinction had been clarified between the responsibility of the State Party to assure itself that physical protection will be provided and the responsibility to provide physical protection.
- Where desirable, flexibility had been introduced into the text by words such as “as appropriate”.
- The Group accepted the desirability of giving indicative titles to articles or groups of articles.
- A need was felt for co-ordinating the efforts of the group with those of the Working Group on Legal Issues.
- Further legal consideration was desirable of, for example, transit, loss or theft of nuclear material, responsibility and territorial jurisdiction.
- A group of supporters of a comprehensive convention had drafted a new text of Article 3 at the request of the Working Group and had formulated a new Annex III. These texts had not been discussed in the Group as a whole.
- Article 2 had not been discussed but was reproduced in the report for completeness.
- Further progress in the group depended on agreement being reached on the scope of the Convention. This was a matter for Governments and should be the subject of intensive consultations before the next session.
- Two delegations had asked for discussion in Plenary of Article 5.0.

The Chairman invited discussion of the report.

The representative of Argentina reserved his delegation's position on the definitions formulated by the Working Group in regard to Article 2. He recalled that there was still an outstanding problem in regard to nuclear material used for military purposes. He continued to see a need for clarification of the relationship between the Convention and the common policy of the Group of exporter countries published in INFCIRC/254. In the absence of

clarification whether it would be necessary in each case to have bilateral negotiations with an exporter, it would remain difficult to establish a definitive attitude to Article 3. While there had been progress on Article 4, difficulties remained in regard to paragraph 1, as it affected rights and obligations of exporters and importers.

The Representative of Japan reserved the right to re-open matters which it had expressly reserved in the report.

The Representative of Australia stated that the purpose of the footnote to Article 5.0 was to highlight the importance of the substance of the provision and to ensure retention of the text for further consideration by Governments. The Representative of Ecuador supported this statement reproduced as CPNM/48.

The representative of Italy proposed that the reports of both Working Groups be sent to all Governments. He referred to the footnote 1 to Annex I and stressed the desirability of including its alternative (as reproduced in CPNM/29, Annex I, p.3–5).

The Representative of Senegal requested, and the meeting agreed, that it be recorded that his delegation proposed that the expression “as far as practicable” be inserted on the last line of paragraphs 4.1, 4.2, and 4.3 of Article 4 before the words “at the levels described in Annex II”.

The Chairman invited the Chairman of the Working Group on Legal Issues, Mr. Estrada Oyuela, to introduce his report on the work of that Group. Mr. Estrada Oyuela introduced document CPNM/47. He made the following points in explanation:

- The note to the report recorded items identified as requiring consideration at the next meeting to determine if they should be the subject of provisions in the Convention;
- Significant changes had been made to the text of Article 6 as drafted in the previous meeting. Footnote 1 to the Article recorded a need for further consideration of offences in regard to nuclear transports and nuclear facilities;
- There had not been an opportunity to consider Articles 6 bis to 12 inclusive but they were reproduced in the text for easy reference;
- The footnote to Article 13 noted the possibility of including a clause on a review conference;
- Footnote 9 to Article 13 noted a material problem which could not be resolved on present facts;
- The square brackets in Article 17 indicated a matter calling for a decision by the meeting at an appropriate time;

- The filling of the blank in Article 17 bis, which was a new provision, depended on technical criteria;
- The choice between the sets of bracketed words in Article 18 did not affect the legal nature of the provision.

Mr. Estrada Oyuela suggested that in the next meeting a styling group might be constituted to deal with translation problems. He foresaw a need also at the next meeting for joint meetings of the Working Groups on Legal Issues and Technical Issues.

The Chairman invited discussion of the report.

Representatives of Peru, Romania, Panama, Tunisia and Ecuador intervened in discussion.

The meeting adopted the reports of the Working Group on Technical Issues and the Working Group on Legal Issues.

After adjournment for discussion, the meeting decided that the next official session of the meeting would be held from 5 to 16 February 1979 and that talks on the scope of the Convention and other matters would be held from 4 to 8 September 1978. Representatives of Romania, Tunisia, India, United States and Peru intervened in discussion of the proposed meetings. It was established in discussion that the September meeting might not definitively decide the scope of the Convention but might come to understandings which could be taken forward as the basis of definitive work in the February meeting.

The meeting considered and approved the report of the Rapporteur.

The Chairman said that on behalf of the meeting he would request the Director General of the International Atomic Energy Agency to transmit to all Member States the documents of the meeting and to ask for their comments on the reports reflecting the present stage of negotiations on the Convention.

He would request also that the Director General invite Member States to participate in a meeting from 4 to 8 September 1978 and in the next session of the conference from 5 to 16 February 1979 and to offer to these meetings the Secretariat facilities of the IAEA at its Headquarters in Vienna.

The Chairman, comparing the draft Convention as it now stood with that produced at the previous meeting said that, apart from Articles 2 and 3, the degree of consensus was now much higher. This was evidenced by the greater number of texts accepted without reservation.

He emphasized, however, that further significant progress depended on agreement being reached on the scope of the Convention.

This was a matter which must be dealt with not by technical or legal experts on their own, but directly by the Governments concerned. Great efforts should be made to settle this issue by consultations on Governmental levels.

The Chairman suggested that delegations might consider and, hopefully, decide during the next meeting what would be the appropriate means for formally adopting the text of the Convention. He said that tentative suggestions had been heard that it be adopted at a specially convened plenipotentiary conference, but that it might be considered preferable to adopt the text in a Final Act at the end of this present series of meetings.



**Proposed Schedule of Work  
for the Meeting of Governmental Representatives  
to draft a Convention  
on the Physical Protection of Nuclear Material,  
5–16 February 1979**

The Secretariat suggests the following schedule of work for this session.

**5 February 1979**

- Opening of the third session
- Consideration of the Memorandum adopted after informal consultations on the scope of the Convention in September 1978
- General statements by the Delegates.

**6 February 1979**

- Splitting of the Meeting into following working groups:
  - Working Group on Technical Issues;
  - Working Group on Legal Issues;
  - Working Group on Preamble;
  - Drafting Committee which would review the entire draft text towards the end of the session and perhaps draft a Final Act.

**7–14 February 1979**

- Meetings of the Working Groups.

**15 February 1979**

- Plenary meeting to consider and approve the reports of the Working Groups
- Conclusion of work by the Drafting Committee.

**16 February 1979**

- Plenary meeting to consider and approve the Final Act.

It is proposed that plenary and working groups' meetings should ordinarily start at 9:30 a.m. and finish at 5:30 p.m. with lunchbreaks from 12:30 p.m. to 14:30 p.m. and coffee or tea breaks at 11 a.m. and 16 p.m.

Simultaneous interpretation into the four official languages of the IAEA (English, French, Russian, Spanish) will be provided for the meetings held in the Boardroom.

Translations of official documents of the Meeting will be produced on the request of the officers of the Meeting as quickly as possible.

**Memorandum to the meeting of 5–16 February 1979**  
**(CPNM/53)**

1. The informal meeting for consultations of Governmental Representatives to Consider the Scope of a Convention on the Physical Protection of Nuclear Material, convened according to the decision of the second regular session, April 1978, was held from 4 to 7 September 1978 at the IAEA Headquarters in Vienna under the Chairmanship of Mr. Raul Estrada Oyuela of Argentina. The following 40 States participated in this meeting: Argentina; Australia; Austria; Belgium; Brazil; Bulgaria; Canada; Chile; Colombia; Czechoslovakia; Democratic People's Republic of Korea; Denmark; Egypt; Finland; France; German Democratic Republic; Germany, Federal Republic of; Guatemala; Hungary; India; Iran; Israel; Italy; Japan; Korea, Republic of; Mexico; Netherlands; Norway; Pakistan; Panama; Peru; Philippines; Romania; South Africa; Sweden; Switzerland; Union of Soviet Socialist Republics; United Kingdom; United States of America; Yugoslavia. An observer from EURATOM also attended the meeting.

2. The scope of the Convention should be formulated in such a way as to be acceptable to as many States as possible. The paragraphs below express the most widely acceptable views and these should form the basis for drafting the Convention at the February session. Alternative views on the scope were expressed by some delegations and these are indicated in the Annex. Many delegations stated that they could accept the following paragraphs only if they were accepted as a whole.

3. The most urgent matter is that of physical protection of nuclear material in international transport and, for this reason, the Convention at this stage should concern the international transport of nuclear material. Nevertheless, the importance of the physical protection of nuclear material in domestic use, storage and transport should be referred to in the preamble. Moreover, the provisions on mutual cooperation and assistance in the protection and recovery of nuclear material, the penal provisions and the provisions on extradition and jurisdiction (Articles 5 to 12 as set out in CPNM/46/Corr.1 and CPNM/47/Corr.1) should also apply to nuclear material in domestic use, storage and transport.

In view of the foregoing, within 5 years after the Convention enters into force, a review conference should be held for the purpose of evaluating the implementation of the Convention and considering the extension of its scope.

4. The Convention should concern the physical protection of nuclear material for civilian purposes. Nevertheless, an appropriate preambular reference should be made to the recognition of the importance of adequate physical protection of nuclear material used for military purposes.

5. Natural uranium as included in the definition, for purposes of the Convention, of nuclear material in the draft Article 1 (CPNM/46/Corr.1, 20 April 1978) should be accorded the level of protection during international transport as outlined in Annex II, 2.(c) of the above document.

#### ANNEX

With regard to paragraph 4 the Argentine Delegation has proposed that Articles 5 to 12 as set out in CPNM/46/Corr.1 and CPNM/47/Corr.1 shall be applicable to nuclear material used for military purposes which leaves military control of the States Parties to the Convention.

The Delegation of Belgium made a reservation to the last sentence of the first section and to the second section of paragraph 3.

The Delegation of France made a reservation to the last sentence of the first section of paragraph 3.

With regard to paragraph 5 the Delegation of Japan retained its position indicated in the document CPNM/46/Corr.1.

The Delegation of the USSR has made a reservation with regard to the second sentence of paragraph 4.

#### **Proposed agenda for the Plenary Meeting on February 8 at 10 a.m.**

7 February 1979  
(CPNM/62)

1. Election of one Vice-Chairman
2. Progress report from the Working Group on Technical Issues
3. Progress report from the Working Group on Legal Issues
4. Status of the draft articles
5. Creation of a Drafting Committee
6. Participation of the Commission of the European Communities

## DAILY REPORTS 9-14

### Rapporteur's Report on meetings held on 5 February 1979

#### ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

Mr. Estrada Oyuela of Argentina assumed the chair and opened the meeting. He informed the meeting that the former Chairman of the meeting, Ambassador Siazon of the Philippines, and one former Vice-Chairman, Mr. Willuhn of the German Democratic Republic, were unable to be present and that this necessitated the election of a new Chairman and Vice-Chairman.

On the nomination of the Representative of Hungary the meeting elected Mr. Rabold of the German Democratic Republic as Vice-Chairman. The meeting then appointed Mr. Estrada Oyuela of Argentina as Chairman on the nomination of the Representative of Peru with brief intervention in support by the Representatives of India, Egypt, France and the Federal Republic of Germany.

The Chairman noted that his election to the position of Chairman made it desirable that a further Vice-Chairman be elected in his stead. The meeting accepted the Chairman's suggestion that such election be deferred to a future Plenary meeting.

#### RESULT OF INFORMAL MEETING OF SEPTEMBER 1978

The Chairman introduced a paper headed "Memorandum to the Meeting of February 5-6, 1979" and summarized its contents. He proposed that it be appropriately numbered and circulated as a document of the meeting (CPNM/53). He asked for guidance whether general discussion on the terms of the proposed Convention was desirable in the light of the memorandum. Representatives of the United States, Peru and Italy responded. The point was made that it was desirable, if possible without restricting delegations' freedom to comment, to avoid a general debate in the interest of proceeding as soon as possible to substantive discussion in working groups of the issues raised. Comment might be made in plenary on specific problems without having a general debate as such.

After a brief adjournment for discussion, the meeting decided, on the proposal of the Chairman, to retain the Working Groups on Technical Issues and on Legal Issues. The mandate of the Working Group on Technical Issues should remain the same while that of the Working Group on Legal issues would be enlarged to include consideration of the preamble to the Convention and Article 2. The Chairman noted that close communication between the respective Chairmen of the Groups would be necessary in order to avoid duplication of work or omission of issues raised in the September memorandum. The work

of the Working Group on Legal Issues should be organized so that representatives normally involved in the Working Group on Technical Issues could be present if appropriate for discussion on particular matters.

The Chairman noted that it would be necessary in a later plenary meeting to establish a drafting committee.

In response to questions from the Representative of Romania, the Chairman confirmed that the question of an article providing for review of the Convention was within the previous mandate of the Working Group on Legal Issues and that meetings of both Working Groups continued to be open to participation by all delegations.

Comments on matters arising from the memorandum prepared by the meeting of September 1978 were made by Representatives of Belgium, the Republic of Korea, France, Peru, Italy, the United States, the Federal Republic of Germany, the Netherlands, the German Democratic Republic, Finland, Australia, Austria, Japan, Switzerland, Yugoslavia, Pakistan, Paraguay and India. Statements submitted to the Secretariat in connection with these interventions are reproduced as CPNM/54, CPNM/55, CPNM/57, CPNM/61/Rev.1, CPNM/64, CPNM/65, CPNM/67, CPNM/71/Corr.1, CPNM/72.

In the course of discussion some representatives expressed the view that in the light of the September memorandum all references to the transport, use and storage of nuclear material on national territory should be removed; that practical measures for physical protection of nuclear material should be considered to be within national sovereignty; and that the Convention should not be considered to be the first step towards a more extensive convention that would cover national facilities. Points made by other delegations included the following:

- the September memorandum was an excellent basis for work to proceed in the Working Groups;
- it was desirable that a Convention be settled during the present meeting;
- comments of delegations seeking to emphasize limitations on the scope of the Convention as agreed at the September meeting should not be seen as re-opening the compromise agreed as recorded in the memorandum;
- the position reached in September involved derogation from the previously held position of delegations favouring a more comprehensive Convention;
- it was unacceptable that the Convention not include a review clause designed to allow extension of the Convention to transportation, use and storage of nuclear material within national territory;
- the penal and extradition provisions should apply to nuclear material in domestic transportation, use and storage;
- any change to the title of the Convention should be consistent with the objectives of expanding the Convention after later review to cover nuclear material within national territory;

- the Convention involved not only technical and legal but also political aspects: it was necessary to keep in mind developing countries' interests, and obstructions to the economic development of developing countries would be unacceptable.

The meeting agreed that work should continue in the Working Groups and that a further plenary meeting should be held on the morning of 8 February.

The Chairman adjourned the meeting accordingly.

### **Rapporteur's Report on meetings held on 8 February 1979**

#### **ITEM 1: ELECTION OF ONE VICE-CHAIRMAN**

The Chairman proposed that the meeting deal in order with the Agency items listed in Document CPNM/62. The Chairman called for nominations for the vacant position of Vice-Chairman. There were no nominations and the Chairman stated his understanding that the meeting did not regard it as necessary to deal further with the item for the time being.

#### **ITEM 2: PROGRESS REPORT FROM THE WORKING GROUP ON TECHNICAL ISSUES**

The Chairman deferred discussion of Agenda Item 2, pending completion of preparations by the Chairman of the Working Group on Technical Issues.

#### **ITEM 3: PROGRESS REPORT FROM THE WORKING GROUP ON LEGAL ISSUES**

The Chairman as Chairman of the Working Group on Legal Issues introduced documents CPNM/Legal Issues/39, Add.1 and Add.2. He reported that the Group had considered Articles 6 bis to 12 which had not been further considered during the April 1978 meeting. It had also considered Articles 13–19 which had been given a first reading in April 1978. The Group had not had an opportunity to consider Article 6. The Chairman noted that the representative of Japan had expressed a reservation in regard to Article 7 and that the representatives of the Netherlands and Denmark had similarly reserved in regard to Article 8.

The Chairman proposed that the Articles reproduced in CPNM/Legal Issues/39, Add.1 and Add.2 be referred to the Working Group on Technical Issues for its consideration of technical issues raised by those Articles.

The Chairman called for comments on the report of the Working Group on Legal Issues.

The representative of Canada read a statement, reproduced as CPNM/66. He referred to differing interpretations of the Hague, Montreal and Internationally Protected Persons Conventions and emphasized the importance of maintaining consistency between the present Convention and previous conventions. He stated the Canadian position that the draft text of the present Convention and its implications are fully consistent with the precedents mentioned.

The representative of the Netherlands stated that in the light of the Canadian statement the Netherlands withdrew its reservation in respect of Article 8.

The representative of Denmark stated that on the same basis Denmark withdrew its reservation in respect of Article 8.

The representative of the United States noted that a provision of the Internationally Protected Persons Convention equivalent to Article 8 of the present Convention had been analysed in an article in the International and Comparative Law Quarterly.

The Chairman noted the agreement of the meeting that the Articles in CPNM/Legal Issues/39, Add.1 and Add.2 be referred to the Working Group on Technical Issues.

In response to questions from the representatives of Mexico and the United States, the Chairman affirmed that the whole of the draft articles submitted to both Working Groups would be reviewed in plenary session after being discussed in the respective Working Groups. He noted that in the absence of a written report from the Working Group on Technical Issues there would be difficulties for the time being in reviewing the substance of the articles in the present plenary session.

Representatives of Switzerland and Italy intervened on textual and translation aspects of the Articles. Representatives of Austria, Canada, United States, Mexico, Egypt, Japan and the Federal Republic of Germany made interventions on the question of performance of depositary and other administrative functions. It was suggested that either the Secretary-General of the United Nations or the Director General of the International Atomic Energy Agency could appropriately perform these functions.

The representative of Mexico emphasized that the Convention should be open to universality of participation and this could be achieved only through having the Secretary-General of the United Nations as depositary.

The Chairman observed that he was consulting the Agency Secretariat on the question of performance of these functions but did not yet have sufficient information to facilitate further discussion.



## ITEM 2: PROGRESS REPORT FROM THE WORKING GROUP ON TECHNICAL ISSUES

At the invitation of the Chairman, the Chairman of the Working Group on Technical Issues (Mr. Harry (Netherlands)) reported on the work of the Group. He explained that for technical reasons the Progress Report prepared was as yet unavailable for distribution<sup>2</sup>. He reported that:

It was important that technical aspects of Articles 6–19 be examined by the Working Group on Technical Issues; similarly there were several points raised in Articles 1–5 and the Annexes which should be the subject of comment by the Working Group on Legal Issues;

The chief matter unresolved in the Working Group on Technical Issues was the definition of “international nuclear transport”. Further discussion was needed of segments of international transportation that might take place within national territory. Pending finalization of this definition, it was necessary to maintain definitions of “nuclear facility” and “nuclear transport”. The latter definitions might also still be needed for purposes of the legal articles;

References to natural uranium had been qualified by addition of the phrase “other than in the form of ore or ore-residues”; therewith a definition of “nuclear material” had been fully accepted without reservation;

A proposal for a general article based on Article 3.1, but relating to international nuclear transport, had been put forward but had yet to be discussed;

An amended version of Article 3.2 now appeared in Article 5 as paragraph 5.3;

Words in Article 4 requiring States to assure themselves that adequate physical protection measures would be applied had been opposed by some delegations since they could imply that States were required to seek actively for such assurances. A passive formulation, “have received assurances”, had been submitted and was acceptable throughout the Article except in regard to paragraph 2 where one delegation had reserved its decision and had expressed a preference for the words “has assured itself as far as practicable”;

There were suggestions in the Group that transit of an international transport by waterways within national territory, and entry into ports, had to be added in Article 4;

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<sup>2</sup> Since distributed as CPNM/63.

Paragraph 6 of Article 4 in CPNM/46/Corr.1 was unclear; a new proposal was under discussion;

In regard to Article 5 there was agreement that the IAEA should be the focal point for exchange of information;

Offences as dealt with by Article 5 should be examined by the Working Group on Legal Issues;

Small changes had been made to Article 5.2 resulting in agreement except for a reservation made by one delegation. On Article 5.2(b) (iii) one reservation on the substitution of “ensure the return” for “expedite the return” was expressed;

Article 5 had been split, resulting in Article 5 bis;

The ordering of the two Annexes had been reversed and these were acceptable within the Working Group;

Annex I was given the following title: “Levels of physical protection to be applied in International Transport of Nuclear Material as categorized in Annex II”;

Ambiguity in regard to specified quantities of uranium had been removed by the addition of “U” after “500 kg” in Annex I;

In relation to the interpretation of Annex II it was understood that the amounts of uranium-235 in the table are expressed as the mass of  $^{235}\text{U}$  contained;

For the cases of combined consignments or mixtures a formula was derived by the delegation of the German Democratic Republic. This proposal, published in CPNM/Tech. Issues/66, was received favourably. To avoid delay in the progress of the Convention, this proposal has not been included in Annex II.

The Chairman suggested that the Chairmen of the two Working Groups arrange procedures to enable an exchange of views between the two Groups.

#### ITEM 4: STATUS OF THE DRAFT ARTICLES

The Chairman stated his intention that the next plenary meeting consider definitive final reports of the Working Groups which accordingly should contain as few reservations as possible.

Representatives of the Federal Republic of Germany and Mexico sought clarification of proposed procedures. The Chairman affirmed that further

consideration of outstanding points upon completion of the work of the Working Groups should take place in plenary.

The meeting agreed that the next Working Group Reports should be final.

#### ITEM 5: DRAFTING COMMITTEE

The Chairman proposed establishment of a Drafting Committee to be representative of all languages to be used in the final convention texts. He considered that members should be lawyers. The meeting agreed that the Chairman should hold consultations and should appoint members of the Drafting Committee. Representatives of Italy, Japan and the Federal Republic of Germany made interventions in respect of the proposal.

#### ITEM 6: PARTICIPATION OF THE COMMISSION OF THE EUROPEAN COMMUNITIES

The representative of France stated that seven participants in the Conference were members of the European Atomic Energy Community which had been following the proceedings of the Conference during previous meetings as an observer. Certain matters within the scope of the Convention were also matters within the competence of the Community and it was therefore necessary that the Community participate in the Conference. To this end the Council of Ministers of the European Community had decided on 6 February 1979 that the European Atomic Energy Community (represented by the Commission) should participate side by side with representatives in the work of the Conference. He sought the meeting's agreement that the Commission's delegation join the participants.

Representatives of Belgium, Italy, the Federal Republic of Germany, the Netherlands, the United States, Australia and Canada intervened in support of the request made by the representative of France. Points made in the course of these interventions included the following:

- The full participation of the Community was required in order to obtain participation in the Convention of the largest number of countries;
- Transportation of nuclear material within the Community comes within the scope of the Community's powers;
- The request was a consequence of the internal legal situation of the Community;
- There were some practical and procedural problems affecting the participation in the Conference and adherence to the Convention but these should be solved at a later date.

Representatives of the German Democratic Republic, Hungary, Cuba, Algeria and the USSR made interventions in opposition to one or other aspect of the request of the representative of France or reserved their position on it. Points made in the course of these interventions included the following:

- All participants in the Convention must be able to implement the Convention as a whole;
- International organizations did not have the competence to implement the important legal provisions of the Convention;
- Delegations had participated in the Conference with instructions based on a situation which would no longer obtain if the Community were to participate;
- The Treaty of Rome and decisions of Member States of the Community were binding for those Member States but not for other States. The question of participation in the Conference was one for those other States;
- Participation in the Conference was a separate question from that of participation in the Convention itself;
- Further information was required on details of the proposed participation of the Community in the Conference and its proposed involvement in the Convention;
- The request raised the possibility of other international organizations becoming full members;
- There was need to seek new instructions in the light of the changed situation;
- Information necessary to enable a decision to be made was lacking;
- Participation of the Community would raise implications in regard to other organizations;
- The division of responsibility for observance of obligations under the Convention as between EURATOM and its Member States needed clarification.

The representatives of Mexico and Argentina reserved their positions in regard to the request of the representative of France.

The representative of Romania observed that some difficulties might arise in regard to compatibility of the existing Convention with the possibility that international organizations might become parties, because all work done to date had been conceived only on the basis that Parties to the Convention would be States.

In the course of discussion an intervention was made also by the representative of Tunisia seeking more precise information.

At the invitation of the Chairman a representative of the European Atomic Energy Community responded to a request for clarification from the representative of the German Democratic Republic. He stated that it was the Community's present intention that it participate in the Convention but before this could be done the Council of Ministers must make a decision in the light of the content of the Convention.

The Chairman observed that in a meeting of this type there was normally a mechanism to consider credentials of representatives. In the present case the Rules of Procedure of the Board of Governors of the IAEA had been adopted so far as they are appropriate. He referred to Rules 3 and 4. In the light of observations and comments on the possible participation in the Convention by the Community, and in the absence of a rule prescribing a solution, he considered that according to Rule 23 this matter was a point of order on which the presiding officer had discretion to decide. As presiding officer he decided to authorize the representatives of the Community to participate in the work of the Conference with a special status as follows:

- (1) The representatives of the Community could participate freely in Conference discussions;
- (2) The representatives of the Community shall have the possibility of making proposals when this appears to be useful;
- (3) Representatives of the Community can participate in the Working Groups of the meeting;
- (4) Representatives of the Community shall not have the possibility of participating in any votes that may occur;
- (5) The question of possible participation of the European Community in the Convention on the Physical Protection of Nuclear Material is postponed until suitable criteria can be adopted in plenary.

The representative of Paraguay asked if the Inter-American Nuclear Energy Commission had been invited to attend the conference.

The representative of the European Atomic Energy Community affirmed that the Community would do all that it could to contribute to a positive and effective result for the meeting.

The Chairman informed the meeting that it was planned that a further plenary meeting be held on 13 February 1979 at 3 p.m. for the purpose of studying the final reports of the Working Groups.

The Chairman adjourned the meeting.

## **Rapporteur's Report on Meetings held on 13 February 1979**

### **FINAL REPORT OF THE WORKING GROUP ON TECHNICAL ISSUES**

At the invitation of the Chairman the Chairman of the Working Group on Technical Issues (Mr. Harry (Netherlands)) introduced the Final Report of the Group (CPNM/70). He reported that the Group had concluded its work on 12 February. The texts of Articles produced contained some ambiguity reflecting the subtle and difficult compromises that had been necessary. It was desirable that the balance so achieved should not be disturbed. He said that the number of reservations had been reduced to 6, numbers 2 and 4 being of technical nature while the remainder related to the scope of the Articles and the Convention. There was a need, he said, for the Drafting Committee to deal with a number of specific points and to make the style and usage of terms conformable throughout. He expressed his thanks to delegations and the Secretariat for their efforts and assistance.

### **FINAL REPORT OF THE WORKING GROUP ON LEGAL ISSUES**

The Chairman, Mr. Estrada Oyuela (Argentina), as Chairman of the Working Group on Legal Issues introduced the Final Report of that Group (CPNM/69 and Add.1 and Add.2). He indicated that compromises had been necessary to achieve agreement on certain points in the light of differing interpretations of the September memorandum (CPNM/53). In regard to the preamble he noted that reservations had been entered by two delegations. Articles 6 bis, 7-11 and paragraph 1 of Article 12 had been presented in the previous report of the Group. Article 12 paragraph 2 was the result of negotiation to obviate the disparities which had been noted in the 1977 and 1978 reports of the Group. Article 12 bis was a new provision which reflected the degree of agreement that had been possible in regard to the review conference; it was subject to reservations by some delegations.

The phrase in square brackets in Article 14 was a technical matter to be resolved in plenary. Article 17 bis reflected a degree of agreement on amendment of the Convention but it was likely that plenary would be called on to discuss it further. Guidance from the plenary would be necessary to settle the point indicated by the square brackets in Article 20. Article 6 was in different form from that in previous records and was subject to some reservations.

Article 2 was of special note in that it was an attempt to reflect in two sentences a generalized interpretation of the scope of the understanding

achieved in September 1978. For various reasons there were express reservations by the USSR, Belgium, and Spain. It had not been possible to find solutions to all difficulties despite the great attempt made in the Working Group. The Chairman thanked participants in the Group for their efforts.

The Chairman referred to CPNM/68 containing the names of delegations represented on the Drafting Committee. He proposed that the meeting refer to the Drafting Committee for the time being only those articles which were not the subject of reservations. At the same time the plenary should continue to discuss remaining articles where there were difficulties of substance. As those articles were settled by the plenary they should be referred to the Drafting Committee. He invited delegations to indicate all articles with which they had substantive difficulties. He indicated that articles should be reconsidered by the plenary after they had been considered by the Drafting Committee.

The meeting agreed that the procedures suggested by the Chairman be adopted. Representatives of Mexico, Austria, Belgium, Canada, Qatar, the Federal Republic of Germany and the European Atomic Energy Community intervened in discussion of aspects of the proposal.

The representative of Japan referred to the status of the Annexes to the Convention and said he would circulate a proposal for an Article to clarify that they were an integral part of the Convention.

In response to an enquiry from the representative of Switzerland, the Chairman indicated that on receipt of indications from delegations an addendum to CPNM/69 would be prepared showing all expressed reservations to the preamble and articles therein. Representatives of Mexico, Austria, Israel, Egypt, Switzerland, Peru, the Federal Republic of Germany and Pakistan indicated articles which should not yet be referred to the Drafting Committee.

The Chairman said that three further topics should be discussed in plenary, namely, the languages of the final texts, the designation of a depositary and the procedure for adoption of the Convention.

## LANGUAGES OF TEXTS

The Chairman informed the meeting that the Agency did not have facilities for making translation into Chinese and Arabic. These translations could be obtained elsewhere but the cost for each of approximately 1000 Dollars could not be met from the present appropriations. After discussion in which representatives of Mexico and Tunisia intervened, the Chairman recorded the consensus of the meeting in favour of establishing the text if possible in the Arabic, Chinese, English, French, Russian and Spanish languages.

## DESIGNATION OF DEPOSITARY

The Chairman noted that in previous discussions two possibilities had been identified for the performance of depositary functions, namely the Depositary might be the Director General of the International Atomic Energy Agency or the Secretary General of the United Nations. One way of recognizing the efforts of the Agency in the convening and staging of the Conference would be to open the Convention for signature at the Agency for a period and after that to transfer it to the Secretary General of the United Nations as depositary. He noted also that in the Working Group on Legal Issues there had been apparent majority support for asking the Secretary General to be Depositary but in the previous plenary there were indications of a different view. In response to the Chairman's request for comments representatives of the great majority of delegations intervened. Tribute was paid to the Agency's part in the Conference and reference was made to its responsibility for peaceful nuclear matters; its wide membership; its technical competence; its capacity to perform depositary functions; the compatibility between the intention that all States might become parties and the idea that depositary functions be performed by the Agency; and the fact that it would be efficient for the Agency to discharge depositary duties along with administrative duties imposed on it by the Convention. A number of representatives referred to the competence of the Secretary General of the United Nations to perform depositary functions. It was noted that a number of African and other States did not have representation in Vienna and that in this respect it might be more convenient for some States if the depositary were located in New York.

In response to a request for information the Director of the Legal Division of the Agency, Mr. Edwards, said that the Agency foresaw no practical difficulty in performance of depositary functions by the Director General nor should there be difficulty in arrangements for signature of the Convention in Vienna. The Agency would be pleased to become depositary.

The Chairman stated his assessment that while opinion in the meeting favoured having the Agency as depositary a considerable number had a different view, and at least one delegation had not expressed a view. He said that he would be guided by these expressions of opinion in his future consultations on the matter.

## PROCEDURE FOR ADOPTION OF THE CONVENTION

The Chairman asked the Director of the Legal Division of the Agency to explain the alternatives for adoption of a Convention text outlined in CPNM/51. The Director of the Legal Division explained the alternatives of having a



diplomatic conference and adopting the Convention by signature of a Final Act of the present conference. He described also a third possibility which would involve preparing for this meeting a text ad referendum which governments would then study with a view to taking up any points of difficulty either at a diplomatic conference or at a further session of this conference which would adopt the text by signature of a Final Act. He noted that the diplomatic conference procedure was now infrequently used and that the Final Act procedure was increasingly common. While a diplomatic conference afforded opportunity to review a text, it required considerable expenditure of time and effort at a higher level of representation. The Final Act procedure would be more expeditious and he favoured it in view of the desirability to the world community of being able to open the Convention for signature promptly so that it might enter into force within as short a time as possible.

Representatives of Egypt, the Federal Republic of Germany, Italy, Peru, Belgium, Spain, Yugoslavia, Australia, Switzerland and Zaire spoke in support of one or other of the possible procedures. The Mexican representative stated also that his Delegation had serious doubts on the competency of this meeting to discuss and decide on the procedure for adoption of the Convention. He added that the task of this meeting was merely to prepare a Draft Convention. In consequence, the final document should be sent to the General Conference of IAEA for consideration and further action.

The Chairman suspended debate on this matter saying that he would re-open debate at a subsequent meeting when it would be possible to make judgements in the light of further progress in the work of the Conference.

## WORK OF THE DRAFTING COMMITTEE

On the proposal of the Chairman the meeting agreed that provisions to be referred to the Drafting Committee for the time being should be the definitions in Article 1 except that of "international nuclear transport", Articles 8, 10, 11, 12 and 19 and the Annexes. He confirmed in response to enquiry that the Drafting Committee was constituted as a limited group and that the possibility of participation by delegations other than those indicated in CPNM/68 should be a matter for the Drafting Committee.

The Chairman adjourned the meeting to 3 p.m. 14 February.

## **Rapporteur's Report on Meetings held on 14 February 1979**

The Chairman opened the meeting and indicated that he expected that the representatives of the Commission of the European Communities would be in a position on 15 February to put forward proposals which they considered appropriate to enable possible participation of the Community in the Convention. They would also outline reasons why the Commission considers its participation necessary. The Chairman expected that discussion would then be deferred to a later meeting when a decision might be taken.

The Chairman proposed that the meeting begin discussion of articles dealt with by the Working Group on Technical Issues which had not yet been sent to the Drafting Committee. He asked the Chairman of the Working Group on Technical Issues to assume the Chair.

### **Article 5 bis**

The Chairman of the Working Group on Technical Issues, Mr. Harry (Netherlands), assumed the Chair. He called for discussion of Article 5 bis which was the subject of a reservation by the Federal Republic of Germany.

The representative of the Federal Republic of Germany said that his delegation had some doubts about the possible operation of the second sentence of Article 5 bis which he considered lacking in precision. However, in a spirit of compromise he would be prepared to accept the present wording. Nevertheless, his Government reserved the right to make the exchange of confidential information with international organizations conditional on arrangements with such organizations for the protection of the confidentiality of the exchanged information.

The meeting decided that Article 5 bis should be passed to the Drafting Committee.

### **Article 5**

The meeting agreed, on the proposal of the representative of Mexico, to substitute "or" for "and" in the second line of paragraph 3 of Article 5, the relevant phrase of which should now read "with each other directly or through international organizations".

The meeting decided that paragraph 3 of Article 5 should be passed to the Drafting Committee. The representative of Egypt gave notice that he proposed to circulate a new paragraph 4 for inclusion in Article 5 concerning the inability of developing countries to bear costs of co-operation pursuant to Article 5.3<sup>3</sup>.

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<sup>3</sup> Distributed as CPNM/WP/28.

The Chairman directed, on the proposal of the representative of Mexico, that the Drafting Committee establish appropriate wording for Article 5.2(b) to express the intention of the meeting that the exchanges of information required by that provision might take place directly between States Parties and/or through international organizations.

The representative of Egypt proposed the addition of “during international nuclear transport” following the words “nuclear material” in the second line of Article 5.2 and the second last line of Article 5.1. Representatives of Italy, the United States, Pakistan, the Federal Republic of Germany, Mexico, India, Austria, Belgium, the USSR, the Netherlands, Australia, Canada, Japan and Qatar intervened. The Chairman recalled the consensus of the Working Group on Technical Issues that in accordance with the September Memorandum, Article 5 should have the wider scope as drafted in CPNM/70. He noted that Egypt now shared the position of Belgium, the USSR and India. Some delegations supported restriction of the provisions as proposed by Egypt. A number of delegations, on the other hand, favoured maintaining the article as negotiated in the Working Group on Technical Issues. It was stated on the one hand that paragraph 1 as drafted would be applicable only when nuclear material was being transported outside of a state and that there was no point in involving the Agency if nuclear material was within a state; in the latter case the matter was one solely for the state concerned. On the other hand representatives supporting the maintenance of the draft in CPNM/70 considered it inappropriate to infer that states should not co-operate in the recovery of nuclear material unlawfully taken from within domestic jurisdiction; the provisions should continue to provide for co-operation concerning nuclear material for peaceful uses stolen from within the territory of a State Party.

The Chairman decided that in the absence of agreement further discussion of paragraph 2 of Article 5 should be deferred pending discussion of them together with Article 2.

#### **Article 4**

The representative of Sweden reserved his delegation's position on Articles 4.6 and 4 until the wording recommended by the Drafting Committee could be considered.

The representative of Australia stated that it was the understanding of his delegation that the responsibility which may be transferred to Article 4.6 was the responsibility for physically collecting assurances referred to in paragraph 4.1. Responsibility could be transferred for collection of assurances and then advice that those assurances have been collected was to be passed to the exporting state. The final link in the chain must always be the exporting state. Its responsibility to receive assurances before exporting or authorizing

the export of nuclear material cannot be transferred to the importing state or any other state or individual.

The representative of the Federal Republic of Germany stated his understanding that under Article 4.6 the importing state would be responsible for obtaining assurances and that having done this it would inform the exporting state accordingly. The exporting state would then be in a position to permit the export.

The Chairman noted that the representatives of Australia and the Federal Republic of Germany were substantially in agreement on the meaning of Article 4.6 and decided that the Drafting Committee should consider clarification of the paragraph in the light of the understandings recorded.

The representative of Sweden reserved the position of his delegation on Article 4.6 pending clarification of its wording by the Drafting Committee.

The representative of Egypt referred to paragraph 5 of Article 4 and proposed the deletion of all words following the word "transit" in the second last line. After discussion he further proposed the insertion of the words "consistent with applicable international law rules" following the word "shall" in the third line of the paragraph. Representatives of Tunisia, Peru, Qatar, Mexico, Ecuador and Turkey intervened in support of the proposal. Points made during these interventions included:

- Mention of territory without qualification was sufficient;
- Discrimination between States Parties and non-States Parties was evident when Article 4.5 was compared with Article 4.3. Under paragraph 3 a State Party should refuse transit if insufficient assurances were received but under Article 4.5 there could be transit of nuclear material through territory without knowledge of the state concerned;
- National sovereignty was in issue;
- If not warned of overflights the state could not be prepared for an accident involving nuclear material occurring in its territory;
- Territory is indivisible.

Representatives of the United States, the United Kingdom, Canada, the Federal Republic of Germany, Hungary, the Netherlands and Japan intervened in support of the draft in CPNM/70. The representative of Yugoslavia withdrew a reservation to the provision and also supported that draft. Points made during these interventions included the following:

- The draft avoided intrusion into areas of aviation and law of the sea where there are norms dealing with some of the same problems;

- The draft reflected the practicalities of application in respect of aircraft and maritime transport;
- The draft covered all situations except innocent passage and overflight;
- The footnote to Article 123 of the Rules for Safe Carriage of Radioactive Materials was relevant;
- If there was a casualty during passage through territorial waters or an air crash the state concerned should be informed at once of the presence of radioactive material which should be protected;
- The reality was that it was reasonable to cover land, internal waterways, air ports and sea ports because for these control was possible;
- It was necessary to differentiate between security, which was covered by other conventions, and safety;
- It was practical to leave physical protection during overflight and passage through the territorial sea to the exporting and importing states;
- There was not and there was no intention that there should be any discrimination between states in paragraphs 3 and 5 which merely expressed a desire not to make governments responsible for things beyond their capacity to control;
- If it would be helpful to delegations who regarded territory as indivisible, the word “territory” could be deleted from paragraph 5.

The representative of Yugoslavia gave notice of intention to circulate a proposal in respect of measures to be taken and information to be given in the case of casualty.

The representative of Romania noted that versions in English and French of CPNM/70 were before the meeting. He stated that on the basis of the French text of paragraphs 3 and 5 of Article 4 he had no comment to make at this stage.

The Chairman requested delegations with differing views on paragraphs 3 and 5 to consult informally with a view to formulating a solution to be presented to the following plenary meeting. He requested that representatives of Egypt, the United States and Mexico form the core of an informal group for this purpose.

The representative of Italy referred to the reservation of his delegation in respect of paragraph 2 of Article 4, recorded in footnote 4 on page 2 of CPNM/70, which related to a technical problem. He gave notice that he proposed to circulate wording designed to obviate the problem.

The representative of the Netherlands indicated that aspects of the same matter were under study by his Government and he reserved his delegation's position.

The Chairman decided that paragraph 1 of Article 4 should be referred to the Drafting Committee.

### **Article 3**

The representative of the United Kingdom referred to his delegation's reservation noted in footnote 3 on page 2 of CPNM/70. He indicated that in seeking to introduce obligations on individual States in regard to arrangements in their own domestic jurisdiction, Article 3 seemed to exceed at least the spirit of the September memorandum. Further, the provision would place on the United Kingdom and other States Parties obligations which in reality would be very difficult to fulfil. He gave notice of intention to circulate revised wording.

### **Definition of "International Nuclear Transport"**

The representative of India referred to the reservation of his delegation recorded in footnote 2 on the first page of CPNM/70. He said that in view of the vagueness as to what a "facility" is he maintained the reservation.

The representative of Brazil entered a reservation to the definition on the same basis as that of India.

The representatives of Yugoslavia and Austria intervened in discussion of the definition.

The Chairman indicated that discussion of the term "facility" in the definition of "international nuclear transport" should proceed informally.

The Chairman indicated that the texts of paragraphs 1, 4 and 6 of Article 4; paragraphs 1 and 3 of Article 5; and Article 5 bis, although now able to be passed to the Drafting Committee should be reserved for consideration by that committee when the remaining paragraphs of Articles 4 and 5 had been settled.

The Chairman adjourned the meeting.

### **Rapporteur's Report on Meetings held on 15 February 1979**

The Chairman opened the meeting and expressed to the United States Delegation the condolences of all delegations for the assassination of the Ambassador of the United States of America to Afghanistan.

## PARTICIPATION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY

The Chairman referred to documents CPNM/75 and CPNM/WP/27 and invited the representative of the Commission of the European Atomic Energy Community (EAEC) to introduce those documents.

The representative of the EAEC said that the division of powers and competences between the Member States of the Community and the Community was such that neither alone could fulfil the obligations which would be imposed by the Convention. The reasons why it was considered necessary that the Community become a party to the Convention were outlined in the explanatory statement circulated as CPNM/75. Draft provisions including a possible protocol to provide the legal basis for the Community to become party had been circulated as CPNM/WP/27.

In response to a question from the representative of Egypt the EAEC representative cited treaties providing for Community participation in which the powers and responsibilities of the Community and its Member States respectively are not delimited<sup>4</sup>.

In response to a further question from the Representative of Egypt the EAEC representative indicated that the Community had no official relationship with or dependency on the United Nations, although it had a special status for UN meetings. It had a co-operation agreement with the Agency, but not being a State as such, it was not a member of the Agency.

The Chairman indicated that a decision on the matters raised by the EAEC representative would be deferred to a later meeting.

## ARTICLES DEALT WITH BY THE WORKING GROUP ON LEGAL ISSUES

The Chairman proposed that the meeting consider articles referred to the Plenary by the Working Group on Legal Issues not yet forwarded to the Drafting Committee. The meeting agreed that articles posing lesser difficulties should be considered first.

The representative of Switzerland referred to the assurance given by the Chairman on 13 February (CPNM/Daily Report/11, page 2) that an addendum to CPNM/69 would be prepared showing all expressed reservations to the preamble and articles therein. He expressed his great concern because such a paper has, two days later and at the time of discussion of the relevant articles, still not been issued. After having received an explanation and the assurance of speedy action from the Chairman, he refrained, in order not to hold up the work of the Conference, from requesting a suspension of the meeting.

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<sup>4</sup> List since circulated in CPNM/WP/31.

## Article 13

The representative of Israel proposed that for reasons of legal logic the word "reservation" appearing twice in paragraph 3 in Article 13 should be replaced in both instances by the word "declaration".

In response to a point of order the Chairman explained that an addendum to CPNM/69 listing reservations to the provisions therein had been prepared but had been withheld from circulation at his request. Reservations referred to in the meeting would be recorded in the Rapporteur's Daily Report.

Reverting to the question asked by the representative of Romania, the Chairman expressed a view that it was not strictly necessary to call a "declaration" made under Article 13.2 a "reservation" since it was something provided for by the system of the article itself. Representatives of Romania and the German Democratic Republic intervened.

The Chairman assessed that there was insufficient support for adoption of the proposal of Israel. The representative of Israel indicated that he maintained his proposal. It was decided to pass Article 13 to the Drafting Committee.

## Article 17

The Chairman explained that the word "tenth" was square bracketed in Article 17 because it was regarded by the Working Group on Legal Issues as a political rather than a technical legal matter to decide how many instruments expressing intention to be bound should be lodged in order to bring the Convention into force. The representatives of Mexico, Denmark, Belgium, Brazil, Japan, the United States, Australia, Zaire, Italy, Canada and Hungary intervened, expressing preferences for a requirement of 10, 15, 20, 25 and 40 such instruments. Several representatives favouring higher numbers emphasized the desirability of universality of application of the Convention. Other representatives, favouring lower numbers, emphasized the desirability of giving effect as early as possible to the practical provisions of the Convention and saw a risk that the setting of too high a number might mean that benefits of the Convention would be unduly delayed or even that it might not enter into force at all.

The Chairman decided that Article 17 should be passed to the Drafting Committee for review on the basis that no number would be indicated until the provision was again considered by Plenary.



## Article 18

After discussion in which representatives of Zaire, Switzerland, Egypt, Mexico and Italy intervened, the meeting decided that the number of days to be indicated in Article 18.2 should be 180.

It was decided to pass Article 18 to the Drafting Committee.

## Article 17 bis

The Chairman decided at the suggestion of the representatives of Hungary and Belgium that discussion of Article 17 bis should be postponed and be discussed together with Article 12 bis.

## “SCOPE” ARTICLES

The Chairman proposed that the meeting consider texts which posed greater difficulties, namely Articles 2, 5.2, 12 bis and 17 bis, and the Preamble.

## Article 2

The Chairman, speaking as the representative of Argentina, referred to Article 2 as in CPNM/69/Add.2 and recalled his previous statement that nuclear material assumed to be used for military purposes should be protected by the penal clauses of the Convention when it ceases to be under the control of the military authorities. He referred to the proposal of Argentina and Italy, which he considered to be within the spirit of the September compromise. He noted that the proposal had not received the support of the Working Group on Legal Issues.

The representative of Belgium recalled her delegation's reservation on Article 2 and indicated that it was maintained.

Representatives of the United States, Italy, the Federal Republic of Germany, Austria, Mexico, the Netherlands, Denmark, France, Canada, Finland, Yugoslavia, Australia, Switzerland, Greece and Sweden intervened in support of the text of Article 2 contained in CPNM/69/Add.2. In doing so, the representative of France reserved the right to reconsider substance and drafting of the article if the substance were re-opened. The representative of Canada, referring to the drafting deficiencies commented upon by representatives of delegations both favouring and opposing that text, proposed drafting amendments, namely, addition of “all the provisions” at the beginning of the first paragraph and insertion of the words “the provisions of” following “Articles 3 and 4” in paragraph 2. Representatives speaking in support variously regarded the text as a satisfactory or as a minimal way of reflecting the compromise agreed

informally between States in September. Some representatives quoted from relevant sections of CPNM/53. The representative of Yugoslavia said that it appeared impossible to reach a compromise which would result in application of the Convention to nuclear material used for military purposes; he saw no difference in principle between civil and military nuclear material.

The representatives of Spain, Belgium, Brazil, Sweden and the USSR saw serious contradictions in the structure and drafting of the text. For these reasons and reasons of substance they supported deletion of paragraph 2 of the article.

The representative of India maintained his preference for a text reading, "This Convention shall apply to nuclear material in international transport".

The Chairman indicated that he detected majority support for CPNM/69/Add.2 subject to drafting improvements. He noted that some delegations had recorded reservations and said that these would be reflected in the Daily Report.

The representative of the USSR requested that the structure of the article, i.e. the division into two paragraphs, be maintained by the Drafting Committee. While he had no comment on paragraph 1, he still had a comment on paragraph 2 and it might prove possible to achieve a compromise on that paragraph.

The Chairman confirmed that the article would fall for final consideration in Plenary after being considered by the Drafting Committee. The meeting decided to pass Article 2 to the Drafting Committee.

#### **Article 12 bis (CPNM/69)**

The representative of Belgium indicated that her delegation's reservation could be withdrawn on the basis of the text as presently printed.

The representative of Austria emphasized the importance to his delegation of the provision for a review conference in the light of the compromise as it was reached and accepted by Austria in September 1978. He considered that the phrase "adequacy as a whole" in Article 12 bis was ambiguous. It could be interpreted as allowing review of matters wider or narrower than the scope of the operative provisions. To obviate such ambiguity and to achieve wording in accordance with the agreement embodied in the September Memorandum he proposed deletion of the words "as a whole" and substitution of "including its scope".

The representative of Hungary gave notice of a proposal, which he would circulate in writing, concerning the rules of procedure to apply to the review conference.

The representative of France observed that the difficulties seen by the representative of Austria appeared to arise only from the English text. The French text literally translated read "to proceed to its evaluation" and did not contain an equivalent of the words "as a whole" found in the English text.

The provision in the French language was acceptable to his delegation. Representatives of the German Democratic Republic, Italy, the Federal Republic of Germany, Finland, Sweden, Switzerland, Argentina and Mexico supported the Austrian proposal as better reflecting the agreement reached in September 1978.

Representatives of Tunisia, Belgium and Qatar intervened in support of the text of Article 12 bis contained in CPNM/69.

The representative of Belgium recalled that the September 1978 meeting had been an unofficial, informal one at which many delegations represented at the current meeting had not been present. She identified two tendencies evident during the November 1977 and April 1978 meetings. Firstly, a maximalist tendency in favour of a Convention covering both international nuclear transport and domestic use, storage and transport; secondly, a minimalist tendency favouring coverage of international nuclear transport. At the September meeting the two came together. After discussion, a compromise solution of a Convention only on international nuclear transport had been suggested but this had been expanded to extend Articles 5–12 to nuclear material in domestic use, storage and transport. At the April meeting the idea of a review conference had been put forward but its purpose was altered during September discussions. Her delegation therefore questioned the extent of claimed compromise.

The representative of Switzerland recalled that during the unofficial September meeting his delegation had wished to make a reservation on the paragraph of the memorandum concerning the review conference, which it had considered did not go far enough. Switzerland was asked, and agreed, not to insist on a reservation in the interest of achieving agreement. The agreement reached was and remains valid. The text of 12 bis as proposed by Austria represented another step in the direction of compromise. Reading the Austrian proposal in the light of the history of the September memorandum, it was not possible to say that the delegations concerned were maintaining a maximalist position.

The representative of Egypt expressed his view that the wording “as a whole” in the English text comprised “scope”, but since the interpretation of it was questioned it seemed preferable to expand the phrase. He therefore proposed deletion of “as a whole” and substitution for that phrase of “as concerns the preamble and the whole of the operative parts and the annexes”. Representatives of Belgium, Romania, France, Austria, Finland and Switzerland indicated that they could support the Egyptian proposal. The representative of Egypt indicated his view that the review conference, on the basis of the wording he proposed, could discuss every article and the preamble and could amend or delete these as it desired.

The Chairman assessed that the article was acceptable to the meeting on the basis of incorporation of the Egyptian amendment.

The representative of Switzerland requested that the minutes reflect the position of all delegations on the question.

The representative of France clarified that his delegation did not maintain any reservation but accepted the French text as amended by Egypt, interpreting it in the light of statements previously made by his delegation.

The representative of Belgium stated that her delegation was not entering a formal reservation but would re-examine the article after the preamble had been dealt with.

The Chairman referred to CPNM/WP/32. He observed that it was not customary to have procedural matters for review conferences dealt with in advance in the treaty which anticipated the conference. Moreover it would be difficult for a future conference to apply the rules of this conference because they would be inadequate and inappropriate. He noted that the applicable rules for this conference were the rules for the Board of Governors as appropriate. He asked whether the objective of the Hungarian delegation might be better reflected in some statement of the meeting. The representative of Hungary indicated that that procedure would be suitable.

Representatives of Spain, Belgium, Tunisia, Finland and France took part in discussion.

The Chairman expressed the consensus of the meeting that the proposal of Hungary should not be included in Article 12 bis but should be noted in the summary records.

The Chairman noted that in the absence of comment the second paragraph of Article 12 bis was to be regarded as approved by the meeting.

### **Article 17 bis**

The representative of the delegation of France indicated that he had substantive difficulties with Article 17 bis. It was abnormal in his view for there to be explicit reference to conferences that would have to be convened. Similarly, it should not be provided several years in advance that amendments might be submitted at a conference. The beginning of Article 17 bis was unacceptable. Difficulties would be removed by having it commence, "Any Member State may propose amendments". This would leave open the place and time of presentation of amendment. He referred to Article 40 of the Vienna Convention on the Law of Treaties. It was undesirable to have two amendment mechanisms — one general, and one for amendments in addition to the review conference. It was acceptable to have an amendment procedure but it should not be linked with the review conference. The issue at stake was extension of the scope of the Convention.

Representatives of Belgium, Romania, Argentina and Tunisia intervened in the discussion. Points made in the course of these interventions included:

- Article 17 bis should be dealt with as a technical article among the final clauses;
- The French proposal would raise logical difficulties and would pose again the problem of linkage to the review conference;
- Article 19 bis and Article 40 of the Vienna Convention on the Law of Treaties were complementary, not exclusive.

## PARTICIPATION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY

The Chairman referred to document CPNM/75 containing an explanatory statement of the Commission of the EAEC and CPNM/WP/27 containing proposals for participation of the Community in the Convention.

The representatives of the following delegations made interventions in which they expressed themselves as being neither for nor against the proposals, expressed misgivings or found aspects of the proposals unacceptable: Argentina<sup>5</sup>, Cuba, the German Democratic Republic, the USSR, Egypt, Hungary, Tunisia, Zaire and India. Points made in the course of these interventions included the following:

- Sufficient information had not yet been given to enable judgement to be made at delegation or governmental level;
- The Community was attempting to attain recognition erga omnes with the States Parties;
- It was unclear whether transport between Member States of the Community could be called international nuclear transport for purposes of the Convention;
- It appeared necessary to modify Article 4;
- The proposal for Article 14 was an empty formula;
- The proposal necessitated opening the EURATOM Treaty to interpretation by other states;
- States were being asked to enter into a Treaty without knowing who was to be responsible for obligations under it;
- The Commission's Statement centred on relations between the Commission and EURATOM members as such;
- The proposal was of interest only to a single geographical area;

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<sup>5</sup> Distributed as CPNM/76.

- It was unclear how the Community could exercise extra-territorial jurisdiction or undertake penal actions;
- Implications for all articles of the Convention needed to be checked before participation could be decided upon;
- The agreements cited in CPNM/WP/31 were not of a universal nature and were of doubtful relevance;
- Distribution of commitments between the Community and Member States could be changed in the future by internal acts of the Community;
- It was a fundamental question whether there would be benefit or gain from having an international institution as a party to the Convention;
- It was desirable to have in written form a statement of exactly what aspects of Article 4 might give rise to difficulty for the Community and its Members.

Representatives of Canada, Japan, Australia, Finland, the United States, Switzerland and Austria intervened in support of participation in the Convention by the Community. Points made in the course of these interventions included:

- It was clear that the Community would be fully bound by the Convention on the basis of the proposals;
- It was more important to emphasize the practical situation than to pursue esoteric legal issues;
- If it were possible to close gaps in the effective implementation of the Convention then this should be done;
- The Commission was not asking that non-Member States be bound by the Treaty of Rome or decision of the European Court of Justice;
- Participation by the Community would ensure full implementation of the Convention;
- It would not be possible for Member States of the Community to give effect to Article 14 if the Community were not a party to the Convention.

The representative of Finland intervened to express that his delegation can in principle accept the participation of the EAEC in the Convention. He stated also that the rights and obligations of the Community, derived from the provisions of the Convention, should be clearly defined in a protocol, which would form an integral part of the Convention.

The representative of Japan stated that the support of his delegation was given on the understanding that participation of the Community would not

in any circumstances reduce the obligations of the Member States under the Convention.

Points made by the representative of the EAEC in the course of interventions in response included the following:

- The Community was a legal entity created by its Member States which was of a new and unique type in international law;
- In 1957 physical protection had not been a current concept, but on more complete examination it clearly was provided for by the EURATOM Treaty. Coverage of physical protection in the Treaty was connected with the Community's exclusive right to conclude contracts concerning the supply of nuclear material whether from inside or outside the Community; the autonomous regime for monitoring safety; and the Community's right of property in regard to special nuclear material produced within the Community;
- The important thing for third parties was that the Community and its members jointly had responsibility covering the totality of commitments in the Convention;
- For questions of practical implementation the rule should be that any State Party to the Convention should address itself to the Community and to the State or States directly concerned simultaneously. The Community and/or State would reply;
- All contracts for supply have to be concluded by the Supply Agency;
- Exports of nuclear material from the Community are subject to approval by the Commission;
- Questions put during the present conference had been put when other agreements referred to were negotiated;
- Governments of some delegations expressing misgivings were signatories to agreements cited in CPNM/WP/31;
- The Commission's intention was that through participation of the Community, Member States and the Community will be able to give the joint and several guarantees requisite to discharge of Convention responsibilities. Participation was not meant to reduce any obligation of a Member State but rather to complement it;
- The proposal in CPNM/WP/27 was a proposal which was open to discussion; amendments or adaptation of it could be considered;
- The Community is not a State, hence the necessity for the second paragraph of Article 14.5. The Community's intention to participate was motivated

by the fact that Member States would not by themselves be in a position to sign and undertake the totality of obligations under the Convention.

The Chairman summarized the debate and concluded that it was not possible to conclude drafting of the Convention during the present session. He deferred further discussion of the matter.

Following discussion of procedure by representatives of Brazil, Mexico, France, Australia, Switzerland, the United States, Tunisia, Canada, the USSR and India, the Chairman decided that the time available on 16 February would be better used for discussions in Plenary than in a further meeting of the Drafting Committee.

The Chairman adjourned the meeting.

### **Rapporteur's Report on Meetings held on 16 February 1979**

The Chairman opened the meeting and proposed that further consideration be given to articles dealt with by the Working Group on Technical Issues.

At the request of the Chairman, the Vice-Chairman from the Netherlands, Mr. Harry, assumed the chair and proposed discussion of articles in regard to which there were written proposals.

#### **Article 3**

The representative of the United Kingdom introduced the proposal of his delegation concerning Article 3 circulated as CPNM/WP/30. He stated that the draft in CPNM/70 could be interpreted as imposing absolute obligations. While he fully supported the objectives of Article 3, his Government was anxious not to undertake obligations that it might not in reality be able to fulfil. While obligations concerning transportation across land and at airports and seaports could be discharged, there were practical problems concerning, for example, maritime passage through territorial waters. Representatives of Italy, Argentina, the European Community, Mexico and Austria intervened during discussion of the proposal. Points made in the course of these interventions included the following:

- It was unclear whether Article 3 could be respected by Member States of the Community without involvement of the Community;
- The provisions in regard to inter-state transport were seen as valuable in regard to transportation from one Member State of the Community to another;



- The role of the Commission in the transfer of nuclear material within the Community was such that participation of the Community would be essential;
- Where transportation between Member States of the Community would be unlawful or contrary to requirements of foreign suppliers the Community's participation was essential;
- The United Kingdom amendment opened unacceptable loop-holes.

The Chairman decided that Article 3 should be passed to the Drafting Committee with the addition of the United Kingdom amendment in CPNM/WP/30 but subject to a reservation made by the representative of Mexico based on the unacceptability of the qualifications that it contained.

#### **Article 4, paragraph 2**

The representative of Italy spoke to the proposal put forward by Italy as CPNM/WP/29 for an addition to Article 4.2. He explained that the proposal was not intended to affect or unbalance the existing text. It was interpretative, not restrictive, and was intended to achieve maximum clearness. It was intended to integrate procedures and to close possible gaps.

The representative of the Netherlands withdrew his reservation to the text of Article 4.2 contained in CPNM/70 and affirmed that the text was acceptable.

Representatives of Mexico, Belgium, the United Kingdom, Canada, Italy, Argentina, the Federal Republic of Germany, Finland, India, Sweden, Austria and Tunisia intervened in discussion. Points made in the course of these interventions included:

- Specific reference to bilateral arrangements was unnecessary;
- Some exporting States might not be Parties to the Convention and it was desirable to make the Convention as comprehensive as possible in the light of this. It should be possible to take bilateral steps simultaneously with multilateral steps pursuant to the paragraph.

The representative of Canada suggested substituting the word "may" for the word "shall" in the third line of the addition proposed.

The representative of Argentina suggested deletion of the word "bilateral".

The representative of Italy indicated that both proposed amendments would be acceptable to his delegation.

The Chairman assessed that the proposal of Italy in CPNM/WP/29 lacked support and decided that the text of Article 4.2 as contained in CPNM/70 should be referred to the Drafting Committee subject to a reservation made by the delegation of Italy.

#### **Article 5, paragraph 4**

The representative of Egypt introduced the proposal of his delegation contained in CPNM/WP/28. He stated that the final implications of the Convention for developing countries wishing to carry out its obligations were unknown. He understood that the cost of physical protection of an installation could be 5–10% of running costs. It was doubtful that developing countries could keep up with the increasing financial burdens flowing from the Convention. Representatives of Qatar, Mexico, Belgium, the United States, India and the USSR intervened in discussion. The consistency of the proposal with the scope of the Convention as reflected in Articles 2 and 5 was discussed. Some delegations considered that discussion of the proposal at the present time would be premature. It was decided that the Egyptian proposal requires further consideration at the next meeting in June.

The Chairman decided that paragraph 2 of Article 5 as contained in CPNM/70 should be referred to the drafting Committee subject to reservations expressed by Belgium, India and the USSR.

#### **Article 5, paragraph 3**

The Chairman noted that there had previously been agreement to change Article 5.3 to achieve by changes of wording to be made by the Drafting Committee expression of the requirement that it be possible to exchange information directly between States Parties and/or through international organizations.

#### **Article 4, paragraphs 3 and 5**

The representative of the United States indicated that consultations on possible new wording were incomplete. Nevertheless new formulations of paragraphs 3 and 5 of Article 4 were extant which showed promise of wide support. He indicated that the texts of the paragraphs as contained in CPNM/70 remain acceptable to his delegation.

With the agreement of the meeting the formulations referred to are reproduced in footnote 6 below.

<sup>6</sup> 4.3. A State Party to this Convention shall not, to the extent consistent with international law, allow, so far as practicable taking into account the means of transport, the transit of nuclear material from a State not party to this Convention to a State not party to this Convention unless the State Party has received assurances that this nuclear material will be protected during international nuclear transport at levels described in Annex I.

4.5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1–3 above shall, to the extent consistent with international law, identify and inform, so far as practicable taking into account the means of transport, in advance States which the nuclear material is expected to transit.

Representatives of Argentina, Mexico, Tunisia, Egypt, the Federal Republic of Germany and Pakistan intervened in discussion, but consideration of these paragraphs could not be finished in the time available.

Mr. Estrada Oyuela of Argentina resumed the Chair.

After discussion of possible dates the meeting decided on a show of hands that a meeting of the Drafting Committee should be held from 4 to 6 June 1979 while a plenary meeting should take place from 7 to 15 June.

The representative of Mexico recorded that he did not agree in the procedure of determining the meeting dates by a show of hands. He stated that the purpose and date of the meeting should be known before delegations were asked to decide. He asked that his position be taken into account when the Agency considered sending out invitations to the next meeting.

The meeting discussed the form in which texts, their status, and positions of delegations should be recorded. The representative of Switzerland on behalf of the representative of Austria and on his own behalf indicated that both delegations had withdrawn their reservations to paragraph 7 of the preamble.

#### CONSIDERATION OF RAPPORTEUR'S DAILY REPORT

The Chairman proposed that the meeting consider and adopt the Daily Reports of the Rapporteur — CPNM/Daily Reports/9–14, for plenary meetings 5–16 February 1979. In response to an enquiry from the representative of Mexico he noted that the Daily Reports were summary reports, referred to CPNM/Daily Report/1 and said that criteria for their preparation were as for those of reports on meetings of the Agency Board of Governors under the Board's Rules of Procedure.

The meeting adopted CPNM/Daily Report/9.

Following discussion of CPNM/Daily Report/10 in which representatives of Egypt, Peru, Mexico and the Federal Republic of Germany intervened, and an intervention from the representative of France, the Chairman suspended consideration of the Daily Reports pending availability of reports in all working languages.

#### NATURE OF NEXT MEETING

The Chairman called for discussion of the nature of the next meeting.

Representatives of Mexico, the Federal Republic of Germany, Switzerland, the United States, Canada, Italy, the Netherlands, Egypt, Austria, Belgium, Australia, the USSR, Denmark, the United Kingdom, Zaire, Yugoslavia, Turkey, Spain, Peru, Paraguay and Tunisia intervened. Points made in the course of these interventions included the following:

- It was important to know what sort of meeting was to be held since this affected preparations by governments; accreditation; furnishing of powers; level of representation; the authoritativeness and legal status of the record; and the commitment of governments to the resultant Convention;
- The meeting should adopt a Final Act as a record of the results of the Conference as explained in the Secretariat paper circulated with CPNM/51;
- The meeting should anticipate the convening of a Diplomatic Conference as explained in the above Secretariat paper;
- Signature of a Final Act was not signature of the Convention and did not necessitate that representatives hold full powers;
- While accreditation to a conference which would adopt a Final Act might be necessary, the grant of wider powers to representatives, e.g. pleni-potentiary powers, was not necessary but was something that governments might nevertheless do as a matter of their own discretion or internal requirements;
- The level of representation was a matter of sovereign prerogative for each State;
- A Final Act was generally signed by the entire delegation; not just the head of delegation;
- It was beyond the scope of this meeting to consider whether to adopt a Convention;
- When drafting of a Convention was finished the next step could be for the General Conference of the Agency or for the United Nations to decide;
- The meeting was comprised of governmental representatives and had the power to decide how a Convention should be adopted;
- The decision on the means of adoption was not one for the General Conference of the Agency or the United Nations General Assembly;
- The meeting was to review a text and not to give it validity in international law;
- The meeting had reached a stage where it could be hoped that a text would be finalized, and delegations should come prepared to sign some kind of paper;
- The conclusions reached in the discussion should be included in the letter of invitation that the Director General would send to Governments;

- The invitation should say that a significant number of delegations would prefer that conclusion of the Convention be through signature of a Final Act;
- The invitation should not contain any generalized statement about conclusion of a Final Act;
- Adoption of a Convention was a matter for governments, while evaluation of one was a matter for the Conference.

The Chairman concluded that the meeting agreed that delegations at the next meeting should be in a position to conclude the negotiation of a Convention if this were possible. He said that if it were said that a significant proportion of delegations preferred a Convention text to be settled by a Final Act then this would only be a reflection of what had occurred in the meeting. It must also be said, however that one delegation had stated a reservation about the procedure of the meeting on the question of a Final Act.

The representative of Mexico recorded that he was not in principle against a Final Act or a Diplomatic Conference. He had not agreed that one procedure or another should be discussed at this meeting. He therefore stated a reservation based on objection to procedure.

## CONSIDERATION OF RAPPORTEUR'S DAILY REPORTS

The Chairman informed the meeting that because of technical difficulties it would not be possible to provide delegations during the meeting with copies of the Daily Reports in all languages. This left alternatives of adopting the Reports as in the English copies or of leaving them unadopted. After interventions by the representatives of Mexico, Peru, Switzerland and Austria, the Chairman decided that remaining Daily Reports would not be adopted. In further discussion representatives of Egypt and the Netherlands intervened.

## REPORT ON ARTICLES AS AT 16 FEBRUARY 1979

The Chairman referred to CPNM/77 and Addendum. A number of delegations made comments, sought clarification or suggested amendments or additions to the document. These were noted for circulation as a corrigendum to CPNM/77. The representative of the Federal Republic of Germany noted that the name of his country was incorrectly portrayed in the Russian text of CPNM/77.

## REPORT OF THE MEETING

The meeting agreed that its report to be circulated should consist of CPNM/77 with addendum and corrigendum and the Daily Reports adopted, with the Daily Reports not adopted annexed for information together with CPNM Working Papers as listed in Note 1 on page 1 of CPNM/77.

The Chairman closed the meeting after an exchange of courtesies.

[The Convention shall be open for signature and ratification, acceptance, approval or accession by the European Atomic Energy Community and international organizations, a majority of whose Member States are parties to the Convention and which [are agreed by the majority of the States Parties to this Convention to]<sup>1/</sup> have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by the Convention.]<sup>2/</sup>  
[International organizations, a majority of whose Member States are parties to the Convention and which [are agreed by the majority of the States Parties to this Convention to]<sup>3/</sup> have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by the Convention can also become parties to the Convention.]<sup>4/</sup>

In such matters within the competence of the organizations, the references to States Parties in the provisions of the Convention, shall be deemed to apply to such an organization when it declares its acceptance of the rights and obligations provided for in the Convention.

[When becoming party to the Convention such international organizations shall communicate to the Depositary which States are members thereof and which articles of the Convention do not apply to the organizations.]<sup>5/ 7</sup>

[States Parties to this Convention which are members of such an organization shall take all appropriate steps to ensure that the organization makes a declaration in accordance with the preceding paragraph.]<sup>6/</sup>

[Such organization shall not have any votes.]<sup>7/</sup>

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The states or organizations listed in the footnotes below are those which first raised objections to the bracketed language.

- <sup>1/</sup> Brazil
- <sup>2/</sup> Union of Soviet Socialist Republics
- <sup>3/</sup> Brazil
- <sup>4/</sup> The European Atomic Energy Community
- <sup>5/</sup> The Union of Soviet Socialist Republics
- <sup>6/</sup> The European Atomic Energy Community
- <sup>7/</sup> The European Atomic Energy Community

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<sup>7</sup> It was agreed that a paragraph would be added to the appropriate article, to provide for the communication by the Depositary of the above information to all states.

DRAFT AGENDA  
FOR MEETING STARTING ON WEDNESDAY 17 October 1979

(CPNM/84)

1. Opening of the Meeting by the representative of the Director General
2. Election of the Chairman
3. Adoption of the Agenda for the Session
4. Consideration of election of two Vice-Chairmen to replace  
Mr. R.A. Estrada Oyuela, Argentina, and Mr. R.J.S. Harry, Netherlands
5. Election of a Rapporteur to replace Mr. L.W. Herron, Australia.
6. Organization of work for the consideration of the draft Convention on the  
Physical Protection of Nuclear Material
7. Consideration of ways to conclude the work of the Conference and to adopt  
the text of the Convention
8. Other business



## DAILY REPORTS 15 – 22

### Rapporteur's Report on Meetings held on 17 October 1979

(15, Corr.1)

The Legal Director of the International Atomic Energy Agency, Mr. L.W. Herron, opened the meeting on behalf of the Director General and welcomed the delegates to the first meeting to be held in the new premises of the Vienna International Centre.

#### ELECTION OF CHAIRMAN AND VICE-CHAIRMEN

Because the former chairman, Mr. Estrada Oyuela of Argentina, had been posted from Vienna Mr. Herron called for nominations for Chairman. Ambassador Siazon of the Philippines was elected unanimously on the proposal of the representative of Brazil supported by the representatives of India, Ireland, Tunisia, Austria, Argentina and Colombia. Ambassador Siazon took the chair. Ambassador Siazon announced that there was agreement that Mr. Olivieri of Argentina replace Mr. Estrada Oyuela and Mr. Dahlhoff of the Federal Republic of Germany replace Mr. Harry of Netherlands as Vice-Chairmen. Mr. Rabold of the German Democratic Republic continued as a Vice-Chairman. Mr. Ross Smith of Australia was elected Rapporteur in succession to Mr. Herron.

#### REPORT OF DRAFTING COMMITTEE

The Representative of Brazil as Chairman of the Drafting Committee presented the second report of that Committee. He reported that the Committee had considered Articles 2, 3, 4.1, 4.2, 4.6, 5, 5 bis, 12 bis, 13, 17 and 18. Some delegations had indicated that in respect of Article 2 the present drafting did not reflect accurately the compromise reached on the scope and in respect of Articles 4.1, 4.2, 4.6 there were additional points of substance that should be dealt with by the Plenary.

#### ORGANIZATION OF WORK

The Chairman said that there had already been four sessions and two informal consultations and suggested that there be no general statements. He suggested

that the meeting should proceed to article by article consideration dealing with those in CPNM/77/Corr.1 marked with one star first. Drafting groups would be invited to work at the same time. He expressed the view that the Preamble dealt with basic questions and could be considered after the articles.

### **Article 1, Paragraph 3**

Drafting changes were suggested for paragraph 3 by one delegation, including the exclusion of “nuclear” from “international nuclear transport”. The Representative of France indicated a difficulty of wording in the French text. The Representative of India said that India had difficulty with the word “facility”. The Chairman said the paragraph would be held over for later decision.

### **Articles 4.3 and 4.5**

A number of delegations – Ecuador, Canada, United States, Italy, the Federal Republic of Germany, Tunisia, Panama, Mexico, Hungary – intervened in the discussion in which the main problems voiced concerned integrity of territorial and jurisdictional sovereignty. One delegation pointed out that it was enough for one State to have responsibility for physical protection, that is, the State providing the carrier. Some delegations pointed out that this Article raised deep and persistent problems. The Chairman appointed representatives of Ecuador, Canada, United States, the Federal Republic of Germany, Tunisia, Mexico, Japan, Peru, Italy, Sweden, Egypt and the USSR to make up an ad hoc working group to draft a new text for Articles 4.3 and 4.5. It was agreed that Canada co-ordinate in the group. After preliminary consideration in the group, the Canadian Representative reported that one difficulty had been caused by a translation error in the Spanish text which referred to airspace rather than airports. Some minor changes were made to Articles 4.3 and 4.5. However, after later discussion on Article 6 bis attention was drawn to unresolved substantive difficulties in Articles 4.3 and 4.5. These provisions were left for further consideration in the ad hoc working group together with Article 6 bis.

### **Article 6**

The following representatives intervened in the discussion: Romania, Mexico, Belgium, Australia, Italy, Argentina, German Democratic Republic, Turkey, Canada, Venezuela, Japan, USA, Austria, France, India, and Denmark.

Points made in the discussion were:

- The text was repetitious;
- The text was imprecise in that it used adjectives which were difficult to define;

- The text would cause great confusion because it enumerated major offences but not minor ones;
- There was confusion between ordinary offences and punishable offences, so that it might be better to refer to “criminal offences”;
- The text should identify a restricted number of very serious offences known by all States. Regulatory offences should not be mentioned as such since they differed from State to State. Offences should be defined in terms of substance and not in technical terms and should be restricted to offences likely to cause death or serious injury and substantial damage;
- There were contradictions in paragraph 1;
- There was ambiguity in paragraph 2 (d)(i);
- The fact that less serious offences were not covered in the Convention did not mean that States could not cover them under their own legislation;
- The main purpose was to build a viable instrument which would achieve co-operation between States Parties on serious offences.

The Representative of Belgium entered a reservation on Article 6. Article 6 was passed to the Drafting Committee.

#### **Article 6 bis**

The Representative of the Indian delegation said that Article 6, paragraph 1, did not go far enough in providing for extension of jurisdiction. He suggested extension to give jurisdiction to the exporting, importing and transit States, the State where the offender is found, and the State giving nationality to the carrier. Another delegation said that Article 6 bis was only intended to include the traditional grounds of jurisdiction; some of the Indian suggestions appeared to go beyond the well understood grounds of jurisdiction under international law.

The Representative of the Federal Republic of Germany said that it was possible that a registering State and the flag flown by the carrier so registered could be different. Other delegations contested this and it was decided that the matter be discussed in the ad hoc working group. The Chairman requested that the working group consider Article 6 bis along with Articles 4.3 and 4.5.

#### **Article 7**

The Representative of the Federal Republic of Germany referred to his delegation’s proposal in CPNM/WP/40 to add a notification provision to Article 7; this would bring the Convention up to the standards of comparable conventions.

This proposal was supported by the Representatives of Australia and India. The Austrian Representative preferred a text closer to Article 6(i) of the Convention for the Protection of Internationally Protected Persons. The Representative of the Federal Republic of Germany said his delegation's suggested text was drafted along the lines of the provisions in the Hague, Montreal and Protection of Diplomats Conventions but was shorter.

The Representative of Italy questioned the use of "offender" and "alleged offender" in Article 6 bis and Article 7. It was suggested that there were valid distinctions justifying retention of the terms used.

It was agreed that the Representatives of India and Greece should join the ad hoc working group.

After a brief procedural discussion the Chairman adjourned the meeting.

### **Rapporteur's Report on Meetings held on 18 October 1979**

(16, Corr.1)

The Chairman, Ambassador Siazon, of the Philippines, announced that Article 7 had been passed to the Drafting Committee.

#### **Article 9**

The Representative of Austria said that Austria had had a reservation on Article 9 paragraph 1 but in a spirit of compromise would withdraw it. The reason for the reservation was apparently a problem for Austria and no other country, and was related to the Austrian penal law and penalties for certain offences. The Austrian Representative asked that it be recorded that it was the understanding of her delegation that all extradition treaties, whether already existent or to be concluded in the future, should be construed only in the context of all their coherent provisions, in particular of those provisions that comprise the general preconditions for extradition.

The following Representatives intervened in the discussion: Romania, Cuba, France, Mexico, Australia, India, Canada, United States, Italy. They made the following points:

- Modern treaty practice was to refer to merely categories of offences rather than to make exhaustive lists of offences;

- Paragraph 1 had a retroactive effect and should be worded more flexibly so that countries could act under it in accordance with their national laws;
- The Article should not be amended since its provisions were identical with those in recent conventions.

The Representative of France withdrew the amendment proposed by France (CPNM/WP/11 and CPNM/WP/33). However, the French Government considered the wording of paragraph 2 was unsatisfactory and he wished to record that France considered that provisions of the kind contained in Article 9 should ensure greater equalization as between countries which made extradition conditional on the existence of a treaty and those which like France, did not make extradition conditional on the existence of a treaty.

Article 9 was passed to the Drafting Committee.

## Article 17 bis

The Representative of the Federal Republic of Germany referred to CPNM/WP/41 containing the wording of a new paragraph 2 of Article 17 bis with an explanatory statement. In further explanation, the Representative said that it was possible that in the near future changes could be made in the transport of nuclear material that necessitated the Annexes being brought up to date, and maybe other clauses, before the Review Conference. Representatives intervened in this discussion from Belgium, France, Romania, United Kingdom, Poland, the German Democratic Republic, Tunisia, Argentina, Italy, Hungary, Netherlands, India and Austria. Most delegations supported the proposal of the Federal Republic of Germany. Points made concerning Article 17 bis included:

- It should be possible to amend the Convention at any time;
- There was a problem of implementation in the present paragraph 2 which could be overcome by including some reference to notification;
- There should be no difference between amending the Annexes and amending the Articles;
- The last sentence of paragraph 1 should also be added to the proposed new paragraph 2.
- Drafting should ensure that Article 17 bis conformed with Article 12 bis;
- The present wording of paragraphs 1 and 2 and the proposed new paragraph allowed for these mechanisms to achieve amendments. Drafting should produce a more clear-cut procedure.

The Chairman suggested the establishment of an ad hoc working group consisting of the Federal Republic of Germany, Belgium, France and the United Kingdom to draw up a common position and then consult with Hungary, Poland, Tunisia, the German Democratic Republic, the United States and Romania.

## **Article 20**

The Chairman said that a choice had to be made on who would be the Depositary. The Representative of Austria foresaw considerable work for the Depositary. He confirmed Austria's clear preference that the Director General of the IAEA be the Depositary. The following Representatives also announced similar support: Denmark, Italy, Japan, Australia, Hungary, USSR, Greece, Brazil, United States, Poland and Ecuador. The Representative of Tunisia felt that the decision need not be taken immediately so that the Group of 77 could consult. The Chairman deferred decision accordingly.

## **Preamble**

Discussion on the Preamble began with some drafting suggestions. One delegation suggested changing the word "stringent" in the last line to "different", and another suggested that in the 6th recital, first line, "safe transfer" should be changed to "secure carriage" or "secure transport". Representatives from Japan, Mexico, India, Belgium, United Kingdom, Spain, Romania and Tunisia intervened in the discussion. The Representative of Belgium referred to the proposal outlined in CPNM/WP/36. Several delegations said that the discussion of the Preamble should be postponed until the rest of the Convention had been dealt with, particularly Article 2, and it was so decided.

## **Article 1**

The Chairman referred Delegations to document CPNM/WP/44 which was a proposal by the Delegations of Argentina, Belgium, Brazil and India regarding the definition of "international nuclear transport" in Article 1. The following Representatives intervened: India, USSR, Turkey, Austria, Spain, Finland, Australia, Sweden, United Kingdom, Japan, Mexico, France, Italy, Federal Republic of Germany, United States, Denmark, Netherlands, Canada, Brazil, Cuba, Panama and Ecuador. Points made in the discussion included:

- The insertion of "a point designated by the sender" and "a point designated by the receiver" clarified the text;

- The objectivity of the old text was to be preferred to the uncertainty and subjectivity of the new text;
- The word “intended” should be retained in the second line of the new text after “transportation”;
- The new text was imprecise;
- The new text might be more subjective but it was less ambiguous than the old text;
- Was “point” clearer than “facility”? Could “loading” and “unloading” be added to “point”?
- The new text left unclear to whom designation would be made;
- The ability of the shipper and receiver to designate points of commencement and ending could well have the effect in the case of land transport to a contiguous country that there would be no international transport;
- The term “shipper” in the old text was to be preferred to “sender” in the new text;
- The new text would introduce the element of influence by a private company;
- The new text introduced subjectivity but the old text also had this element, for example, in the word “facility” which was undefined;
- The new text should refer to legally fixed “points”, namely, the loading and unloading points evidenced by the shipping documents.

The Representatives of India and Brazil as members of the drafters’ group answered points of objection to the new text. The former expressed willingness to work further on an acceptable definition. The Brazilian Representative said that it was not intended to imply that transport would be subject to lesser standards but rather to state the precise moment of application. “Shipper” and “sender” might be translation problems. By “sender” he understood the authority authorized to send abroad.

The Chairman suggested an ad hoc working group composed of Representatives of Australia, Brazil, France, Finland, Federal Republic of Germany, Japan, India, Spain, USSR and United States, to work on a new text. He designated the Representative of Spain as co-ordinator of the group.

## **Article 2 and Article 5**

The Chairman accepted a suggestion that Article 5 should be considered before Article 2.

On Article 5, Representatives of Romania, CEC, United Kingdom, Turkey, Australia and Canada intervened and made the following points:

- In Article 5.2(a) last line, the word “interested” or “relevant” should be inserted before “international organizations”;
- There was no intention in the proposal in CPNM/WP/39 to limit the range of States to which co-operation might be provided on request;
- Some countries did not have central authorities, mentioned in paragraph 5.1, having responsibility for all functions, but would rely on traditional diplomatic channels, or perhaps the police;
- Assistance should be provided on request and should be extended to any State.

The meeting approved Article 5, paragraphs 1, 2 and 3, except for the chapeau of 5.2 which was passed to the Drafting Committee for further consideration in the light of explanations and suggestions regarding the proposal in CPNM/WP/39.

On Article 2, the Representative of India said that it should also deal with nuclear material for military purposes. He suggested that Article 2 should read “The Convention shall apply to nuclear material in international transport.” The Representative of Argentina said that his country maintained the same position as formerly stated. The following delegations intervened in the discussion: United States, Italy, Canada, Austria, Belgium, Finland, Netherlands, Federal Republic of Germany, Denmark, Australia, France, USSR, Cuba and Indonesia. Points made in the discussion included:

- The text in Article 2 reflected a compromise worked out last year recorded in point 4 of the September 1978 memorandum;
- The compromise was the best possible one;
- Paragraph 2 should include a reference to paragraph 5.3 which was explicitly related.

The Representative of the United States said that it was critical for his Delegation that Article 2 remain in essence as it now stood.

The Chairman adjourned the meeting.



## **Rapporteur's Report on Meeting held on 19 October 1979**

(17, Corr.1)

The Chairman introduced Article 3, the text of which had been agreed in the Drafting Committee and was set out in document CPNM/83/Rev.1. It was adopted without comment.

### **Article 4.1, 4.2, 4.4 and 4.6**

The Representative of Mexico proposed that Article 4.1 should be amended so that assurances on levels of physical protection applicable to exports and imports would be transmitted through the IAEA. As with safeguards, this would be a guarantee and would avoid any type of bilateral agreement. The other Representatives who intervened in the discussion on Article 4 were the United States, Finland, India, Ecuador, Australia, Turkey, Italy, Belgium, France, Niger, Denmark and Argentina. The Representative of Australia outlined his proposal for Article 4.6, as shown in CPNM/WP/38. The Representative of Italy referred again to his country's reservation, as outlined in document CPNM/WP/29. Points made in the discussion included:

- While it was appropriate to transmit assurances through the IAEA this should not be the exclusive method;
- There was a precedent in Article 5.3 to include a reference indicating that both methods — directly or through an international agency — were appropriate;
- There was an inherent contradiction between paragraphs 4.1 and 4.4;
- There was no reason why the IAEA should be needed to supply a second assurance nor why it should be compulsory;
- In paragraph 4.2, last line, the words “as far as practicable” should be added after the word “transport”.

The Chairman nominated the following countries to form an ad hoc working group on Articles 4.1, 4.2, 4.4 and 4.6: Australia, Belgium, Mexico, India, Niger, Italy, United States, Turkey, Japan, Commission of the European Communities, Argentina, Denmark and the Federal Republic of Germany. The Representative of Argentina was nominated as co-ordinator.

## **Article 5 bis**

The following Representatives made interventions in the discussion on Article 5 bis: India, United States and Australia. Article 5 bis was adopted with the amendment that the words “the security of the State concerned or” be inserted between “jeopardize” and “the” in the last line.

## **Article 18**

Article 18 was adopted without comment.

## **Proposed Article 14**

The Chairman referred to documents CPNM/81, a text for Article 14, and CPNM/WP/45, a proposal by the Community for an “adhesion clause for regional integration organizations”. The Chairman reported further on the informal consultations in September. He said that there had been a frank and friendly exchange of views that had led to a clearer understanding of how the Community and its Member States function. The results of the informal consultations were positive because delegates had to decide whether the present meeting should be held and they had produced the text in document CPNM/81. The Chairman also referred to the statement by the Representative of the Community available as document CPNM/82.

In addition to the Representative of the Community who answered questions and commented on documents CPNM/81 and CPNM/WP/45, the following Representatives intervened: Panama, India, USSR, Peru, Romania, Hungary, Austria, Japan, Tunisia, Australia and Argentina. The main points made included:

- The word “similar” should be added to the third line of the first paragraph of CPNM/81 between “and” and “international organizations”;
- What was the scope and competence of Euratom, what were the relations between Euratom and the States as Member States, and what were the rights of Euratom in enforcing jurisdiction?
- How would an international organization fulfil functions on territories of members which have not signed?
- It was more appropriate to provide for participation of States first, and then to deal with the question of the signature of an international organization;
- How many votes would the Community cast? Would it be those Member States present and voting?

- In CPNM/WP/45, first paragraph, “regional integration organizations” should be replaced by “international organizations”;
- The problems of voting should be sorted out;
- To be sure of obligations under the Convention it was absolutely necessary that States Parties be informed in a clear-cut manner of the distribution of responsibilities between the Community and its Member States;
- Questions of Community accession should be dealt with after the Convention as a whole was established;
- There was confusion about voting in the third paragraph of CPNM/WP/45, which should be clarified;
- Was there a legal necessity for Euratom to participate in voting?
- If there was a legally binding requirement for Euratom to vote at a future conference and if one of its Member States voted then this could result in litigation which could delay the work of the conference.

One Representative, stressing that he was making a preliminary comment, said that it was very rare in the establishment of a convention to refer to the question of voting. What was being established was a convention, not an institution. In discussing the question of voting, new areas were being created and this should not happen. In any future conference, rules of procedure should be established at that conference.

The Representative of the Community referred to his statement in document CPNM/82. Most questions stemmed from a lack of understanding of what the Community really was. The Community was a new kind of international grouping that could not be assimilated to the traditional type. It was not just an international organization; it acted on behalf of the Community as such, not on behalf of its Member States. Under the Convention, Member States would not be able to exercise all the rights and obligations, as some had been transferred to the Community and this was why full participation by Member States could only be guaranteed if the Community became a member. This would complete the membership of the Member States of the Community. Far from reducing the rights and obligations of Member States, participation by the Community would guarantee that they were fully covered. If it were not a party, there would be certain fields not covered as far as Member States of the Community are concerned.

The Representative of the Community said that in the case of international transport of nuclear material within the Community, the sender must receive assurances which would be given by the receiving State. If this were unsatisfactory only the Community could prevent the transport taking place. Only the Community could impose restrictions on movements between Member States

since this was a right that had been transferred to the Community. On voting, he said that the third paragraph in CPNM/WP/45 was only intended to assure all countries that as a party to the Convention, the Community would not claim an additional vote. In any voting situation, the Community would cast only the number of votes of those Member States present and then only in a situation when necessary. The Representative said that Articles 6 – 11 of the Convention were the sole responsibility of the Member States. It was because of Articles 3, 4 and 5 of the Convention that the Community needed to be a party. There was no intention to increase the voting of the Community which would vote only on matters of Community responsibility. The alternative was to disfranchise Member States as participants of the Convention. The Representative added that, on behalf of the Community, he would be happy to see the paragraph on voting rights dropped from the Convention.

On the proposal that “regional integration organization” should be changed to “international organization”, the Representative of the Community said that the latter did not cover the Community and he was against the change. He did not want to exclude other organizations and suggested the formulation “regional integration organizations and international organizations”.

The Chairman appointed an ad hoc working group consisting of the CEC, Japan, Brazil, Romania and the USSR to prepare a text. The IAEA Secretariat was asked to provide a co-ordinator.

#### **Article 17 bis**

The co-ordinator of the ad hoc working group, the Representative of the Federal Republic of Germany, introduced a new text in document CPNM/WP/46. He indicated that it was compatible with the language of other treaties. One Representative said that the new text now did not refer to the conferences under Article 12 bis and something had been lost in the new draft. The Representative of Turkey suggested the following drafting changes to CPNM/WP/46: after “amendments” first line, paragraph 1, add “to the provisions of this Convention”; replace “immediately” in the third sentence with a more precise time limit; and add in the seventh line after the full stop: “No amendment proposal may be made between the date of invitation for and the closure of the Conference.”

It was decided that the text of Article 17 bis be sent to the Drafting Committee.

#### **Article 12 bis**

The Representative of the Federal Republic of Germany said that the ad hoc working group on Article 17 bis did not feel it had a mandate to deal with Article 12 bis and suggested that the Drafting Committee could take into account concerns about Article 12 bis.

One Representative suggested changing “implementation” to “operation” at the beginning of the third line in paragraph 1 and replacing the text after “adequacy” with the words “with a view to ensuring that the purposes of the Convention are being realized”. Another Representative said that Article 12 bis was the result of a long worked-out compromise and he would prefer to keep the present language. Other Representatives associated themselves with this statement. It was pointed out that the problem might be caused by translation – as long as the word “application” was used in the French text “operation” in the English was acceptable.

The Chairman referred Article 12 bis to the ad hoc working group on Article 17 bis. It would also include the Representatives of Romania, France, Greece and the Netherlands. The Representative of Poland was appointed co-ordinator. The group was enjoined to take into account the elements lost from the old Article 17 bis and reflect them in the new Article 12 bis.

### **Article 13**

The Chairman referred to proposals by the Representative of the USSR in document CPNM/48 and by the Representative of the CEC in document CPNM/39/Rev.1.

The Representative of the CEC said that his proposal was designed to take account of the fact that the Statute of the International Court of Justice (Chapter II, Article 34) to which Article 13 refers provides only for States to be parties in cases before the Court. The Representative of the USSR said his Delegation was proposing a new formula which was flexible and concentrated on negotiation. It was a formula that had been accepted unanimously at a recent conference on air pollution over frontiers in Geneva and had been accepted there by the CEC.

The Chairman adjourned the meeting.

### **Rapporteur's Report on Meeting held on 20 October 1979**

(18, Corr.1)

The Chairman said that the discussion on Article 13 would continue and referred delegations to documents CPNM/83/Rev.1, CPNM/WP/48 and CPNM/WP/39/Rev.1.

Representatives who intervened in the discussion were the United States, Bulgaria, Poland, Romania, Australia, India, Netherlands, Italy and the United Kingdom. Points made in the discussion included:

- Difficulties caused by the need for accession by the Commission of the European Communities were understandable and therefore the first alternative in the Community's proposal in CPNM/WP/39/Rev.1 was acceptable;
- This proposal had flexibility;
- CPNM/WP/48 stated the obvious; Article 33 of United Nations Charter was a better statement, and countries were already bound by Article 33;
- It was necessary to provide an additional avenue for those States who wished to use it;
- The USSR proposal was satisfactory and covered various ways of settling disputes;
- The text in CPNM/83/Rev.1 provided only for compulsory settlement of disputes and this was not desirable;
- Any formula has to leave an appropriate place for the settlement of disputes on the basis of agreement between parties;
- The first alternative of CPNM/WP/39/Rev.1 was a fundamental change from earlier wording which gave a central place to the International Court of Justice;
- The USSR amendment was simple and gave a choice to Parties;
- There should be no open-ended system and the International Court of Justice should appoint the arbitrators;
- The amendments presented a choice between compulsory and not compulsory settlement;
- Countries which wanted the avenue of compulsory settlement should be able to use it.

The Chairman postponed consideration of Article 13.

#### **Article 4.3, 4.5, 4.7**

The Representative of Canada, as co-ordinator of the ad hoc working group, said that he was very grateful to the members of the working group who had spent a great deal of time outside normal conference hours to reach agreement on a compromise text, contained in document CPNM/WP/50.

The Chairman, in referring the text to the Drafting Committee, stressed the compromise nature of the text.

## Article 1.1, 1.2

The Chairman drew attention to document CPNM/77/Corr.1 and suggested consideration of articles marked with three asterisks, i.e. those already approved by the Drafting Committee.

Paragraphs (a) and (b) of Article 1 were adopted.

## Article 8

The Representative of Italy requested that the words in the last line “through proceedings in accordance with the laws of that State” be transferred to the second line after the word “submit”. This was supported by one other Representative, but contested by others. Then the Representative of Italy said that his Delegation interpreted the above words in the last line as referring to the whole Article 8. The following Representatives intervened in the discussion: Italy, Netherlands, United States, Canada, India, Denmark, Poland, Argentina and Austria.

Referring to serious problems his Government had in implementing Article 8, the Representative of the Netherlands said that his Delegation was very seriously considering whether it would be necessary to make a reservation on this matter at the ratification of the Convention to confirm its interpretation in the sense that the Netherlands would only be obliged to prosecute if it did not extradite after having received a request to extradite. Without such an interpretation the system of Article 8 was not clear and could give rise to serious problems.

The Representative of Denmark said that his Delegation wished to be associated with the Netherlands statement.

Points made by other Representatives included:

- The drafting of Article 8 was identical to texts in other conventions and should not be changed;
- The Netherlands reading did not seem to be an accurate interpretation of the text;
- It was clear that there was a difference of view on the system in Article 8 *which appeared impossible to resolve*;
- The resolution of problems could take place in the future through whatever mechanism was adopted for settling disputes;
- It would be inappropriate to revise this article because it would raise doubts as to the meaning of provisions in conventions that provided precedents;
- If there was ambiguity it could be lived with;

- There was very little possibility of flexibility about the language of Article 8.

After a brief discussion about the desirability of setting up a working group, Article 8 was adopted.

## Article 10

Article 10 was adopted without comment.

## Article 11

One Representative said that the second sentence of Article 11, paragraph 1, might be superfluous and could be deleted. It was identical with Article 10 of the Internationally Protected Persons Convention except that the latter did not include the second sentence. Two other Representatives disagreed.

Article 11 was adopted.

## Article 12

In introducing Article 12, the Chairman referred Delegations to a proposed amendment of the United States Delegation, outlined in document CPNM/WP/49.

The Representative of the United States said that he had been approached by a number of Delegations expressing concern about the possible impact of certain provisions in the second half of the Convention which might allow intrusion by one State into the internal criminal proceedings of another State. This might have led to reservations about the scope provisions of the Convention. The intention of the proposal was one of reassurance to clarify the situation. It was appropriate in Article 12 because that article dealt with exchange of information. The proposed amendment was not limiting and it referred to “this Convention” and therefore did not undercut obligations under other conventions.

Other Representatives who intervened in the discussion on Article 12 were Belgium, USSR, France, India, the Federal Republic of Germany, Poland, Australia, Greece and Canada. Points made in the discussion included:

- Paragraph 2 proposed a double system in that States Parties had to inform States directly concerned and the depositary;
- “Wherever practicable” weakened what was a necessity and should be replaced by “except in case of *force majeure*” in paragraph 2;
- The United States amendment introduced greater clarity into the Convention and was necessary;



- The United States amendment might not fit with Article 12;
- There was regret about the need for the amendment but if adopted both Articles 2.2 and 5.2 must remain intact;
- The proposed amendment had doubtful usefulness and it went against the spirit of the Convention;
- The effect of “authorizing any State to obtain information” was the same as “requiring any State to provide information”.

Articles 12.1 and 12.2 were adopted. The Chairman suggested an ad hoc working group to consider the proposed amendment set out in document CPNM/WP/49 and its possible location in the Convention. Members of the group were Australia, Belgium, Canada, Federal Republic of Germany, France, Greece, India, Poland, USSR and United States. The Representative of Greece agreed to act as co-ordinator.

## Article 19

The meeting accepted the Chairman’s suggestion that Article 19 await consideration of Article 14.

## Annex 1

Annex I was adopted without comment.

## Annex 2

The Representative of Poland proposed some editorial corrections to the Annex.

The Chairman said that Annex 2 came from INFCIRC/254.

Annex 2 was adopted.

The Representative of Japan drew attention to his Delegation’s proposal set out in document CPNM/WP/26.

The Chairman said there was also a similar proposal from Australia. The proposal was accepted and the Drafting Committee was asked to find an appropriate place in the Convention for the proposed sentence.

The Chairman noted that the following had been sent to the Drafting Committee: Article 4.3, 4.5, 4.1; Article 5.2 chapeau; Article 6; Article 7 (plus CPNM/WP/40); Article 9; Article 17 bis and Article 21 (the proposed Japanese amendment in document CPNM/WP/26).

The Chairman adjourned the meeting.

## **Rapporteur's Report on Meetings held on 23 October 1979**

(19, Corr.1)

The Chairman asked the Chairman of the Drafting Committee, the Representative of Brazil, to present the Third Report of the Drafting Committee, set out in CPNM/85.

The Representative of Brazil drew attention to some minor editorial corrections and also to the footnotes in the Report. He said that the Drafting Committee had postponed discussion of Article 7 because it could be modified by consideration of other articles still before the Plenary.

The meeting agreed with the Chairman's suggestion to consider the articles in reverse order.

### **New Article**

The new Article was adopted without comment.

### **Article 17 bis**

The Representative of Poland suggested that consideration of Article 17 bis should reflect the results of the ad hoc working group's work on Article 12 bis. Consideration of Article 17 bis was accordingly postponed until the working group's paper could be distributed.

### **Article 9**

The Representative of Mexico said that his Delegation had stated in Plenary meetings before that because of internal practices it was difficult to accept paragraph 1, which lacked flexibility. The Mexican Government had entered reservations to similar clauses in other conventions. The Representative of Cuba said that his Delegation had also stated in Plenary sessions that paragraph 9.1 allowed little flexibility in respect of commitments that certain countries would have to undertake. He had the impression that the Drafting Committee had not taken the positions of countries with difficulties on paragraph 9.1 sufficiently into account. Similar articles in other conventions were not accepted by Cuba and it was appropriate to find a solution that would cover the opinion of all countries. The Representative proposed that the words "when such States Parties consider this to be appropriate" be inserted after "States Parties" at the beginning of the second sentence in paragraph 1. This addition would give States Parties flexibility, was not a change to substance, and would allow States Parties to decide for themselves in future bilateral agreements whether the offences were extraditable or not.

The Representative of Canada, in expressing understanding of the positions of Cuba and Mexico, said that the meeting should avoid decisions that gave rise to difficulties for internal constitutional law. However, the meeting was faced with policy decisions taken on previous conventions; that is, States had agreed that these were serious offences and should be included in existing extradition treaties. The problem was serious for Cuba and Mexico because it involved the creation of new offences.

The Chairman noted that there was a basic disagreement on substance and suggested setting up a working group on Article 9.1 though he was pessimistic about results. After discussion in which several Representatives affirmed previously stated positions, it was decided not to proceed to discuss the paragraph in a working group. Representatives of the United States, Tunisia and Austria also intervened in this discussion.

Article 9 was adopted with reservations by Cuba and Mexico.

## Article 6

The Representative of Belgium said that his Delegation had already drawn attention to the delicate nature of this article. As he had no instructions on the present wording he was forced to ask for a postponement of consideration for 48 hours.

The Chairman noted that this proposal was very close to proposing a meeting on the Austrian National Day.

The Representative of the German Democratic Republic said that the article should cover not only the threat of force but also the use of force and proposed the addition to paragraph 1(d) of the words "use or" between "by" and "threat".

The Representative of Canada said that while he thought the point was covered by "intimidation" he accepted this addition but suggested that it should be in the reverse order, i.e. "threat or use of". He was opposed to the Belgian proposal to postpone consideration.

The proposal by the German Democratic Republic was accepted. The Chairman deferred decision on adoption of the article until the afternoon session.

Later in a statement for the record, the Representative of Belgium said that in answer to his colleague from Canada, he wanted to be precise that the Belgian request for postponement was inspired by consideration of substance much more than form. It seemed that from the beginning there had been a misunderstanding on procedure. The actual version of Article 6 reproduced a Canadian proposal that had been tabled on 12 February last. Belgium had asked when this proposal was tabled that Belgian amendments should also be discussed in the Plenary. This had not been the case. It concerned the amendments contained in document CPNM/52, page 8 (English version) of 5 February 1979. The Representative had reminded the Plenary of this on 19 October because Belgium felt indeed that the

text of April 1978, which was of a different conception, constituted a better basis to answer the question. Since the Conference had apparently considered that the Canadian proposal constituted the only working basis, Belgium had to face a new situation that obliged it to re-examine fundamentally this text which seemed to have eliminated all other texts. Therefore he had requested the postponement. However, if the Conference now wished to go ahead and discuss Article 6, he could not prevent it but he had to say that by proceeding that way there were certain risks and a great responsibility as far as the signature and approval of the Convention was concerned. Belgium therefore maintained its previous reservation on Article 6.

Article 6 was adopted, with the addition of the words “or use” after “threat” in the first line of 1(d).

## **Article 5.2**

The Chairman drew attention to the words in square brackets.

Two Representatives said that they were in doubt about what the words in square brackets meant, particularly the word “likelihood”, and asked for time for further consideration. Another Representative said that the insertion of the words in square brackets was appropriate because they gave internal consistency to the rest of the paragraph. Another Representative said that he had difficulty with “missing” and “likelihood”.

It was agreed that an ad hoc working group consisting of the Representatives of France, India, Sweden and the United States should consider Article 5.2. The Representative of Sweden agreed to co-ordinate this group.

Later, the Representative of Sweden, on behalf of the working group, presented a new text which dropped the square brackets and replaced the words “credible threat thereof” by “possibility”. After a lengthy discussion on the wording, the meeting accepted a suggestion to adopt the original wording as shown in CPNM/85, but with the deletion of the square brackets and making the last lines read: “feasible extent in the recovery and protection of such material to any State that so requests.”

## **Article 4.3, 4.5 and 4.7**

The Chairman said that this article came to the Plenary after long negotiations in the working group; the compromise arrived at was a delicate one.

One Representative suggested the addition of the words “of its territory” after “transit” in the first line of 4.3, and of the word “that” in the middle line of 4.7 between “including” and “over”.

A Representative said that “territorial” could apply to both “sovereignty” and “jurisdiction” in 4.7. It was agreed that the word “the” should be inserted between “and” and “jurisdiction”.

The Representative of Egypt said that 4.3 and 4.5 excluded international waterways and he failed to understand why international nuclear transport through international waterways should be exempted from protection at the levels described in Annex I. This affected the adequacy of the Convention and would cause difficulties in its implementation. He entered a reservation on 4.3 and 4.5.

After a discussion on the drafting of Article 4.7 it was decided that the paragraph should read: "Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and the jurisdiction of a State, including that over its airspace and its territorial sea."

Article 4.7 was adopted, as amended.

Article 4.3 and 4.5 were adopted, with a reservation by Egypt.

#### **Article 4.1, 4.2, 4.4 and 4.6**

The Representative of Mexico said that the proposals of Mexico had not been understood in their entirety and that consensus had not been achieved on those issues. Therefore, Mexico might have to make a reservation on 4.1 but could accept the other paragraphs.

The Representative of Australia said there had been confusion between "receive" in 4.1 and "obtain" in 4.4. Australia would like to put on record its view, that in respect of transfers of nuclear material under paragraph 1, the last link in the chain of receiving assurances should always be the exporting State Party and that State should receive those assurances before it exported material. Because Australia had thought that there was also confusion between 4.1 and 4.6 as to the transfer of responsibility so far as "obtaining" assurances was concerned. Australia had had an amendment to put forward but in the interests of moving forward with a convention would not press it providing that Australia's position and interpretation were made clear.

The Representative of Italy said the Italian position was on record in document CPNM/WP/29 of 15 February 1979. In that paper it had been suggested that the existing paragraph 2 be integrated as follows: "If assurances as to the levels of physical protection described in Annex 1 have not been received in good time, the importing State Party shall take appropriate bilateral steps, as far as practicable to assure itself that the transport will take place in compliance with the aforesaid levels." He said that the Italian Delegation was also ready to accept the amendment proposed by other Delegations and to limit itself to the addition in the third line of the words "as far as practicable" after "State Party has received assurances." The Italian Delegation expected to see trace of the amendment suggested by several Delegations in the new text.

The Representative of Greece supported the Italian proposal to add "as far as practicable" to 4.2 as it was in 4.3.

The Representative of Turkey said that his Delegation wanted “from a State not party to this Convention” deleted and indicated a possible reservation if it were not. The Representative of Niger had supported this in the working group.

A number of Representatives intervened on this point including Australia, Finland, Argentina, United States, Romania, Turkey, Niger and Italy. Points made in the discussion included:

- The position would imply a combination of paragraphs 1 and 2;
- Both exporter and importer States would be required to receive assurances and this would double the number of countries to receive assurances;
- Paragraph 2 was intended specifically to cover the situation of States not party to the Convention;
- For consistency “physical” should be added to “protection”, whenever the latter appears in the text;
- Paragraph 2 was inserted to make distinction between States Parties and States not party;
- The combination of paragraphs 1 and 2 was the initial proposal of two years ago;
- The discussion should not be re-opened.

After the discussion, Delegations which had indicated the possibility of reservations or amendments withdrew them. The Representative of Italy said that he withdrew in a spirit of compromise, but reserved the possibility of a further interpretative reservation.

Article 4.1, 4.2, 4.4 and 4.6 were adopted.

### **Article 13**

The Chairman referred to the alternative texts contained in documents CPNM/WP/39/Rev.1, CPNM/WP/48 and a new text proposed by Poland, German Democratic Republic and Romania, in document CPNM/WP/55. Representatives of Poland, Peru, India, the Community and Mexico intervened in the discussion. Points made included:

- The new text was a compromise attempt though CPNM/WP/48 was to be preferred;
- The only change in the new text was in the compulsory procedure;
- There was no solution if parties could not agree on procedure.

The meeting agreed with the Chairman that it was not prepared to adopt the new text. An ad hoc working group consisting of Australia, the Community, France, German Democratic Republic, Poland, Romania, Peru, USSR, United States and India was set up. The Representative of Peru agreed to be co-ordinator.

## **Article 1**

The Chairman announced that the working group, co-ordinated by the Representative of Spain, had agreed that the text of the definition of “international nuclear transport” should remain as set out in CPNM/77/Corr.1. The working group had requested him to make the following statement:

“The definition of ‘international nuclear transport’ as in CPNM/77/Corr.1 shall remain unchanged.

“Concerning the definition of ‘international nuclear transport’, a facility is any facility where effective measures for the physical protection of nuclear material can be taken in accordance with the national law of the State where the facility is located and in accordance with this Convention. The State where the facility is located may determine which facility is the departure and arrival facility, respectively. Further, the definition of international nuclear transport is without derogation from the responsibility of a State for physical protection of nuclear material in its territory.

“The Delegation of India expressed its reservation to the definition of international nuclear transport in CPMN/77/Corr.1. According to this delegation the term ‘facility’ in the definition should be replaced with ‘territory’, along with some consequential changes, since India firmly believed that the Convention should apply only when nuclear material was in the course of international nuclear transport and not located within the territory of a State.”

The text was referred to the Drafting Committee.

## **Article 12.3**

The Representative of Greece, as co-ordinator of the working group, reported that there was unanimous agreement on the text as set out in CPNM/WP/56, both on content and its position as Article 12.3. He said that the working group considered that the new paragraph did not contain anything affecting the rights and obligations of States under other international treaties, especially consular conventions.

The Representative of India said that his Delegation accepted the new paragraph but without prejudice to its position on Article 2 of the Convention.

A number of Representatives discussed the meaning of the words “requiring” and “obliging” both in English and French. These included the Representatives of Romania, Peru, Italy, Greece, France, Tunisia, Canada, Belgium, Brazil, Panama and Switzerland.

It was decided that the concept of creating an obligation should be incorporated in the wording.

Article 12.3 was passed to the Drafting Committee.

## **Article 2**

Consideration of Article 2 was postponed.

## **Article 6 bis**

It was decided that efforts for compromise should continue.

The Chairman adjourned the meeting.

## **Rapporteur's Report on Meetings held on 24 October 1979**

The Chairman referred to the Daily Reports which were to serve as record of the meeting. CPNM/Daily Report/15 and 16 were adopted and consideration of later Daily Reports was postponed.

## **Article 6 bis**

The Chairman referred to document CPNM/WP/58 which was a proposal by the ad hoc working group to add a new paragraph 4 to Article 6 bis as set out in document CPNM/77/Corr.1.

The Representative of India, on behalf of the working group, said that the new text was a compromise which added the exporting State and the importing State to those having competence, but not the transit State, as the Indian Delegation had suggested. As far as the Indian Delegation was concerned, the ordering of the paragraphs was wrong. Also it was his view that the phrase "consistent with international law" in the new text was misleading, as there was hardly any international law concerned with the movement of nuclear material. The Representative of the Federal Republic of Germany appealed for retention of the phrase.

The Chairman said that the Drafting Committee would deal with the question of order of paragraphs.

Article 6 bis was referred to the Drafting Committee.



## Article 20

The Chairman said that he was informed that there was general agreement that the Director General of the IAEA should be Depositary.

The first paragraph of Article 20 was referred to the Drafting Committee.

Discussion on the second paragraph was postponed.

## Article 2

The Chairman referred to document CPNM/77/Corr.1 and a new amendment initially sponsored by Brazil and Belgium in document CPNM/WP/57.

The Representative of Belgium said that his Delegation had been associated with Brazil in sponsoring the new amendment of Article 2.7. He said that this might not be a simple drafting matter and could be a matter of substance. However, in the interests of expediting the Convention, Belgium would prefer not to sponsor the amendment, particularly as the Belgian amendment adding "and 5.3" to the first line of Article 2.2 had been accepted.

*The following Representatives intervened in the discussion: India, Spain, Brazil, United States, Netherlands, Australia, the Federal Republic of Germany, Yugoslavia, Japan, Cuba, United Kingdom, Italy, Venezuela and Argentina.*

The Representative of Spain suggested a number of amendments, the purpose of which would be to add logic and clarity to the article.

Points made in the discussion included:

- A new working group should be established to consider the new formulation;
- Article 2 in its present form was the result of much discussion and work and was the only basis for wide adherence by States represented at the meeting;
- The present form hinged on a fundamental agreement that the Convention would not establish levels of physical protection domestically but only for international transport; however, the Convention set up co-operative mechanisms that could be used domestically;
- The meeting should not lightly embark on a new presentation at this late stage;
- *The additional Spanish paragraph would vitiate most of the articles of the Convention;*
- The present form was the result of delicate balance and careful compromise and should not be changed;
- The question of the substance of Article 2 should not be re-opened;
- The new proposals would need to be closely examined;

- The proposal by Brazil enumerated articles in a manner that could cause great difficulties, for example, in arbitration issues;
- There was time to look at the scope of the Convention;
- Spain and Ecuador had proposed about two years ago a committee on scope and objectives; as the first session had elected three Vice-Chairmen and only two of them were engaged with the committees on legal issues and technical issues, the committee on scope and objectives met under the third Vice-Chairman, but only very briefly;
- The present text did not represent an equilibrium of views or a balance satisfying all delegations;
- The time factor should not be mentioned as an excuse to delay consideration of a text;
- The subject of scope should be studied seriously as it related to the sovereignty of States;
- The most important issue of the Convention was scope and its consideration had been continually postponed.

The Representative of Argentina said that his Delegation was prepared to examine any proposal on Article 2.

The Chairman recalled that the question of scope had been extensively discussed at a meeting from 4–7 September 1978, chaired by Mr. Estrada Oyuela of Argentina.

## Articles 12 bis and 17 bis

The Chairman referred to document CPNM/WP/54/Rev.1, the new text produced by the working group.

On behalf of the group, the Representative of Poland said the group had achieved a compromise by keeping the substance and making two drafting amendments in paragraph 2 by adding “at intervals of not less than five years” at the beginning and “with the same objective” at the end of the paragraph. The group proposed that Article 17 bis should be retained without change as in document CPNM/85. The compromise was a delicate one. He was also authorized to state that the working group considered that a conference held according to Article 17 bis could be held at the same time, immediately before or following a conference convened according to Article 12 bis.

In the discussion, the following Representatives intervened: Tunisia, India, Belgium, Indonesia, Poland and Spain. Points included:

- The new texts overturned the system agreed at the February conference which provided for a single system of conferences which would be evaluation conferences;
- The new texts provided for two systems – the academic or evaluation type and the more political one seeking solutions;
- There was no longer this intangibility of the Convention for five years and a conference could be held even after a year;
- Paragraph 1 of Article 12 bis in the new text deliberately excluded the scope of the Convention whereas the Review Conference could discuss the preamble, articles and annexes; therefore, conferences under 12 bis should have the opportunity to discuss scope.

The Representative of Belgium said that her Delegation had stated in February that her Delegation must formulate a reservation on these articles until the preamble had been studied in Plenary.

The Chairman commented that there was a misunderstanding on the first paragraph of 12 bis.

Article 12 bis as in document CPNM/WP/54/Rev.1 and Article 17 bis as in CPNM/85 were adopted.

## EGYPTIAN PROPOSAL

The Chairman reminded delegations of the proposal by Egypt set out in document CPNM/Daily Report/14<sup>8</sup> and in CPNM/WP/28<sup>9</sup> on the establishment of a special fund to assist developing countries in implementing the Convention.

The Representative of Egypt said that implementation of the Convention would mean financial burdens that would discourage some countries from joining.

The following Representatives intervened in the discussion: Turkey, United States, Belgium, Romania, Tunisia, Venezuela, Switzerland, Panama, Australia, Paraguay, USSR, Yugoslavia, Canada, Finland, Poland, Japan, Republic of Korea, Greece, Egypt, Ecuador and India. Points made in the discussion included:

- There was much sympathy for the objectives of the proposal;
- The Convention dealt with standards, crimes, etc. and not with domestic protection;

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<sup>8</sup> See Daily Report on Meetings held on 16 February 1979, Article 5, paragraph 4.

<sup>9</sup> See under: Reports – Comments and proposed amendments, below.

- The proper way to deal with the matter would be through the existing technical assistance channels of the IAEA and bilateral assistance;
- The Convention was not an appropriate legal instrument for a fund;
- Any measure making a contribution towards the implementation of the Convention by the largest possible number of States was welcome;
- Any measure under the Convention presupposes considerable expenditure on equipment and techniques and therefore the Egyptian proposal was pertinent and compatible because it helped developing countries implement the Convention;
- This was not a question of technical assistance but of specific assistance;
- A compromise could stress that the fund was aimed at accelerating implementation of the Convention;
- The term “affluent countries” was ambiguous and any contributions to such a fund should be provided on the basis of assessment as for the IAEA;
- The fund was a good idea as help was needed, especially for transit countries;
- The idea carried considerable implications, for example, in that the function of the depositary would be unusual in normal treaty terms;
- The idea needed more development and Delegations needed more guidance than provided in Egypt’s proposal;
- The proposal introduced a change of fundamental character that required much consideration;
- It was uncertain whether this Convention was the appropriate international instrument for such a fund;
- If the proposal were pressed, it would be impossible to obtain a Convention at this meeting;
- It would be difficult now to reach a concrete result in discussing the proposal;
- The Convention was not a suitable document to express a provision dealing with technical assistance;
- The proposal would introduce a number of practical problems which were complex and required time for study;
- It was more practical to use either existing multilateral or bilateral means;
- What expenses would the Convention really create?

- It would seem that a transit country could have expenses but the carrier should have to pay them;
- The matter of expenses should be studied further and could be considered at the Review Conference;
- The meeting could adopt a resolution stating that the matters covered by the proposal should be studied;
- The Egyptian proposal deserved great attention but could be dealt with at the Review Conference so that there would be no delay now.

The Representative of Panama suggested some drafting changes in the text of the Egyptian proposal.

The Representative of Egypt thanked all delegations for their support and expressions of sympathy. He said that any kind of recommendation would help to encourage more countries to adhere to the Convention.

The Representative of Japan suggested that the IAEA could be asked to study the feasibility of setting up a fund within its existing framework.

The Representative of India said that his Delegation was opposed to reference to the IAEA which would only mean shelving the matter. It was a simple matter for the meeting to decide on a fund or not. The Representative of Belgium said that it was for the conference to decide how such a fund should be established.

After a discussion about to whom the IAEA would report the results of a feasibility study, the meeting agreed with the Chairman that the IAEA would report to those bodies it normally reported to in accordance with its Statute. The meeting agreed that the IAEA should undertake a feasibility study on the establishment of a voluntary fund to assist developing countries in implementing the Convention.

## Article 13

The Chairman referred delegations to document CPNM/WP/55/Rev.1, the new text for Article 13 proposed by the working group. On behalf of the group the Representative of Poland pointed out a correction: in 5.3 “notification” should be “ratification”.

Representatives who intervened in the discussion were Poland, Egypt, Switzerland, France, Yugoslavia, Panama, India, Romania, Tunisia, Turkey and Denmark. Points in the discussion included:

- Because it was decided that the Director General would be the depositary, could not the Director General appoint the arbitrators?
- The depositary and arbitrating functions were different and the Secretary General of the United Nations was to be preferred;

- Only one person should be designated to appoint arbitrators;
- Paragraph 3 meant that the moment any Party found it difficult to accept one mechanism the other Party would not be bound by any other mechanism;
- Any wording that could help remove problems in the text would be welcome;
- Parties would not be in a position of having no resort to settlement;
- Delegations that had insisted on the compulsory arbitration system and reference to the International Court of Justice should satisfy themselves on the wording;
- Proper drafting would not affect the substance of the compromise achieved in reaching the present text;
- Under the text delegations should not find that they could not use the settlement mechanism of their choice.

The Chairman said that he felt that there were no problems of substance but some drafting changes were required. At his suggestion it was agreed that the working group, co-ordinated by Poland, would convene again to make drafting changes.

It was agreed that India would join the working group on Article 14.

The Chairman adjourned the meeting.

### **Rapporteur's Report on Meetings held on 25 October 1979**

(21, Corr.1)

The Chairman referred to the fourth report of the Drafting Committee set out in document CPNM/87.

#### **Article 1, third definition**

Article 1, third definition was adopted.

#### **Article 6 bis**

It was suggested that Article 6 bis was linked with Article 2 and its consideration could be deferred until after a decision on Article 2. Consideration was postponed.

## **Article 7**

Article 7 was adopted without comment.

## **Article 12.3**

Article 12.3 was adopted, with minor drafting corrections to the French text.

## **Article 20.1**

Article 20.1 was adopted without comment.

## **Article 14**

The Chairman reminded the meeting that a working group had been established on Article 14 and its text was set out in CPNM/WP/42.

The Director of the Legal Division of the IAEA, as co-ordinator of the working group, said that the group had met on several occasions and had initially focussed on provisions for participation by regional integration organizations and international organizations. After examination of existing precedents and a fine appreciation of the positions of delegations the closely considered compromise text in CPNM/WP/62 was agreed.

In the following discussion, there were interventions by the following Representatives: Greece, Austria, Community, Italy, India, Canada, Australia, Czechoslovakia, Egypt, Paraguay, Luxembourg and Cuba. Points made in the discussion included:

- There was no reason why there should be two places for signature; it should be only Vienna;
- It was reasonable and economic to have only one point at which to deposit instruments;
- In order to confirm the position of the Commission for the European Communities, the statement made at the September meeting, in document CPNM/82, should be attached to the official documents of the Conference;
- Member States of the Community and the Community itself would deposit instruments at the same time;
- On the question of a contact point it was suggested that States could communicate to both the Community and Member State, and the Community and the Member State would react individually or jointly according to their respective competences;

- Accession by the Community was essential;
- It would be convenient to have the Convention open for signature in both New York and Vienna at the same time;
- A two-years period was too long for signature: until the end of 1980 would be sufficient.

In answer to questions by the Representative of India, the Representative of the Community said that, on voting, if Community competence was involved then the Community would vote; if Member States competence, then they would vote; and if it were a case of mixed competence, then the Community would work out how the voting would be carried out — there would be no splitting of votes. On international nuclear transport, the Community would be bound by the Convention. On the sharing of competences, this was a question that would be settled internally between the Community and Member States.

The Representative of Egypt raised a question whether the text meant that the Convention was open for signature for two years, then entered into force and after that was open for accession. The Legal Director said that this depended on provisions for entry into force. If the Convention entered into force then the provisions of paragraph 3 became operative. But it was possible that during two years an insufficient number might sign and it was for the meeting to provide for that situation.

The Representative of Yugoslavia proposed that the words “by all States” should be included in paragraph 1 if they were included in paragraph 3.

The Representative of Luxembourg said that everything would depend on when the Convention entered into force. He proposed an amendment that paragraph 3 should read “The Convention shall be open for accession at the end of the period of two years provided for in paragraph 1.”

It was then agreed that Article 14 should be passed to the Drafting Committee. Later, however, during the discussion on Article 17 in which the Representative of Indonesia said that the word “accession” should be included in Article 17.1 and 17.2, the text of Article 14 was re-opened.

The Legal Director informed the meeting that this was a substantive point, extensively discussed in the Working Group on Legal Issues in February. The use of the word “accession” had been rejected there. It was theoretically possible to include accession as a procedure which would be counted to bring a treaty into force but it was not commonly done.

In this discussion, the following Representatives intervened: Panama, Austria, Greece, United States, Australia, Ecuador, India, Cuba, Tunisia. The Representative of India said that the final clauses could only be provisionally adopted and the proper course was to consider them after the adoption of the other clauses.

There was a general discussion on the merits of including “accession” as one of the procedures to be counted in bringing the Convention into force.



After a recess, the Chairman announced that there was agreement on the text of Article 14 with the insertion in paragraph 1 of the words "by all States" after "signature", and the replacement of "for a period of two years" at the end of paragraph 1 by "until its entry into force." The proposed amendment by Luxembourg was relinquished and paragraph 3 as shown in CPNM/WP/62 retained.

Article 14 was passed to the Drafting Committee.

Later when the meeting was considering the fifth report of the Drafting Committee as outlined in document CPNM/89, the Representative of Romania said that he had some drafting amendments to propose to 14.4. When compared to the initial starting point of paragraph 4, the meeting now had a situation where it was open for a number of organizations to sign. It was now possible for international organizations to join the Convention, not only by accession but also by signature. Those organizations of a regional integration nature were the first to be considered because they involved transfers of competence or jurisdiction. Other international organizations were now considered and a criterion was needed to guide. The Representative urged his proposal as a means of clarifying the text and avoiding misunderstanding. He proposed that sub-paragraph 4 (a) be amended to provide that "the Convention shall be open for signature or accession by regional integration organizations and other international organizations to which the States members transferred, according to the constitutive acts of the respective organization, their competences to negotiate, conclude and implement international agreements in matters covered by this Convention." He proposed also to add to sub-paragraph 4 (d): "and provided that this voting system has been expressly accepted by the States members of the respective organizations."

In the following discussion, the following Representatives intervened: Tunisia, Japan, Switzerland, Niger, United States, Hungary, CEC, Belgium, Panama, Poland, the German Democratic Republic, India, USSR, Peru and Argentina. Points made in the discussion included:

- The new text as shown in document CPNM/89 was a compromise and intended to ensure the position of the Community;
- The hope was expressed that the Community would show the same spirit of co-operation and tolerance as delegations had shown towards the Community;
- The concern for clarity expressed by Romania was shared;
- There was sympathy for Romania's proposal which was an improvement but the Romanian amendment might give rise to lengthy discussions;
- The Romanian amendment could be supported if there was majority support but was not acceptable if it delayed proceedings;
- The Romanian proposal advocated major changes, not just in drafting;

- The issue of participation by the Community was an extremely contentious one and there had been great difficulty achieving a compromise;
- The Romanian amendments could risk negating certain elements of the compromise text;
- Delegations had gone to the limits of their flexibility in reaching the compromise and while it was not fully satisfactory it could be lived with;
- The meeting should not enter into a discussion on the competence of an international organization which was determined by its own internal acts;
- The Romanian proposal was praiseworthy but at this stage of a long negotiation even problems of form and procedure became important;
- It is obvious that international organizations to which Member States have not transferred competence in respect of the negotiation, conclusion and application of international agreements could neither exercise the rights and fulfil the responsibilities which the Convention attributes to States Parties, nor exercise any right of voting;
- This Convention might become a precedent and in that respect the competence of organizations was very relevant.

Consideration of Article 14 was postponed for a short time. After some informal consultations between interested delegations the Romanian Representative suggested that at least a clarifying amendment to the existing text should be made, namely, to insert after “sovereign States and has” the words “received, according to the constitutive acts of such an organization.” He reiterated also his previous proposal for an addition to sub-paragraph 4(d).

One delegation suggested the establishment of a working group and the Representative of Romania repeated that his proposal would help the Convention. He favoured further consideration by the working group if the meeting agreed. However, because of the procedural difficulties that this might cause, and in order not to jeopardize the conclusion of the Convention, he might consider reserving his position on paragraph 4(a) and (d). After discussion of the possibility of making a reservation, the Chairman asked for further guidance on whether further discussion of substance was likely to be productive.

The Representative of Peru considered that the Romanian proposals might assist him in avoiding possible reservations.

The Representative of the Community said that he would welcome a statement of reservation by the Representative of Romania. He feared that re-opening the issue would create problems and was unlikely to be fruitful.

The Representative of Romania made the following statement: “In the opinion and interpretation of the Romanian Delegation of Article 14 relating to

the participation of international organizations in the Convention this refers only to such an organization to which the Member States have transferred their competence to negotiate, conclude and apply on their own behalf international agreements and to exercise the rights and obligations which derive therefrom including the exercise of the right of voting.”

## **Article 17**

The Chairman referred to the text of Article 17 as shown in CPNM/83/Rev.1. He said that the meeting had to decide on the number in square brackets.

The following Representatives intervened in the discussion: German Democratic Republic, Brazil, India, Federal Republic of Germany, Australia, United States, Hungary, Canada, Austria, Egypt, Belgium, Japan, Cuba, Finland, Denmark, Tunisia, Switzerland, Panama, Italy, Greece and Yugoslavia.

After a general discussion in which figures of 10, 15, 20, 25 and 35 were mentioned, the meeting agreed to the Chairman’s suggestion of 21.

The meeting then considered the proposal by the Representative of Indonesia on “accession”, as reported above.

Article 17 was adopted.

## **Article 19**

The Chairman reminded delegations that Article 19 was linked to Article 14. He referred to the texts in document CPNM/77/Corr.1, an amendment by Japan in document CPNM/WP/42 and an amendment by Poland in document CPNM/WP/53.

The Representatives of Japan, the Community, Poland, Egypt and India suggested further drafting changes. To a question from the Representative of the Federal Republic of Germany, the Chairman said that it would be placed in the record that the dates of actions under Article 19 would be provided with all communications.

Article 19, as shown in document CPNM/77/Corr.1 with the amendments proposed by Japan and Poland, was adopted.

## **Article 20, second paragraph**

The Chairman referred to the text of the second paragraph of Article 20 as outlined in document CPNM/77/Corr.1. He read out a suggested text that deleted the words “by their respective governments” in the first and second lines and the insertion of the words “done at Vienna in duplicate and” after “Convention” in the second line.

The Representatives of Poland, India, Peru and Egypt intervened in the discussion. Some drafting changes were suggested and the Representatives of

India and Peru stated that they were not authorized to sign any final document. The Chairman said that the paragraph was a provision enabling governments to sign the Convention and had nothing to do with a document concerned with the closing of the Meeting.

It was agreed to pass the second paragraph of Article 20 to the Drafting Committee.

After the Drafting Committee had reported back in CPNM/89, there was a general discussion of the provision.

The meeting agreed that preparation of the provision should be left to the Director of the Legal Division who should take into account legal authorities.

### **Article 13**

The Chairman referred to the text of Article 13 as shown in document CPNM/WP/55/Rev.2 which was the result of compromise. It was noted that the French Delegation had withdrawn as a sponsor of this proposal.

Article 13 was adopted.

### **Article 2**

The Chairman referred to the compromise texts as outlined in documents CPNM/WP/61, CPNM/83/Rev.1 and CPNM/86, and also to the Belgian amendment, adding the words "and 5.3".

The Representative of India said that he wanted to reiterate the settled position of the Indian Government. He said that the new proposal in document CPNM/WP/61 made the text more complicated. The Convention should not exclude nuclear material for military use nor should it be concerned with nuclear material in domestic use, storage or transport. The Representative requested that the Indian position as set out in document CPNM/86 be reflected in the record.

Other Representatives who intervened included: Argentina, Italy, United States, Tunisia, the Federal Republic of Germany, Denmark and Australia. The Representative of Italy said that the new text lost some points and it was not clear how it had improved the old one. He indicated that his instructions were very firm that the text outlined in CPNM/83/Rev.1 should be maintained. The Representative of Argentina said that the Argentine position was well-known. Other points in the discussion included:

- The text of document CPNM/83/Rev.1 was preferable but the new text could be accepted;
- The new text did not change the substance and the clarification made was a normal one;
- A working group was necessary.

The Chairman agreed with the suggestion for a working party and the following Representatives were nominated: Argentina, Australia, Austria, Brazil, Belgium, Cuba, the Federal Republic of Germany, Denmark, India, Italy, Japan, Netherlands, Romania, Spain, Tunisia, USSR, United States, Venezuela and Yugoslavia, with the Chairman as co-ordinator.

Later, the Chairman introduced a compromise text as shown in CPNM/WP/64 and said that it was a fragile text. The Representative of Italy said that the new compromise represented an improvement worthy of interest and attention. The new text, however, did not obtain the clearance of his authorities which were objecting to the further shrinking of the scope of the Convention that paragraph 3 of the new text was implying. Without wanting to prevent the consensus at this late stage of the negotiations, he wished that his statement be placed on the record with a possible interpretative reservation on this matter. Other Representatives who intervened in the discussion were Peru, Argentina, Cuba, India, Switzerland, Yugoslavia and Ecuador. Points made included:

- The narrowing of the scope was to be regretted;
- The exclusion of nuclear material for military use and the inclusion of nuclear material in domestic use, storage or transport was to be regretted.

The Representative of Switzerland said that his Delegation reserved the right of consideration by his Government and the possibility of a reservation later.

Article 2 was adopted, as in document CPNM/WP/64.

#### **Article 6 bis**

The Representative of France said that his delegation was not currently in a position to give final approval to the additional fourth paragraph in document CPNM/87. This provision introduced new elements to the field of criminal jurisdiction, necessitating a thorough examination of their legal implications.

The Representative of India proposed the addition of the words “of nuclear material” to the end of 6 bis 4.

Article 6 bis was adopted, with this amendment.

#### **Preamble**

The Chairman introduced the Preamble as shown in document CPNM/77/ Corr.1.

The first four paragraphs were adopted separately without comment.

#### *Fifth paragraph*

The Representative of Belgium referred to the Belgian amendment as shown in CPNM/WP/36. The Representative of the Federal Republic of Germany said that he would prefer not to have the amendment but that if there was support for it he could agree but would propose to add the words "and this Convention" to the Belgian amendment.

The Representative of India referred to his amendment as shown in document CPNM/Legal Issues/35. He proposed inclusion of the following words at the end of the paragraph: "in international transport". The following Representatives intervened in the discussion: Peru, Cuba, United States, Argentina, Switzerland, Tunisia, Turkey, Italy, Brazil, Austria, Canada, Australia, Netherlands, Venezuela and Spain.

It was agreed to accept the Belgian amendment together with that of the Federal Republic of Germany. The Indian amendment was not agreed.

The fifth paragraph was adopted, with the Belgian and Federal Republic of Germany amendments.

#### *Sixth paragraph*

The Representative of the United Kingdom withdrew a proposed amendment changing the words "safe transfer" to "secure transport."

The sixth paragraph was adopted.

#### *Seventh paragraph*

Adopted without comment.

#### *Eighth paragraph*

The Representative of India proposed an amendment to delete all words after "military purposes." The Representatives of Austria, United States, USSR, Peru, Argentina and Finland intervened in this discussion.

The eighth paragraph was adopted.

#### **Title of Convention**

The Chairman said that the Representative of India had made a proposal outlined in document CPNM/Legal Issues/35. The Representatives of the United States and India intervened in the discussion.

The Indian amendment was not accepted.

The title "Convention on the Physical Protection of Nuclear Material" was adopted.

## Article 14

The Representative of Argentina questioned the inclusion of a specific date in paragraph 1 of Article 14 and suggested that it should be deleted. He said that Governments might not be able to meet this date.

The Chairman said that there would be substantive problems if no date was mentioned.

The Representative of Argentina asked that his statement be included in the record. He said that it was open to his Government to maintain its reservation as not once it had examined the draft of the Convention, he was referring to the reservation made by his Delegation at the February meeting.

The Chairman adjourned the meeting.

## Rapporteur's Report on Meetings held on 26 October 1979

(22)

The Chairman said that Daily Reports of the February meeting had to be adopted. Comments on Daily Reports 10–14 had been incorporated and recent amendments would be taken into account.

Daily Reports 10–14 were adopted.

The Chairman said the Daily Reports 15 and 16 of the present meeting had already been adopted and then proceeded to deal with the remaining Daily Reports. Several Representatives referred to corrections and changes they had requested. The Representative of France said that Daily Reports 19, 20 and 21 were not translated into French yet and he would like to reserve the possibility of later corrections.

On Daily Report 19 the Representative of Peru said that he had drawn attention the previous night to the fact that on page 4 of Daily Report 19 the English rendering of Article 4.7 was not a correct rendering of the Spanish text. Speaking on behalf of all the Latin American countries he had to insist that the paragraph be changed to the Spanish version as shown in CPNM/85. The Chairman postponed discussion until consideration of Article 4 in the final text of the Convention.

Daily Reports 17, 18, 20 and 21 were adopted at that stage.

## FINAL TEXT

The Chairman referred to the document containing the final text and also said that the first page containing the Title and the Preamble were now receiving their third reading and had been referred by the Drafting Committee.

The title, "Convention on the Physical Protection of Nuclear Material", was adopted.

The Representative of Belgium said that in the French text most of the paragraphs needed corrections of style. Some of the language used was not legal language and he would want to confirm its exactness later. He would have to reserve until the text could be reviewed later. The Chairman said that this was supposed to have been the work of the Drafting Committee. The Representative of France said that the difficulty was that a number of terms translated from English to French were not legal terms in French. The Representatives of Argentina and Peru referred to similar problems in Spanish and the Representative of Egypt referred to possible problems when the text would be translated into Arabic.

The Representative of Switzerland said that this was not a new problem. He said that the meeting had worked on an English text and this should be confirmed and then translations into other languages should be left to the Secretariat with the co-operation of Delegations using those languages. The Representative of France said that he did not think these were comments on substance. As had been done before, the text would be referred to legal authorities in France and then returned to the Secretariat.

The Representative of Cuba drew attention to the fact that the numbers of Articles in the final text were different from those used in document CPNM/77/Corr.1. The Chairman said that a correlation table would be circulated with the records.

Other Representatives who intervened in this discussion were Italy, United States, Luxembourg and Greece.

## **Preamble**

The Preamble was adopted, with comments on translations.

## **Article 1**

Article 1 was adopted, without comment.

## **Article 2**

The Representative of India again referred to his Delegation's dissent from and dissatisfaction with Article 2.

Article 2 was adopted.

## **Article 3**

Article 3 was adopted without comment.



#### Article 4

The Representative of Peru said that he was speaking on behalf of Spanish-speaking Delegations which considered that the version of 4.7 shown in the Spanish text was different from that agreed. He asked Delegations to consider the deletion of the word "the" before "jurisdiction" in the English text. The Spanish translation would then be in agreement with the text shown in CPNM/85.

The Chairman recalled that the word "the" had been inserted in the text by the Plenary.

Article 4 was adopted, with the deletion of "the" before "jurisdiction" in 4.7.

#### Articles 5 and 6

Adopted.

#### Article 7

The Representative of Belgium said that he did not want to go back to substance or reservations but there was an important problem of interpretation in this article. Two new concepts "alteration" and "dispersal" had been introduced into the list of offences, interpretation of which would have an effect on extradition proceedings. He requested clarification on the content of these concepts so that he could explain it to his authorities.

The Representative of the United States said that he could not give a complete explanation on such short notice. However, he understood the term "alteration" to include changes made to the form or content of nuclear material. Such changes might be made physically or by various chemical processes. The term "dispersal" referred to the spreading of nuclear material.

Article 7 was adopted.

#### Article 8

The Representative of Luxembourg said that his Delegation was not able at present to give final approval to Article 8.4 because it added new elements on penal competence that necessitated further examination.

Article 8 was adopted.

#### Articles 9 and 10

Adopted without comment.

## **Article 11**

The Representative of India suggested a deletion. The Representative of Cuba asked for the record to show that his Delegation had reservations on Article 11, as shown in page 2 of Daily Report 19.

In the discussion on the Indian suggested deletion, the following Representatives intervened: Federal Republic of Germany, Poland, India, Yugoslavia, Switzerland, United Kingdom, Denmark and Hungary. The Representative of Turkey said that Article 11 required more detailed consideration and Turkey might want to make a reservation.

The Chairman noted that there was strong opposition to the Indian deletion. Article 11 was adopted.

## **Articles 12, 13 and 14**

Adopted without comment.

## **Article 15**

Article 15 was adopted, to read "The Annexes constitute an integral part of this Convention."

## **Article 16**

Adopted without comment.

## **Article 17**

The Representative of Turkey said that Turkey would not consider itself bound by Article 17.2.

The Legal Director advised that for reservations provided for by the Convention to be sure of having effect, they should be made in connection with formal adherence to the Convention. A reservation made at this meeting for purposes of Article 17.2 would not be very reliable. This was supported by the Representative of Poland.

At this stage, the Representative of the United Arab Emirates said that since the Arabic translation of the text of the Convention had not been made available during consideration of the drafting of the Convention, the Arabic version of the text to be prepared by the Secretariat would have to be considered by the Arab States concerned, concerning the formulation of its legal language in concert with the other official United Nations working languages. His Government reserved the right to communicate to the Secretariat any necessary changes to be made to the translation prepared by the Secretary. His Government also reserved the right of

making reservations on certain provisions of the Convention when it decided to become party to the Convention.

Article 17 was adopted.

## Article 18

The Representative of Romania said that, on the basis of his Delegation's proposal and statement recorded on page 5 of the Daily Report 21, of 26 October, and as set out in document CPNM/91, the Romanian Delegation made a formal reservation to Article 18.4, previously described as Article 14.

The Representative of Niger asked what was the meaning of "other nature" in Article 18.4(a).

The Representative of Romania said that perhaps it was the result of appeals not to touch compromise texts and this one had not been touched. The Representative of the United States said that the clause was the result of delicate negotiations and the phrase "other nature" was not without meaning. One very special kind of regional organization was clearly described and the clause implied an admission that there were other kinds. The Representative of Niger said that the concern should be for clarity and he had hoped to be able to justify the wording. He did not believe the United States' explanation was satisfactory and Niger could not support a wording that was very ambiguous. The Representative of Greece suggested that while the Representative of Niger had asked a legitimate question he might be satisfied if his remarks were recorded in the daily report.

Article 18 was adopted.

## Articles 19–23

Articles 19–23 were adopted without comment.

## Annexes 1 and 2

Adopted.

The Draft Convention as a whole was then adopted.

## FINAL ACT

The Chairman reminded Delegations of two hours' informal consultations that morning on the text of a Final Act. He appealed for restraint in considering the text which had already been considered and amended. He said that paragraphs 10–12 were the substantive ones.

The Representative of Peru said that he had a problem in that he had to have the approval of his authorities to sign the text in its present form because of the internal laws.

The Chairman suggested that he might be able to sign if the words “for approval” were added at the end of paragraph 10.

In the ensuing discussion the following Representatives intervened: Belgium, Italy, United States, Federal Republic of Germany, Romania, Greece, Egypt, India, Poland, Panama, Canada, Denmark, and Paraguay.

Finally, it was agreed that the words “for consideration” would be added to paragraph 10.

The Final Act was agreed.

The Chairman thanked all Delegations and all who had helped in the meeting, especially the interpreters.

Signing of the Final Act began at 21.15 hours and was completed by 22.00 hours on Austria's National Day.

**REPORTS OF WORKING GROUPS  
AND DRAFTING COMMITTEE**



**REPORT ON ARTICLES AS THEY STAND AT END OF  
PLENARY MEETING ON 16 FEBRUARY 1979**

(CPNM/77/Corr.1)

Key: \*\*\* Sent by Drafting Committee to Plenary  
     \*\* Sent by Plenary to Drafting Committee  
     \* Produced by Working Groups and sent to Plenary  
     (not yet sent to Drafting Committee)

Note:

1. The following proposals have been tabled in Plenary:

CPNM/WP/25	CPNM/WP/28	CPNM/WP/34
CPNM/WP/26	CPNM/WP/29	CPNM/WP/35
CPNM/WP/27	CPNM/WP/33	CPNM/WP/36

2. Reservations which have been maintained to some parts of the text of the draft Convention are listed on the attachment to this Report.

**PREAMBLE\***

**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,

**Convinced** of the need for facilitating international co-operation in the peaceful applications of nuclear energy,

**Desiring** to avert the potential dangers posed by the unlawful taking and use of nuclear material,

**Convinced** that offences relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offences,

**Aware of the need** for international co-operation to establish effective measures for the physical protection of nuclear material,

**Convinced** that the present Convention should facilitate the safe transfer of nuclear material for peaceful purposes,

**Stressing** also the importance of the physical protection of nuclear material in domestic use, storage and transport,

**Recognizing** the importance of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection,

## ARTICLE 1

For the purpose of this Convention:

- \*\*\* “Nuclear material” means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing.
- \*\*\* “Uranium enriched in the isotope 235 or 233” means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.
- \* “International nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.

## ARTICLE 2\*\*

1. The Convention shall apply to nuclear material used for peaceful purposes while in international transport.
2. With the exception of articles 3 and 4 this Convention shall also apply to nuclear material used for peaceful purposes in domestic use, storage or transport.

## ARTICLE 3\*\*

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.

## ARTICLE 4

- \*\* 1. Each State Party to this Convention agrees not to export or to authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.



- \*\* 2.** Each State Party to this Convention agrees not to import or authorize the import of nuclear material from a State not party to this Convention, unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.
- \* 3.** A State Party to this Convention shall not allow the transit by land or internal waterways, or the entry into its air or sea ports of nuclear material from a State not party to this Convention to a State not party to this Convention unless the State Party has received assurances as far as practicable, that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.
- \*\* 4.** Each State Party to this Convention agrees to apply within the framework of its national law the physical protection at the levels described in Annex I in the event of nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.
- \* 5.** The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1–3 above shall identify and inform in advance States whose territories the nuclear material is expected to transit by land or internal waterways, or whose air or sea ports it is expected to enter.
- If assurances as to the levels of physical protection as described in Annex I have not been received, the responsible State shall, as far as practicable, not cause nuclear material to transit or enter that State.
- \*\* 6.** The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as importing State.

## ARTICLE 5

- \*\* 1.** States Parties to the Convention shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use, or alteration of nuclear material or in the event of credible threat thereof.
- \*\* 2.** In the case of theft, robbery or any unlawful taking of nuclear material or in the event of credible threat thereof States Parties to the Convention shall, in accordance with their national law, co-operate and assist one another to the maximum feasible extent in the protection and recovery of such material and assist any other State that so requests.

In particular:

- (a) A State Party shall take appropriate steps to inform as soon as possible other States which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or threat to it and to inform where appropriate, international organizations;
- (b) As appropriate, the States Parties concerned shall exchange information with each other and/or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:
  - (i) Co-ordinate their efforts through diplomatic and other agreed channels;
  - (ii) Render assistance, if requested;
  - (iii) Ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

- \*\* 3. States Parties to the Convention shall co-operate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

#### ARTICLE 5 bis\*\*

- 1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.
- 2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to applicable national law or regulation or which would jeopardize the physical protection of nuclear material.

#### ARTICLE 6\*

- 1. The intentional commission of any act constituting the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material without lawful

authority shall be made a punishable offence by each State Party to this Convention under its internal law if such act causes or is likely to cause death or serious injury to any person or substantial damage to property.

2. The intentional commission of:

- (a) any theft or robbery of nuclear material;
- (b) any embezzlement or fraudulent obtaining of nuclear material;
- (c) demanding nuclear material by threat of force or by any other form of intimidation;
- (d) any threat:
  - (i) to use nuclear material to cause death or serious injury to any person or substantial property damage;
  - (ii) to commit an offence listed in sub-paragraph (a) in order to compel a natural or legal person, international organization or State to do or refrain from doing any act,

shall be made a punishable offence by each State Party to this Convention under its internal law.

3. The intentional commission of:

- (a) any attempt to commit any offence listed in paragraph 1 and sub-paragraphs 2(a) and (b) of this Article;
- (b) any act constituting participation in any offence listed in this Article, shall be made a punishable offence by each State Party to this Convention under its internal law.

4. Each State Party shall make the offences listed in this Article punishable by appropriate penalties which take into account their grave nature.

#### ARTICLE 6 bis\*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 6 in the following cases:

- (a) When the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to Article 9 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

## ARTICLE 7\*

Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

## ARTICLE 8\*\*\*

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

## ARTICLE 9\*

1. The offences in Article 6 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph 1 of Article 6 bis.

## ARTICLE 10\*\*\*

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in Article 6 shall be guaranteed fair treatment at all stages of the proceedings.

#### ARTICLE 11\*\*\*

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 6, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

#### ARTICLE 12\*\*\*

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties to the Convention.
2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.

#### ARTICLE 12 bis\*\*

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as concerns the preamble, the whole of the operative part and the Annexes in the light of the then prevailing situation.
2. Thereafter, the majority of States Parties to the Convention may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences.

#### ARTICLE 13\*\*

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not

consider itself bound by paragraph 1 of this Article. The other States Parties shall not be bound by paragraph 1 of this Article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this Article may at any time withdraw that reservation by notification to the depositary.

#### ARTICLE 14\*

1. The present Convention shall be open for signature at the Headquarters of the International Atomic Energy Agency in Vienna [from ... to ... and thereafter at the Headquarters of the United Nations in New York] until the date upon which it enters into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention will be open for accession by all States.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

#### ARTICLE 17\*\*

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the [tenth] instrument of ratification, acceptance or approval with the depositary.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the [tenth] instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval, or accession.

#### ARTICLE 17 bis\*

1. At conferences convened pursuant to Article 12 bis, any State Party may propose amendments to this Convention. Amendments adopted at a conference by a two-thirds majority of States Parties to the Convention, shall be promptly circulated by the depositary to all States Parties to the Convention.

2. An amendment shall enter into force for each State Party to the Convention accepting the amendment upon its ratification by a majority of the State Parties

to the Convention and thereafter for each remaining State Party to the Convention on the date of the deposit of the instrument of ratification by it.

#### ARTICLE 18\*\*

1. Any State Party may denounce this Convention by written notification to the depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

#### ARTICLE 19\*\*\*

The depositary shall promptly notify all States of the date of:

- (a) each signature of this Convention;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession;
- (c) any reservation or withdrawal in accordance with Article 13;
- (d) the entry into force of this Convention; and
- (e) any denunciation made under Article 18.

#### ARTICLE 20\*

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the [Director General of the International Atomic Energy Agency] [Secretary General of the United Nations] who shall send certified copies thereof to all States.

\* IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective governments, have signed this Convention, opened for signature at the [Headquarters of the International Atomic Energy Agency in Vienna] [Headquarters of the United Nations in New York] on . . .

## ANNEX I\*\*\*

### LEVELS OF PHYSICAL PROTECTION TO BE APPLIED IN INTERNATIONAL TRANSPORT OF NUCLEAR MATERIAL AS CATEGORIZED IN ANNEX II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:
  - (a) For Category III materials, storage within an area to which access is controlled;
  - (b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
  - (c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.
2. Levels of physical protection for nuclear material during international transport include:
  - (a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing states, specifying time, place and procedures for transferring transport responsibility;
  - (b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces.
  - (c) For natural uranium other than in the form of ore or ore-residue, transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.



## ANNEX II\*\*\*

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	I	Category II	III <sup>c</sup>
1. Plutonium <sup>a</sup>	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated <sup>b</sup>			
	– uranium enriched to 20% <sup>235</sup> U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less but more than 15 g
	– uranium enriched to 10% <sup>235</sup> U but less than 20%		10 kg or more	Less than 10 kg but more than 1 kg
	– uranium enriched above natural, but less than 10% <sup>235</sup> U			10 kg or more
3. Uranium-233	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) <sup>d/e</sup>	

<sup>a</sup> All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

<sup>b</sup> Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.

<sup>c</sup> Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.

<sup>d</sup> Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

<sup>e</sup> Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.

## LIST OF RESERVATIONS

### **Preamble**

India (paragraphs 5 and 8) and the USSR.

### **Article 1**

Brazil, India and Pakistan (definition of “international nuclear transport”).

### **Article 2**

Argentina, Belgium, India, Spain and the USSR.

### **Article 2, paragraph 2**

Romania.

### **Article 3**

Mexico.

### **Article 4, paragraph 2**

Italy.

### **Article 5, paragraph 2**

Belgium, India and the USSR.

### **Article 6 bis**

India.

### **Article 7**

Canada and Japan.

### **Article 9, paragraph 1**

Austria.

**Article 12 bis**

Belgium.

**Article 17 bis**

Belgium, France and the Federal Republic of Germany.

## REPORT OF THE WORKING GROUP ON LEGAL ISSUES<sup>10</sup>

(CPNM/28)

10 November 1977

The Working Group on Legal Issues met on 4, 7, 8 and 9 November 1977 under the Chairmanship of Mr. R. Estrada Oyuela of Argentina.

As a result of various proposals put forward by the participants, the following draft Articles emerged. Members of the Group stressed that the following draft Articles are to be put forward on a preliminary basis and that there is still a great deal of work to be done on them. The inclusion of square brackets in the draft Articles indicates that certain delegations were not, at this stage at least, ready to agree with the content of the passages in question in the form in which they appear at present.

### ARTICLE 6

1. The intentional commission of:<sup>11</sup>

- (a) Any theft, robbery or other unlawful taking of nuclear material;
- (b) Any unlawful use of, damage to or destruction of nuclear material;
- (c) Any theft, robbery or other unlawful taking of a nuclear transport, or any unlawful damage to or destruction of such transport;
- (d) Handling or dealing with nuclear material with the knowledge that such material has been unlawfully taken;
- (e) Any threat to use nuclear material or any threat to damage or destroy nuclear material, or nuclear transports in order to compel a natural or legal person, international organization or State to do or refrain from doing any act;
- (f) Any demand for nuclear material by threat of force, or by any other form of intimidation;
- (g) Any attempt to commit any of the offences listed in sub-paragraphs (a)–(d);
- (h) Any act constituting participation as an accomplice in any offence listed in sub-paragraphs (a)–(g);

shall be made a punishable offence by each State Party to this Convention under its internal law.

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<sup>10</sup> The text of this report is that approved at the plenary session of the meeting held on 10 November 1977.

<sup>11</sup> Some delegations consider that, when the definition of nuclear facilities is prepared, it will be necessary to consider it in the Article concerning punishable offences.

2. The States Parties shall apply the provisions of Articles 6 bis, 8 and 9 of this Convention in respect of offences listed in Article 6 which [are punishable by a term of imprisonment at least as long as that required for an extraditable offence under the extradition laws of the requested State, and which]:

- (a) result in severe injury to persons or severe damage to property;
- (b) endanger, or are likely to endanger, human life or health; or
- (c) involve the use of, damage to or destruction of nuclear material; seizure of [a nuclear facility or] a nuclear transport; or threat to use, damage or destroy nuclear material, [a nuclear facility] or a nuclear transport.

#### ARTICLE 6 bis<sup>12</sup>

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 6.2 in the following cases:

- (a) When the offence has been committed in its territory or by one of its nationals;
- (b) Where the alleged offender is present in its territory and it does not extradite him pursuant to Article 9.

2. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

#### ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall:  
(a) be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights [or, if he is a stateless person, which he requests and which is willing to protect his rights]; and (b) be entitled to be visited by a representative of that State.

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<sup>12</sup> An opinion was expressed that the offences provided for by Article 6.2 are common to most jurisdictions and that in those circumstances there should be no general obligation to undertake extraterritorial jurisdiction in respect of those offences where none at present exists in a certain jurisdiction, particularly if it provides for extradition of its own nationals.

## ARTICLE 8

The State Party in whose territory the alleged offender is present shall, under its jurisdiction established pursuant to Article 6 bis, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.<sup>13</sup>

## ARTICLE 9

1. The offences in Article 6.2 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may<sup>14</sup> at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdictions in accordance with Article 6 bis.

## ARTICLE 10

Any person regarding whom proceedings are being carried out, in connection with any of the offences set forth in Article 6, shall be guaranteed fair treatment at all stages of the proceedings.

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<sup>13</sup> Some delegations expressed their desire to have cleared up in the future as to whether the obligation to submit for prosecution should exist in the absence of a request for extradition.

<sup>14</sup> A delegation was of the view that the words "may at its option" should be replaced by "must".

## ARTICLE 11

1. The States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 6, including the supply of [all] evidence at their disposal necessary for the proceedings.
2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

## ARTICLE 12

1. Each State Party shall inform the Director General of the International Atomic Energy Agency [the Secretary General of the United Nations] of the laws and regulations which give effect to this Convention. The Director General [the Secretary General] shall communicate periodically such information to all States Parties to the Convention.<sup>15</sup>

### Alternative 1

2. The State Party where an alleged offender is prosecuted for an offence set forth in Article 6 shall, in cases where the offence is committed against another State or by the subject of another State or affects the interests of another State, notify the Director General of the International Atomic Energy Agency [the Secretary General of the United Nations] of the final outcome. The Director General [Secretary General] shall transmit the information to all States Parties.

### Alternative 2

2. The State Party where an alleged offender is prosecuted for an offence set forth in Article 6 shall notify the States concerned of the final decision.

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<sup>15</sup> Some States consider that it is not necessary to have this information because it would be provided under the article concerning information on ratification.

## REPORT ON THE WORKING GROUP ON LEGAL ISSUES<sup>16</sup>

(CPNM/47/Corr.1)

20 April 1978

The Working Group on Legal Issues met from 11 to 14 and from 17 to 19 April 1978 under the Chairmanship of Mr. R. Estrada Oyuela (Argentina).

The Group drafted final clauses of the Convention and considered the following items for possible inclusion in the Convention: Participation by international organizations; Legal effects of annexes; Provisional application of the Convention; Reservations; Review Conference; Amendments. The Group decided to take these items up again during the next series of meetings.

The Group undertook a second reading of the draft Article 6 which had been worked out by the Group during the series of meetings in November 1977. As a footnote to the Article indicates, the Group deferred consideration of the inclusion of the means of transport used in transports of nuclear material as well as nuclear facilities, pending inter alia, agreement on the scope of the Convention and on the definitions of nuclear transports and of nuclear facilities. For different reasons various delegations have suggested the deletion of Article 6 paragraph 2.

The Group was unable to review Articles 6 bis to 12.

Agreement on the draft provisions has been reached on a preliminary basis.

The draft Articles 6 to 18 are set out in Annex I to this report.

### ANNEX I

#### ARTICLE 6<sup>17</sup>

1. The intentional commission of:

- (a) Any theft, robbery or any obtaining by fraud of nuclear material;
- (b) Any possession, use, alteration or dispersion of nuclear material without authorization of the competent authorities;
- (c) (Provisionally deleted);

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<sup>16</sup> The text of this report is that approved at the plenary meeting held on 20 April 1978.

<sup>17</sup> The Group agrees that when the scope of the Convention has been determined and definitions of "nuclear transports" and "nuclear facilities" have been provided in Article 1 of the Convention further consideration should be given to the desirability of including in this Article offences involving the means of transport as well as nuclear facilities.



- (d) Any undertaking or arranging for the retention, removal, disposal or sale of nuclear material without lawful authority, or receiving nuclear material, knowing or having reason to know that such material was obtained by an offence mentioned in this paragraph;<sup>18</sup>
- (e) Any threat to commit one of the foregoing offences in order to compel a natural or legal person, international organization or State to do or refrain from doing any act;
- (f) Demanding nuclear material by threat of force or by any other form of intimidation;
- (g) Any attempt to commit any of the offences listed in sub-paragraphs (a), (b) and (d);
- (h) Any act constituting participation as an accomplice in any offence listed in sub-paragraphs (a), (b), (d), (e), (f) and (g);<sup>19</sup>

shall be made a punishable offence by each State Party to this Convention under its internal law.

2. The States Parties shall apply the provisions of Articles 6 bis, 8 and 9 of this Convention in respect of offences listed in Article 6 which:

- (a) Result in severe injury to persons or severe damage to property;
- (b) Endanger, or are likely to endanger, human life or health.

#### ARTICLE 6 bis<sup>20</sup>

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 6.2 in the following cases:

- (a) When the offence has been committed in its territory or by one of its nationals;
- (b) Where the alleged offender is present in its territory and it does not extradite him pursuant to Article 9.

2. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

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<sup>18</sup> The Working Group has deferred the decision as to which of the offences mentioned in Article 6.1 should be included in the final draft of Article 6.1(d).

<sup>19</sup> Certain delegations have expressed the view that in this connection the concept of "conspiracy" (*entente en vue de commettre*) should be considered.

<sup>20</sup> An opinion was expressed that the offences provided for by Article 6.2 are common to most jurisdictions and that in those circumstances there should be no general obligation to undertake extraterritorial jurisdiction in respect of those offences where none at present exists in a certain jurisdiction, particularly if it provides for extradition of its own nationals.

## ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary enquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this Article shall:  
(a) be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights [or, if he is a stateless person, which he requests and which is willing to protect his rights]; and (b) be entitled to be visited by a representative of that State.

## ARTICLE 8

The State Party in whose territory the alleged offender is present shall, under its jurisdiction established pursuant to Article 6 bis, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.<sup>21</sup>

## ARTICLE 9

1. The offences in Article 6.2 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may<sup>22</sup> at its option consider this Convention as the legal basis for extradition in respect of these offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

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<sup>21</sup> Some delegations expressed their desire to have cleared up in the future as to whether the obligation to submit for prosecution should exist in the absence of a request for extradition.

<sup>22</sup> A delegation was of the view that the words "may at its option" should be replaced by "must".

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdictions in accordance with Article 6 bis.

## ARTICLE 10

Any person regarding whom proceedings are being carried out, in connection with any of the offences set forth in Article 6, shall be guaranteed fair treatment at all stages of the proceedings.

## ARTICLE 11

1. The States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 6, including the supply of [all] evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

## ARTICLE 12

1. Each State Party shall inform the Director General of the International Atomic Energy Agency [the Secretary General of the United Nations] of the laws and regulations which give effect to this Convention. The Director General [the Secretary General] shall communicate periodically such information to all States Parties to the Convention.<sup>23</sup>

### Alternative 1

2. The State Party where an alleged offender is prosecuted for an offence set forth in Article 6 shall, in cases where the offence is committed against another State or by the subject of another State or affects the interests of another State,

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<sup>23</sup> Some States consider that it is not necessary to have this information because it would be provided under the article concerning information on ratification.

notify the Director General of the International Atomic Energy Agency [the Secretary General of the United Nations] of the final outcome. The Director General [Secretary General] shall transmit the information to all States Parties.

## Alternative 2

2. The State Party where an alleged offender is prosecuted for an offence set forth in Article 6 shall notify the States concerned of the final decision.

## ARTICLE 13<sup>24</sup>

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this Article. The other States Parties shall not be bound by paragraph 1 of this Article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this Article may at any time withdraw that reservation by notification to the Depositary.

## ARTICLE 14<sup>25</sup>

1. This Convention shall be open for signature by all States [at the Headquarters of the United Nations in New York] [at the Headquarters of the International Atomic Energy Agency in Vienna] and shall remain open for signature until the date upon which it enters into force.

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<sup>24</sup> Some delegations proposed provisions on a Review Conference to be included in the Convention.

<sup>25</sup> In regard to Article 14, paragraph 1, the Working Group noted that it might prove desirable to consider prescribing a date upon which the Convention shall be open for signature. It might not be practicable for the Convention to be open for signature immediately upon its adoption if, for example, the Convention is adopted at a conference in Vienna but is to be open for signature in New York.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. After its entry into force, this Convention will be open for accession by all States.
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

#### ARTICLE 15<sup>26</sup>

#### ARTICLE 16<sup>26</sup>

#### ARTICLE 17

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the [tenth] instrument of ratification, acceptance or approval with the Depositary.
2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the [tenth] instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### ARTICLE 17 bis

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect . . . . months following the date on which notification is received by the Depositary.

#### ARTICLE 18

The Depositary shall promptly notify [all States] [all signatory and acceding States] of the date of each signature of this Convention of each deposit of an instrument of ratification, acceptance, approval or accession, of any reservation or of its withdrawal in accordance with Article 13, of the entry into force of this Convention or of any denunciation made under Article 17 bis.

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<sup>26</sup> The provisions of these Articles are now included in Article 14.

**FINAL REPORT OF THE WORKING GROUP ON LEGAL ISSUES  
DRAFT PREAMBLE AND ARTICLES 6 bis–20**

(CPNM/69)  
13 February 1979

**PREAMBLE**

**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,

**Convinced** of the need for facilitating international co-operation in the peaceful applications of nuclear energy;

**Desiring** to avert the potential dangers posed by the unlawful taking and use of nuclear material,

**Convinced** that offences relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offences,

**Aware of the need** for international co-operation to establish effective measures for the physical protection of nuclear material,

**Convinced** that the present Convention should facilitate the safe transfer of nuclear material for peaceful purposes,

**Stressing** also the importance of the physical protection of nuclear material in domestic use, storage and transport,

**Recognizing** the importance of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection,

**ARTICLE 6 bis**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 6 in the following cases:

- (a) When the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender

is present in its territory and it does not extradite him pursuant to Article 9 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

## ARTICLE 7

Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

## ARTICLE 8

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

## ARTICLE 9

1. The offences in Article 6 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph 1 of Article 6 bis.

## ARTICLE 10

Any person regarding whom proceedings are being carried out, in connection with any of the offences set forth in Article 6, shall be guaranteed fair treatment at all stages of the proceedings.

## ARTICLE 11

1. The States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 6, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 of the Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

## ARTICLE 12

1. Each State Party shall inform the Depositary of the laws and regulations which give effect to this Convention. The Depositary shall communicate periodically such information to all States Parties to the Convention.
2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the Depositary who shall accordingly inform all States.

## ARTICLE 12 bis

A conference of States Parties shall be convened by the Depositary five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as a whole in the light of the then prevailing situation.

Thereafter, the majority of States Parties to the Convention may obtain, by submitting a proposal to this effect to the Depositary, the convening of further conferences.

## ARTICLE 13

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from



the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this Article. The other States Parties shall not be bound by paragraph 1 of this Article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this Article may at any time withdraw that reservation by notification to the Depositary.

#### ARTICLE 14

1. The present Convention shall be open for signature at the Headquarters of the International Atomic Energy Agency in Vienna [from . . . to . . . and thereafter at the Headquarters of the United Nations in New York] until the date upon which it enters into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention will be open for accession by all States.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

#### ARTICLE 15<sup>27</sup>

#### ARTICLE 16<sup>27</sup>

#### ARTICLE 17

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the [tenth] instrument of ratification, acceptance or approval with the Depositary.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the [tenth] instrument of ratification, acceptance or

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<sup>27</sup> The provisions of these Articles are now included in Article 14.

approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval, or accession.

#### ARTICLE 17 bis

1. At conferences convened pursuant to Article 12 bis, any State Party may propose amendments to this Convention. Amendments adopted at a conference by a two-thirds majority of States Parties to the Convention, shall be promptly circulated by the Depositary to all States Parties to the Convention.
2. An amendment shall enter into force for each State Party to the Convention accepting the amendment upon its ratification by a majority of the States Parties to the Convention and thereafter for each remaining State Party to the Convention on the date of the deposit of the instrument of ratification by it.

#### ARTICLE 18

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect . . . days following the date on which notification is received by the Depositary.

#### ARTICLE 19

The Depositary shall promptly notify all States of the date of each signature of this Convention, of each deposit of an instrument of ratification, acceptance, approval or accession, of any reservation or of its withdrawal in accordance with Article 13, of the entry into force of this Convention or of any denunciation made under Article 18.

#### ARTICLE 20

The original of this Convention, of which the [Arabic, Chinese], English, French, Russian and Spanish texts are equally authentic, shall be deposited with the [Secretary General of the United Nations] who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective governments, have signed this Convention, opened for signature at [the Headquarters of the International Atomic Energy Agency in Vienna on . . .] [the Headquarters of the United Nations in New York].

## ARTICLE 6

1. The intentional commission of any act constituting the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material without lawful authority shall be made a punishable offence by each State Party to this Convention under its internal law if such act causes or is likely to cause death or serious injury to any person or substantial damage to property.

2. The intentional commission of:

- (a) any theft or robbery of nuclear material;
- (b) any embezzlement or fraudulent obtaining of nuclear material;
- (c) demanding nuclear material by threat of force or by any other form of intimidation;
- (d) any threat:
  - (i) to use nuclear material to cause death or serious injury to any person or substantial property damage;
  - (ii) to commit an offence listed in sub-paragraph (a) in order to compel a natural or legal person, international organization or State to do or refrain from doing any act, shall be made a punishable offence by each State Party to this Convention under its internal law.

3. The intentional commission of:

- (a) any attempt to commit any offence listed in paragraph 1 and sub-paragraphs 2(a) and (b) of this Article;
- (b) any act constituting participation in any offence listed in this Article shall be made a punishable offence by each State Party to this Convention under its internal law.

4. Each State Party shall make the offences listed in this Article punishable by appropriate penalties which take into account their grave nature.

## ARTICLE 2

1. The Convention shall apply to nuclear material used for peaceful purposes while in international transport.

2. With the exception of Articles 3 and 4 this Convention shall also apply to nuclear material used for peaceful purposes in domestic use, storage or transport.

**RESERVATIONS SUBMITTED BY THE DELEGATIONS IN WRITING  
WITH REGARD TO THE FINAL REPORT  
OF THE WORKING GROUP ON LEGAL ISSUES  
(CPNM 69 and Add.1 and Add.2)**

(CPNM/73/Rev.1)  
15 February 1979

**PREAMBLE**

Reservations by Austria (para.7), India (paras 5 and 8), Switzerland (para.7) and the USSR.

**ARTICLE 2**

Reservations by Argentina, Belgium, India and the USSR.

**ARTICLE 6**

Reservation by the Federal Republic of Germany.

**ARTICLE 6 bis**

Reservation by India.

**ARTICLE 9.1**

Reservation by Austria.

**ARTICLE 12 bis**

Reservations by Austria, Finland and Switzerland.

**ARTICLE 17 bis**

Reservations by the Federal Republic of Germany.

## REPORT FROM THE WORKING GROUP ON TECHNICAL ISSUES<sup>28</sup>

(CPNM/29)

10 November 1977

The Group met on 4, 7, 8 and 9 November 1977 under the Chairmanship of Mr. R.J.S. Harry of the Netherlands.

As a result of various proposals put forward by the participants the following draft Articles emerged. Members of that Group stressed that the following draft Articles are to be put forward on a preliminary basis and that there is still a great deal of work to be done on them. The inclusion of square brackets in the draft Articles indicates that certain delegations were not, at this stage at least, ready to agree with the bracketed content in the form in which it appears at present.

### ARTICLE 1

For the purpose of this Convention:

[“Nuclear material”<sup>29</sup> means plutonium; uranium-233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing; [and source material.]]

[“Uranium enriched in the isotopes 235 or 233” means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.]

[“Source material” means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate.]

[“Strategic Special Nuclear Material” (SSNM)<sup>30</sup> means plutonium, uranium-233 and uranium enriched in the isotope uranium-235 to 20% or more.]

[“Nuclear facility” means a reactor, a critical facility, a fabrication plant, a reprocessing plant or an isotope separation plant – [while [customarily] containing [NMISM] [NMESM] [SSNM]<sup>31</sup> and any other location which [customarily] uses

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<sup>28</sup> The text of this report is reproduced as approved by the plenary meeting on 10 November 1977.

<sup>29</sup> The individual articles are drafted to retain the opportunity to adjust the scope of application of each article according to the various technical and policy issues involved. The applicability of the definitions must be decided when decisions have been taken on the scope of each individual article. At this stage the definitions are not intended to determine “per se” the scope of the Convention.

<sup>30</sup> SSNM – Strategic Special Nuclear Material.

<sup>31</sup> NMISM – Nuclear material **including** source material; NMESM – Nuclear material **excluding** source material.

[NMISM] [NMESM] [SSNM] [of category I and II [and III] as categorized in Annex I] or a separate storage [customarily] containing [NMISM] [NMESM] [SSNM] and which is not covered in any other definition in this Article.]

“Nuclear transport” means the carriage of [NMISM] [NMESM] [SSNM] by any means of transportation [starting with its departure from the facility of the shipper and ending with the arrival at the facility of the receiver] [starting with the loading in the facility of the shipper and ending with the unloading in the facility of the receiver], including intermediate storage.

“International nuclear transport” means a nuclear transport which goes beyond the territory of any State.

[Any part of a nuclear transport by an aircraft, vessel or any vehicle which does not go beyond the territory of the exporting or importing State shall not be included within the term “international nuclear transport”.]

## PROPOSED NEW ARTICLE

States Parties shall take appropriate measures to protect the confidentiality of any information which they receive by virtue of the provisions of this Convention from another State Party or of any [information] [knowledge] which they otherwise acquire when participating in an activity carried out for the implementation of this Convention. If, pursuant to Articles 3, 4 and 5 of this Convention, States Parties provide information to international organizations, they shall take steps to ensure that the confidentiality of such information is protected.

## ARTICLE 3

1. Each State Party to the Convention shall take appropriate measures [within the framework of] [consistent with] its national law for the physical protection [as referred to in the annex] of [NMISM] [NMESM] [SSNM] [being processed, used, stored and in transit], [nuclear facilities and nuclear transports] [in nuclear facilities or in nuclear transport] within its territory or under its jurisdiction [or under its control anywhere], having regard in particular to the need to prevent its [loss] illegal seizure, theft, unauthorized use, [damage] [or destruction] and the subsequent need to provide for search and recovery.

[2. In this regard [the physical protection measures listed in Annex III] [the document INFCIRC/225/Rev.1 of the International Atomic Energy Agency entitled “The Physical Protection of Nuclear Material”] is a useful basis for guiding States Parties in designing a system of physical protection measures and procedures.]

3. States Parties to the Convention shall co-operate and consult, as appropriate, with each other directly and through international organizations, with a view to improving techniques of physical protection, including the ability to detect the loss or theft of [NMISM] [NMESM] [SSNM] and to recover such material. No State Party shall thereby be obliged to disclose any details of its own security arrangements.

#### NEW ARTICLE (to go before Article 4)

[To assist in achieving adequate levels of physical protection of nuclear materials] States Parties to the Convention shall categorize [NMISM] [NMESM] [SSNM] in accordance with Annex I.]

#### ARTICLE 4

1. Each State Party to this Convention agrees not to export [or permit the export of] [NMISM] [NMESM] [SSNM] [or to import or permit the import of [NMISM] [NMESM] [SSNM] from a State not party to this Convention], unless such material will [at all times] [at any stage] be subject to the measures described in Annex II. The responsibility for the protection during international nuclear transport, as provided for in this paragraph, may, by mutual agreement, be assumed by another State Party.

[2. [NMISM] [NMESM] [SSNM] designated for international nuclear transport shall be categorized for purposes of physical protection as specified in Annex I to this Convention.]

3. The State Party responsible for the protection according to paragraph 1 shall identify and notify States which the nuclear transport will transit. In the event that the [NMISM] [NMESM] [SSNM] will transit a State not party to the Convention, the responsible State shall seek assurances in advance that the transit State not party to the Convention will co-operate and assist in protecting and recovering such material in case of loss or theft during transit. If such assurances cannot be obtained, the responsible State shall, insofar as practicable, not cause [NMISM] [NMESM] [SSNM] to transit that State.

[4. In the event that [NMISM] [NMESM] [SSNM] transit the territory of a State Party, the international transport originating and terminating in the territory of a State not party to this Convention, the State Party shall take the responsibilities as specified in this Convention.]

## ARTICLE 5

[5.0. States Parties to the Convention agree that under no circumstances will they hand over control of [NMISM] [NMESM] [SSNM] to individuals or groups of individuals under threat.]

1. States Party to the Convention shall identify and make known to each other through the [IAEA] [international organizations] their central [authority] [agency] and point of contact having responsibility for establishing and maintaining physical protection of [NMISM] [NMESM] [SSNM] (including international nuclear transport) [nuclear facilities and nuclear transports] [being processed, used, stored and in transit] and for co-ordinating recovery and response operations in the event of any unlawful taking, unlawful use or damage of [NMISM] [NMESM] [SSNM].

2. In the case of theft, robbery or any other unlawful taking of [NMISM] [NMESM] [SSNM], or in the event of [significant] threat to [NMISM] [NMESM] [SSNM], [a nuclear facility] [or nuclear transport] [being processed, used, stored or in transit] States Parties to the Convention shall co-operate and assist one another to the maximum feasible extent in the protection and recovery of such material. In particular:

- (a) A State Party shall take appropriate steps to inform as soon as possible other States which appear to it to be concerned of any theft, robbery or other unlawful taking of [NMISM] [NMESM] [SSNM] or threat to it and to inform, where appropriate, international organizations;
- [(b) The States Parties concerned shall [as appropriate] exchange information with each other and international organizations with a view to protecting threatened [NMISM] [NMESM] [SSNM], or recovering unlawfully taken [NMISM] [NMESM] [SSNM] and shall, as appropriate:
  - (i) Co-ordinate their efforts through diplomatic and other channels;
  - (ii) Render assistance, if requested;
  - (iii) Expedite the return of unlawfully taken [NMISM] [NMESM] [SSNM] to the owner State.]



## [ANNEX I

TABLE: CATEGORIZATION OF [NMISM] [NMESM] [SSNM]

Material	Form	I	II	III
1. Plutonium <sup>a, f</sup>	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less <sup>c</sup> [but more than x g]
2. Uranium-235 <sup>d</sup>	Unirradiated <sup>b</sup>			
	– uranium enriched to 20% <sup>235</sup> U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less <sup>c</sup> [but more than y g]
	– uranium enriched to 10% <sup>235</sup> U but less than 20%	–	10 kg or more	Less than 10 kg <sup>c</sup> [but more than y g]
	– uranium enriched above natural, but less than 10% <sup>235</sup> U	–		10 kg or more
3. Uranium-233	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less <sup>c</sup> [but more than x g]
4. [[NMISM] [NMESM] [SSNM] Irradiated <sup>e</sup> ]				

[a All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.]

b Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.

[c Less than a radiologically significant quantity, to be decided later, should be exempted.]

d [Natural uranium, depleted uranium and thorium and quantities of uranium enriched to less than 10%] quantities not falling in Category III [quantities of [NMISM] [NMESM] [SSNM] falling below Category III] should be protected in accordance with prudent management practice.

e Irradiated fuel should be protected as Category I, II or III [NMISM] [NMESM] [SSNM] depending on the category of the fresh fuel. However, fuel which by virtue of its original fissile material content is included as Category I or II before irradiation should only be reduced one Category level, while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.

[f The State's competent authority should determine if there is a credible threat to disperse plutonium malevolently. The State should then apply physical protection requirements for Category I, II or III of [NMISM] [NMESM] [SSNM], as it deems appropriate and without regard to the plutonium quantity specified under each category herein, to the plutonium isotopes in those quantities and forms determined by the State to fall within the scope of the credible dispersal threat.]]

## [ALTERNATIVE TO ANNEX I

TABLE 1. CATEGORIZATION OF UNIRRADIATED STRATEGIC SPECIAL NUCLEAR MATERIAL (SSNM)<sup>a</sup>

SSNM	Form	Category		
		I	II	III <sup>b</sup>
1. Plutonium	Any form	2 kg or more	Less than 2 kg but more than 500 g	500 g or less <sup>c</sup>
2. Uranium-235	Any form with uranium enriched to 20% U-235 or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less <sup>c</sup>
3. Uranium-233	Any form	2 kg or more	Less than 2 kg but more than 500 g	500 g or less <sup>c</sup>
4. Fresh fuel	— Any U and Pu solution, mixture or compound	Total Pu content 2 kg or more	Total Pu content less than 2 kg but more than 500 g	Total Pu content 500 g or less <sup>c</sup>
	— Any form with uranium enriched to 20% U-235 or more	Total U-235 content 5 kg or more	Total U-235 content less than 5 kg but more than 1 kg	Total U-235 content 1 kg or less <sup>c</sup>

<sup>a</sup> Although this is the recommended categorization, it is open to the State's authority, upon evaluation of the specific circumstances, to assign a different categorization of physical protection.

<sup>b</sup> SSNM not falling in Category III should be protected in accordance with prudent management practice.

<sup>c</sup> Less than a radiologically significant quantity to be determined later should be exempted.]

TABLE 2. CATEGORIZATION OF IRRADIATED FUEL, RADIOACTIVE WASTE AND DECOMMISSIONED NUCLEAR PLANT<sup>a</sup>

	Form	Category		
		I	II	III
1. Irradiated fuel	Any form	<ul style="list-style-type: none"> <li>– In reactors rated more than 100 MW·t</li> <li>– In reprocessing plants</li> </ul>	<ul style="list-style-type: none"> <li>– In reactors rated from 10 to 100 MW·t</li> <li>– In cooling pools (also of reprocessing plants)</li> <li>– During transport</li> </ul>	<ul style="list-style-type: none"> <li>– In reactors rated from 100 kW·t to 10 M</li> </ul>
2. Radioactive waste				
– high activity	Liquid Solid	In any place	In any place	
– medium activity	Any form		In any place	
– low activity	Any form			In any place
3. Nuclear plant decommissioned		Depending on plant conditions	Depending on plant conditions	Depending on plant conditions

<sup>a</sup> Although this is the recommended categorization, it is open to the State's authority, upon evaluation of the specific circumstances, to assign a different categorization of physical protection.

TABLE 3. CATEGORIZATION OF OTHER RADIOACTIVE MATERIAL <sup>a</sup>

	Form	Category	
		II	III
Radioactive material not contained in Tables 1 and 2	Unsealed sources Sealed sources		

<sup>a</sup> Activity levels to be defined.]

## ANNEX II

1. During holding or storage incident to the international nuclear transport the levels of physical protection shall at a minimum include the following:

- (a) For Category III materials, [holding or] storage within an area to which access is controlled;
- (b) For Category II materials, [holding or] storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
- (c) For Category I material, [holding or] storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

2. International nuclear transport shall at a minimum be subject to the following:

- (a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing states, specifying time, place, and procedures for transferring transport responsibility.
- (b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and, in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces.

[3. For radiologically significant quantities of [NMISM] [NMESM] [SSNM] not coming within categories I, II or III the application of those measures which would be applied to valuable cargo under prudent management practice.]

## ANNEX III

Contents of INFCIRC/225/Rev.1 to be reproduced without reference to designation of the document.

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Note 1: It may be revised at a subsequent meeting.

Note 2: Annex III may be redrafted to incorporate Annexes I and II.

## REPORT OF THE WORKING GROUP ON TECHNICAL ISSUES<sup>32</sup>

(CPNM/46/Corr.1)

20 April 1978

The Group met from 11 to 19 April 1978 under the Chairmanship of Mr. R.J.S. Harry of the Netherlands.

As a result of deliberations which focused mainly on Articles 4 and 5 of the draft Convention and on related definitions and Annexes the draft texts were reformulated as set out below.

Members of the Group stressed that even the texts on which agreement was reached should be considered as of provisional character and ad referendum. In cases where agreement was not complete, the divergent individual positions of delegates are indicated.

The inclusion of square brackets in the draft Articles indicates that at this stage at least no agreement could be reached on the bracketed content.

### *DEFINITIONS*<sup>33</sup>

#### ARTICLE 1

For the purposes of this Convention:

“Nuclear material” means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature; any material containing one or more of the foregoing.<sup>34</sup>

“Uranium enriched in the isotopes 235 or 233” means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

[“Nuclear facility” means a reactor, a critical facility, a fabrication plant, a reprocessing plant or an isotope separation plant – while containing nuclear material or any other facility while containing nuclear material or a separate storage while containing nuclear material.]

[“Nuclear transport” means the carriage of nuclear material by any means of transportation [starting with its departure from the facility of the shipper and

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<sup>32</sup> The text of this report is that approved at the plenary meeting held on 20 April 1978.

<sup>33</sup> The Working Group suggested that the articles or groups of articles be given titles indicative of their subject matter.

<sup>34</sup> Delegates of Japan and Brazil expressed reservations about including natural uranium in this definition.

ending with the arrival at the facility of the receiver] [starting with the loading in the facility of the shipper and ending with the unloading in the facility of the receiver], including intermediate storage.]

...

“International nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from the facility of the shipper and ending with the receipt of the consignment by the receiver within its facility.<sup>35</sup>

“Irradiated fuel”.<sup>36</sup>

## [SCOPE

### ARTICLE 2

This Convention shall apply to all nuclear facilities, nuclear material, and nuclear transports, other than those facilities, materials, or transports used for military purposes.]<sup>37</sup>

## [ARTICLE 3

1. Each State Party to the Convention shall take appropriate measures within the framework of its national law to ensure that nuclear material within its territory is protected at the levels described in Annex III.
2. States Parties to the Convention shall co-operate and consult, as appropriate, with each other directly and through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material.]<sup>38</sup>

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<sup>35</sup> The delegate of Japan indicated that, in particular in the special geographical situation of Japan, a nuclear transport originating and ending in the same State, although passing through international waters, should not be considered as international nuclear transport. The delegates of Brazil, India and Japan indicated that the national part of the transport should be excluded.

<sup>36</sup> Some delegates felt that a definition of irradiated fuel should be included in the Convention but there was not enough time to discuss this at the present session.

<sup>37</sup> The substance of this Article was discussed in the ad hoc Working Group on Scope and Objectives without agreement being reached.

<sup>38</sup> This text was developed at the request of the Working Group on Technical Issues by a working party composed of delegations favouring the inclusion of an Article 3 and was not discussed by the Working Group on Technical Issues.

## *INTERNATIONAL NUCLEAR TRANSPORT*

### ARTICLE 4

- 4.1. Each State Party to this Convention agrees not to export or to authorize the export of nuclear material unless the State Party has assured itself that such material will be protected during the international nuclear transport at the levels described in Annex II.
- 4.2. Each State Party to this Convention agrees not to import or authorize the import of nuclear material from a State not party to this Convention, unless the State Party has assured itself that such material will during the international nuclear transport be protected at the levels described in Annex II.<sup>39</sup>
- 4.3. A State Party to this Convention shall not allow the transit by land through its territory of nuclear material from a State not party to this Convention to a State not party to this Convention unless the State Party has assured itself as far as practicable, that such material will be protected at the levels described in Annex II.
- 4.4. Each State Party to this Convention agrees to apply the physical protection at the levels described in Annex II in the event of nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.<sup>40</sup>
- 4.5. The State Party responsible for assuring itself that the nuclear material will be protected at the levels described in Annex II according to paragraph 1–3 above shall identify and notify States which the nuclear material will transit by land.  
If assurances as to the levels of physical protection as described in Annex II cannot be obtained, the responsible State shall, as far as practicable, not cause nuclear material to transit that State.
- [4.6. The responsibility for the protection during international nuclear transport, as provided for in this Article may, by mutual agreement, be assumed by another State Party.]

### ARTICLE 5

- [5.0. States Parties to the Convention agree that under no circumstances will they hand over control of nuclear material to unauthorized individuals or groups of individuals under threat.]<sup>41</sup>

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<sup>39</sup> The delegates of Italy and Japan expressed reservations on paragraph 2.

<sup>40</sup> The delegate of Japan expressed reservations on paragraph 4.

<sup>41</sup> Most delegates were in favour of deleting this paragraph. However, the delegates of Australia and Ecuador requested that this paragraph be discussed in the plenary meeting.



5.1. States Parties to the Convention shall identify and make known to each other directly or through [the International Atomic Energy Agency] [international organizations] their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material.

5.2.<sup>42</sup> In the case of theft, robbery or any unlawful taking of nuclear material, or in the event of credible threat thereof States Parties to the Convention shall co-operate and assist one another to the maximum feasible extent in the protection and recovery of such material.

In particular:

- (a) A State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or threat to it and to inform, where appropriate, international organizations;
- (b) As appropriate, the States Parties concerned shall exchange information with each other and international organizations with a view to protecting threatened nuclear material, or recovering unlawfully taken nuclear material and shall:
  - (i) Co-ordinate their efforts through diplomatic and other channels;
  - (ii) Render assistance, if requested;
  - (iii) Expedite the return of unlawfully taken nuclear material to the State from which it was taken.

5.3. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to applicable national law or regulation or which would jeopardize the physical protection of nuclear material.

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<sup>42</sup> The delegate of Belgium expressed a reservation on paragraph 5.2.

ANNEX I<sup>43</sup>

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category		
		I	II	III <sup>c</sup>
1. Plutonium <sup>a</sup>	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated <sup>b</sup>			
	– uranium enriched to 20% <sup>235</sup> U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less but more than 15 g
	– uranium enriched to 10% <sup>235</sup> U but less than 20%		10 kg or more	Less than 10 kg but more than 1 kg
	– uranium enriched above natural, but less than 10% <sup>235</sup> U			10 kg or more
3. Uranium-233	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) <sup>d,e</sup>	

- a All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.
- b Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.
- c Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.
- d Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.
- e Other fuel which by virtue of its original fissile material content is classified as Category I or II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.

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<sup>43</sup> The delegate of Italy expressed reservation on the inclusion of uranium enriched to less than 10% <sup>235</sup>U, which according to his views should be protected in accordance with prudent management practice. In addition he maintained, for the time being, his preference for an alternative annex as reproduced in CPNM/29, Annex I, p.3-5.

## ANNEX II

### LEVELS OF PHYSICAL PROTECTION OF NUCLEAR MATERIAL IN INTERNATIONAL TRANSPORT

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:
  - (a) For Category III<sup>44</sup> materials, storage within an area to which access is controlled;
  - (b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
  - (c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.
2. Levels of physical protection for nuclear material during international transport include:
  - (a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing states, specifying time, place, and procedures for transferring transport responsibility.
  - (b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces.
  - (c) For natural uranium, transportation protection for quantities exceeding 500 kilograms shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.<sup>45</sup>

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<sup>44</sup> Categories of nuclear material as defined in Annex I.

<sup>45</sup> The delegate of Japan made a reservation on paragraph (c).

## [ANNEX III]

### LEVELS OF PHYSICAL PROTECTION OF NUCLEAR MATERIAL

1. Levels of physical protection of nuclear material in use and storage include:
  - (a) For Category III materials, use and storage within an area to which access is controlled;
  - (b) For Category II materials, use and storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control, or any area with an equivalent level of physical protection;
  - (c) For Category I materials, use and storage within a protected area as defined for Category II above to which, in addition, access is restricted to persons whose trustworthiness has been determined and under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.
2. Levels of physical protection of nuclear material in transport include:
  - (a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver and carrier.
  - (b) For Category I materials, transportation under special precautions as identified above for transportation of Category II and III materials and, in addition, under constant surveillance of escorts and under conditions which assure close communication with appropriate response forces.]

## PROGRESS REPORT BY THE CHAIRMAN OF THE WORKING GROUP ON TECHNICAL ISSUES

(CPNM/63)

8 February 1979

The Working Group's deliberations on 5, 6 and 7 February 1979 resulted in the following texts of Articles 1, 3, 4 and 5 and the Annexes of the draft convention.

### *DEFINITIONS*

#### ARTICLE 1

For the purposes of this Convention:

"Nuclear material" means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residues; any material containing one or more of the foregoing.

"Uranium enriched in the isotope 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

["Nuclear facility" means a reactor, a critical facility, a fabrication plant, a reprocessing plant or an isotope separation plant — while containing nuclear material or any other facility while containing nuclear material or a separate storage while containing nuclear material.]<sup>46</sup>

["International nuclear transport" means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from the facility of the shipper and ending with the receipt of the consignment by the receiver within its facility.]<sup>47</sup>

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<sup>46</sup> Final decision on maintaining this definition in the Convention was delayed until an agreement is reached on the definition of "international nuclear transport".

<sup>47</sup> Discussion on this definition has not yet been finished, reservations having been expressed by some delegations with regard to inclusion of "national legs" of the transport.

### ARTICLE 3

[“Each State Party shall take appropriate steps within the framework of its national law to ensure that, during international nuclear transport, nuclear material within its land territory or on board a ship or aircraft registered in that State is protected at the levels described in Annex I.”]<sup>48</sup>

### *INTERNATIONAL NUCLEAR TRANSPORT*

### ARTICLE 4

- 4.1. Each State Party to this Convention agrees not to export or to authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.
- 4.2. Each State Party to this Convention agrees not to import or authorize the import of nuclear material from a State not party to this Convention, unless the State Party has received assurances<sup>49</sup> that such material will during the international nuclear transport be protected at the levels described in Annex I.
- 4.3. A State Party to this Convention shall not allow the transit by land<sup>50</sup> through its territory of nuclear material from a State not party to this Convention to a State not party to this Convention unless the State Party has received assurances as far as practicable, that such material will be protected at the levels described in Annex I.
- 4.4. Each State Party to this Convention agrees to apply the physical protection at the levels described in Annex I in the event of nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.<sup>51</sup>
- 4.5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1–3 above shall identify and inform in advance States whose territory the nuclear material will transit by land.<sup>52</sup>

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<sup>48</sup> This modification of the former version of Article 3.1 takes into account the narrowed scope of the Convention. However, several delegations expressed reservation, and no agreement could be reached yet.

<sup>49</sup> The Italian delegation indicated that it would prefer the following formulation of the words underlined: “has assured itself as far as practicable”.

<sup>50</sup> The delegation of the Federal Republic of Germany expressed reservation to the inclusion of the words “by land”. The Egyptian delegation requested the addition after the words “by land” of “or waterway”.

<sup>51</sup> The delegate of Japan maintained its reservation on this paragraph.

<sup>52</sup> The delegation of the Federal Republic of Germany expressed reservation as to including the words “by land”. The US delegation proposed the addition of “or enter its air or sea port.”

If assurances as to the levels of physical protection as described in Annex I cannot be obtained, the responsible State shall, as far as practicable, not cause nuclear material to transit that State.

- [4.6. "The State Party responsible according to paragraph 1 above may transfer this responsibility, by mutual agreement, to the other State Party involved in the transport as importing state."]<sup>53</sup>

## ARTICLE 5

- 5.1. States Parties to the Convention shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material,<sup>54</sup> or in the event of credible threat thereof.
- 5.2. In the case of theft, robbery or any unlawful taking of nuclear material, or in the event of credible threat thereof States Parties to the Convention shall, in accordance with their national law, co-operate and assist one another to the maximum feasible extent in the protection and recovery of such material and assist any other State that so requests.

In particular:

- (a) A State Party shall take appropriate steps to inform as soon as possible other States which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or threat to it and to inform where appropriate, international organizations;
- (b) As appropriate, the States Parties concerned shall exchange information with each other and international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:
  - (i) Co-ordinate their efforts through diplomatic and other agreed channels;
  - (ii) Render assistance, if requested;
  - (iii) Ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.<sup>55</sup>

The means of implementation of this co-operation shall be determined by the States Parties concerned.<sup>56</sup>

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<sup>53</sup> No agreement could be reached on the text, some delegations requesting its deletion.

<sup>54</sup> The Brazilian delegation made a reservation regarding the words "any unauthorized removal, use or alteration".

<sup>55</sup> The delegate of the USSR expressed his reservation of the formulation of paragraph 5.2.6 (iii).

<sup>56</sup> The Belgian delegation maintained its reservation to paragraph 5.2.



- 5.3. States Parties to the Convention shall co-operate and consult as appropriate, with each other directly and through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

## *CONFIDENTIALITY OF INFORMATION*

### ARTICLE 5 bis

- 5 bis.1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.<sup>57</sup>
- 5 bis.2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to applicable national law or regulation or which would jeopardize the physical protection of nuclear material.

### ANNEX I

#### LEVELS OF PHYSICAL PROTECTION TO BE APPLIED IN INTERNATIONAL TRANSPORT OF NUCLEAR MATERIAL AS CATEGORIZED IN ANNEX II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:

- (a) For Category III<sup>58</sup> materials, storage within an area to which access is controlled;

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<sup>57</sup> The delegation of the Federal Republic of Germany made a reservation to the last sentence of paragraph 5 bis.1 because of its ambiguity.

<sup>58</sup> Categories of nuclear material as defined in Annex II.

(b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;

(c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

2. Levels of physical protection for nuclear material during international transport include:

(a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing states, specifying time, place, and procedures for transferring transport responsibility.

(b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces.

(c) For natural uranium other than in form of ore or ore residues, transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

## ANNEX II

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category		
		I	II	III <sup>c</sup>
1. Plutonium <sup>a</sup>	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated <sup>b</sup>			
	– uranium enriched to 20% <sup>235</sup> U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less but more than 15 g
	– uranium enriched to 10% <sup>235</sup> U but less than 20%		10 kg or more	Less than 10 kg but more than 1 kg
	– uranium enriched above natural, but less than 10% <sup>235</sup> U			10 kg or more
3. Uranium-233	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) <sup>d, e</sup>	

<sup>a</sup> All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

<sup>b</sup> Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.

<sup>c</sup> Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.

<sup>d</sup> Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

<sup>e</sup> Other fuel which by virtue of its original fissile material content is classified as Category I or II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.

## ERRATUM

Add at the bottom of page 1 of this report:

["Nuclear transport" means the carriage of nuclear material by any means of transportation [starting with its departure from the facility of the shipper and ending with the arrival at the facility of the receiver] [starting with the loading in the facility of the shipper and ending with the unloading in the facility of the receiver], including intermediate storage.]<sup>59</sup>

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<sup>59</sup> Final decision on retaining this definition in the text of the Convention was delayed until an agreement is reached on the definition of "international nuclear transport".

## FINAL REPORT BY THE CHAIRMAN OF THE WORKING GROUP ON TECHNICAL ISSUES TO THE PLENARY MEETING

(CPNM/70)  
13 February 1979

The Working Group's deliberations on 5, 6, 7, 9 and 12 February 1979 resulted in the following texts of Articles 1, 3, 4, 5 and 5 bis and of the Annexes of the Draft Convention.

### *DEFINITIONS*<sup>60</sup>

#### ARTICLE 1

For the purpose of this Convention:

"Nuclear material" means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing.

"Uranium enriched in the isotope 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

"International nuclear transport" means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.<sup>61</sup>

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<sup>60</sup> Titles of articles were sometimes given to indicate tentatively the subjects covered. The final decision on maintaining them has been left to the Drafting Committee.

<sup>61</sup> The delegation of India made a reservation to this definition because it includes "facility".

## *INTERNATIONAL NUCLEAR TRANSPORT*

### ARTICLE 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.<sup>62</sup>

### ARTICLE 4

- 4.1. Each State Party to this Convention agrees not to export or to authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.
- 4.2. Each State Party to this Convention agrees not to import or authorize the import of nuclear material from a State not party to this Convention, unless the State Party has received assurances<sup>63</sup> that such material will during the international nuclear transport be protected at the levels described in Annex I.
- 4.3. A State Party to this Convention shall not allow the transit by land or internal waterways, or the entry into its air or sea ports of nuclear material from a State not party to this Convention to a State not party to this Convention unless the State Party has received assurances as far as practicable, that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.
- 4.4. Each State Party to this Convention agrees to apply within the framework of its national law the physical protection at the levels described in Annex I in the event of nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.
- 4.5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1–3 above shall identify and inform in advance States whose territories the nuclear material is expected to transit by land or internal waterways, or whose air or seaports it is expected to enter.

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<sup>62</sup> The delegation of the United Kingdom made a reservation to Article 3.

<sup>63</sup> The Italian delegation indicated that it would prefer another formulation of the words underlined, like, for instance: “has assured itself as far as practicable”.

If assurances as to the levels of physical protection as described in Annex I have not been received, the responsible State shall, as far as practicable, not cause nuclear material to transit or enter that State.

- 4.6. The responsibility for obtaining assurances referred to in paragraph 4.1 may be transferred, by mutual agreement, to the State Party involved in the transport as importing State.

## ARTICLE 5

- 5.1. States Parties to the Convention shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material<sup>64</sup> or in the event of credible threat thereof.
- 5.2. In the case of theft, robbery or any unlawful taking of nuclear material<sup>64</sup> or in the event of credible threat thereof States Parties to the Convention shall, in accordance with their national law, co-operate and assist one another to the maximum feasible extent in the protection and recovery of such material and assist any other State that so requests.
- In particular:
- (a) A State Party shall take appropriate steps to inform as soon as possible other States with appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material<sup>64</sup> or threat to it and to inform where appropriate, international organizations;
  - (b) As appropriate, the States Parties concerned shall exchange information with each other and international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:
    - (i) Co-ordinate their efforts through diplomatic and other agreed channels;
    - (ii) Render assistance, if requested;
    - (iii) Ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.

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<sup>64</sup> Appropriate wording of texts underlined should be formulated by the Drafting Committee according to relevant wording of Article 6.

The means of implementation of this co-operation shall be determined by the States Parties concerned.<sup>65</sup>

- 5.3. States Parties to the Convention shall co-operate and consult as appropriate, with each other directly and through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

## *CONFIDENTIALITY OF INFORMATION*

### ARTICLE 5 bis

- 5 bis.1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.
- 5 bis.2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to applicable national law or regulation or which would jeopardize the physical protection of nuclear material.<sup>66</sup>

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<sup>65</sup> The Belgian delegation expressed a reservation regarding the scope of Article 5.2. This was directly related to the Belgian delegation's reservation on the scope of the Convention as registered in the annex of the Memorandum adopted at Informal Consultations in September 1978 (CPNM/52). The text of Article 5.2 would be acceptable to the Belgian delegation if the words "in international transport" were added after the words "nuclear material". The delegations of India and the USSR also made reservations regarding the scope of Article 5.2.

<sup>66</sup> It is suggested to the Drafting Committee that, if appropriate, the word "shall" in the first sentence of Article 5 bis.1 could be replaced by "will", and the words "shall not be" in Article 5 bis. 2 could be replaced by "are not". In addition a reversal of order of sentences could be envisaged without splitting the article into paragraphs.



## ANNEX I

### LEVELS OF PHYSICAL PROTECTION TO BE APPLIED IN INTERNATIONAL TRANSPORT OF NUCLEAR MATERIAL AS CATEGORIZED IN ANNEX II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:
  - (a) For Category III materials, storage within an area to which access is controlled;
  - (b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
  - (c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.
2. Levels of physical protection for nuclear material during international transport include:
  - (a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing states, specifying time, place and procedures for transferring transport responsibility;
  - (b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces.
  - (c) For natural uranium other than in the form of ore or ore-residue, transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

ANNEX II  
TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category		
		I	II	III <sup>c</sup>
Plutonium <sup>a</sup>	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
Uranium-235	Unirradiated <sup>b</sup>			
	– uranium enriched to 20% <sup>235</sup> U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less but more than 15 g
	– uranium enriched to 10% <sup>235</sup> U but less than 20%		10 kg or more	Less than 10 kg but more than 1 kg
	– uranium enriched above natural, but less than 10% <sup>235</sup> U			10 kg or more
Uranium-233	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) <sup>d,e</sup>	

<sup>a</sup> All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

<sup>b</sup> Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.

<sup>c</sup> Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.

<sup>d</sup> Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

<sup>e</sup> Other fuel which by virtue of its original fissile material content is classified as Category I or II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.

**WORKING GROUP ON SCOPE AND OBJECTIVES**  
**NOTE BY THE CHAIRMAN**

(CPNM/49)  
18 April 1978

The Group met on 12, 13 and 17 April 1978 under the Chairmanship of Mr. K. Willuhn of the German Democratic Republic.

Draft proposals have been submitted in writing by the delegations of Belgium, Spain, Panama and Spain jointly, Hungary and Belgium, Brazil, Colombia, France, India and Panama jointly.<sup>67</sup>

In the course of its meetings the substance of Articles 2 and 3 was discussed but the Group did not succeed in reaching agreement on the scope of the Convention. It was decided to continue the negotiations on this subject at the next session of the Meeting of Governmental Representatives to Consider the Drafting of a Convention on the Physical Protection of Nuclear Material.

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<sup>67</sup> See texts of proposals in documents CPNM/SCOPE/1 to 6.

## APPOINTMENT OF THE MEMBERS OF THE DRAFTING COMMITTEE

(CPNM/68)  
12 February 1979

After consultations held in accordance with the decision taken on 8 February, the following delegations have been appointed Members of the Drafting Committee:

Australia	Italy
Brazil	Japan
Canada	Mexico
Chile	Qatar
Czechoslovakia	Tunisia
Egypt	USSR
France	United States
Germany, Federal Republic of	

The first meeting of the Drafting Committee will be held on Tuesday 13 February, 15 minutes after the end of the afternoon plenary meeting.

**FIRST REPORT OF THE DRAFTING COMMITTEE  
ON ARTICLES 1, 8, 10, 11, 12 AND 19  
AND ANNEX I**

(CPNM/74)  
14 February 1979

**ARTICLE 1**

For the purposes of this Convention:

- (a) "Nuclear material" means plutonium except that with isotopic concentration exceeding 80% in plutonium-238, uranium-233, uranium enriched in the isotopes 235 or 233, uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue, and any material containing one or more of the foregoing;
- (b) "Uranium enriched in the isotope 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
- (c) "International nuclear transport" means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.

**ARTICLE 8**

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

**ARTICLE 10**

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in Article 6 shall be guaranteed fair treatment at all stages of the proceedings.

## ARTICLE 11

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 6, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 of this article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

## ARTICLE 12

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties to the Convention.
2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.

## ARTICLE 19

The depositary shall promptly notify all States of the date of:

- (a) each signature of this Convention;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession;
- (c) any reservation or withdrawal in accordance with Article 13;
- (d) the entry into force of this Convention; and
- (e) any denunciation made under Article 18.

## ANNEX I

### LEVELS OF PHYSICAL PROTECTION TO BE APPLIED IN INTERNATIONAL TRANSPORT OF NUCLEAR MATERIAL AS CATEGORIZED IN ANNEX II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:

- (a) For Category III materials, storage within an area to which access is controlled;
- (b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
- (c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

2. Levels of physical protection for nuclear material during international transport include:

- (a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing states, specifying time, place and procedures for transferring transport responsibility;
- (b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces.
- (c) For natural uranium other than in the form of ore or ore-residue, transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

## ANNEX II

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category		
		I	II	III <sup>c</sup>
1. Plutonium <sup>a</sup>	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated <sup>b</sup>			
	— uranium enriched to 20% <sup>235</sup> U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less but more than 15 g
	— uranium enriched to 10% <sup>235</sup> U but less than 20%		10 kg or more	Less than 10 kg but more than 1 kg
	— uranium enriched above natural, but less than 10% <sup>235</sup> U			10 kg or more
3. Uranium-233	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) <sup>d,e</sup>	

<sup>a</sup> All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

<sup>b</sup> Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.

<sup>c</sup> Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.

<sup>d</sup> Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

<sup>e</sup> Other fuel which by virtue of its original fissile material content is classified as Category I or II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.



## SECOND REPORT OF THE DRAFTING COMMITTEE

(CPNM/83/Rev. 1)

17 October 1979

The Drafting Committee met on 15 and 16 October 1979. It considered and approved the following provisions:

Article 2  
Article 3  
Article 4 paragraph 1  
Article 4 paragraph 2  
Article 4 paragraph 4  
Article 4 paragraph 6  
Article 5  
Article 5 bis  
Article 12 bis  
Article 13  
Article 17  
Article 18.

The text of these provisions as approved by the Committee is as follows:

### ARTICLE 2<sup>68</sup>

1. This Convention shall apply to nuclear material used for peaceful purposes while in international nuclear transport.
2. With the exception of Articles 3 and 4, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage or transport.

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<sup>68</sup> A number of Delegations expressed the view that the present drafting of Article 2 did not reflect accurately the compromise reached on the scope of the Convention. The Committee, however, agreed that this point related to matters of substance and should be referred back to the Plenary. One Delegation noted that the term "international nuclear transport" was used in paragraph 1 only for consistency with the relevant definition in Article 1.

### ARTICLE 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.

### ARTICLE 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.

2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention, unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.

3. ....

4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.

5. ....

6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as importing State.<sup>69</sup>

### ARTICLE 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material or in the event of credible threat thereof.

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<sup>69</sup> Some Delegations indicated that paragraphs 1, 2 and 6 could be improved. The Committee agreed, however, that this was a matter of substance and should be dealt with by the Plenary.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the protection and recovery of such material to one another and to any other State that so requests.

In particular:

- (a) a State Party shall take appropriate steps to inform as soon as possible other States which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof and to inform where appropriate, international organizations;
- (b) as appropriate, the States Parties concerned shall exchange information with each other and/or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:
  - (i) co-ordinate their efforts through diplomatic and other agreed channels;
  - (ii) render assistance, if requested;
  - (iii) ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events;

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. States Parties shall co-operate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

#### ARTICLE 5 bis

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the physical protection of nuclear material.

## ARTICLE 12 bis

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review its implementation and adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.
2. Thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences.

## ARTICLE 13

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this Article. The other States Parties shall not be bound by paragraph 1 of this Article with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this Article may at any time withdraw that reservation by notification to the depositary.

## ARTICLE 17

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the [tenth] instrument of ratification, acceptance or approval with the depositary.
2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the [tenth] instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

## ARTICLE 18

1. Any State Party may denounce this Convention by written notification to the depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

## THIRD REPORT OF THE DRAFTING COMMITTEE

(CPNM/85)  
23 October 1979

The Drafting Committee met on the 22 October 1979 and considered the following provisions:

### ARTICLE 4

3. A State Party shall not allow the transit by land or internal waterways or through its airports or seaports of nuclear material between States that are not Parties unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.
4. . . .
5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.
6. . . .
7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including over airspace and territorial sea.<sup>70</sup>

### ARTICLE 5, PARAGRAPH 2 (CHAPEAU)

2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof [as well as in the case of missing nuclear material or of likelihood thereof], States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the protection and recovery of such material to one another and to any other State that so requests.<sup>71</sup>

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<sup>70</sup> In the view of certain delegations paragraph 7 should come after paragraph 1.

<sup>71</sup> The Drafting Committee was of the view that the bracketed sentence was consistent with the purpose of this Article. However, it concluded that, since this was a question of substance, it should leave the decision as to its inclusion to the Plenary.

## ARTICLE 6

### 1. The intentional commission of

- (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
  - (b) a theft or robbery of nuclear material;
  - (c) any embezzlement or fraudulent obtaining of nuclear material;
  - (d) an act constituting a demand for nuclear material by threat of force or by any other form of intimidation;
  - (e) a threat:
    - (i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or,
    - (ii) to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
  - (f) an attempt to commit any offence described in paragraphs (a), (b) or (c); and
  - (g) an act which constitutes participation in any offence described in paragraphs (a) to (f)
- shall be made a punishable offence by each State Party under its internal law.

### 2. Each State Party shall make the offences described in this Article punishable by appropriate penalties which take into account their grave nature.

## FOURTH REPORT OF THE DRAFTING COMMITTEE

(CPNM/87)  
24 October 1979

The Drafting Committee met on 24 October 1979 and considered the following provisions:

### ARTICLE 1, THIRD DEFINITION

“International nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.

### ARTICLE 6 bis

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 6 in the following cases:

- (a) When the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to Article 9 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

4. In addition to the States Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in Article 6 when it is the exporting or importing State.

### ARTICLE 7

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures,



including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to Article [6 bis] and where appropriate, all other States concerned.

#### ARTICLE 12, PARAGRAPH 3

Where an offence involves nuclear material used for peaceful purposes in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

#### ARTICLE 20, PARAGRAPH 1

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

## FIFTH REPORT OF THE DRAFTING COMMITTEE

(CPNM/89)  
25 October 1979

The Drafting Committee met on 25 October 1979 and considered the following provisions:

### ARTICLE 14

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. After its entry into force, this Convention will be open for accession by all States.
4. (a) This Convention shall be open for signature or accession by international organisations and regional organisations of an integration or other nature, provided that any such organisation is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.  
(b) In matters within their competence, such organisations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this Convention attributes to States Parties.  
(c) When becoming party to this Convention such an organisation shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.  
(d) Such an organisation shall not hold any vote additional to those of its Member States.
5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

### ARTICLE 20, PARAGRAPH 2

In witness whereof, the undersigned, being duly authorized thereto, have signed this Convention, done at Vienna in duplicate on . . . . .

**COMMENTS, PROPOSED AMENDMENTS  
AND STATEMENTS**



**COMMENTS ON THE DRAFT CONVENTION  
ON PHYSICAL PROTECTION OF NUCLEAR MATERIALS,  
FACILITIES AND TRANSPORTS**

(CPNM/2)  
1 September 1977

**NOTE BY THE DIRECTOR GENERAL**

Those comments on the draft convention on physical protection of nuclear materials, facilities and transports which Member States had communicated to the Director General by 1 September 1977 are reproduced overleaf. The Annex hereto contains a list of articles of the draft convention upon which Member States have made specific comments.

**COMMENTS BY**

A. Austria	E. Iran	I. Poland
B. Belgium	F. Ireland	J. South Africa
C. Bulgaria	G. Italy	K. Switzerland
D. India	H. Korea, Republic of	L. Turkey

**A. AUSTRIA**  
(Original: English)

29 August 1977

*“General remarks* — Austria has participated with great interest in the efforts made by IAEA to develop principles and measures for the physical protection of nuclear materials. For a country like Austria, with smaller nuclear activities, international recommendations in this field, and especially from IAEA, represent important guide-lines for provisions and measures to be taken by the national authorities. Therefore, Austria welcomes the preparation of an international convention on the physical protection of nuclear materials, facilities and transports.

*Special remarks* —

*Ad. Art. 5:*

Concerning the exchange of information on the points of contact as suggested in this article, it would be useful, if IAEA could prepare a list of competent authorities in the Member States, to which the convention could refer to. For instance such a list could be annexed to Doc. INFCIRC/225.

*Ad. Art. 6:*

- a) The definition of punishable offenses as contained in para 1 is too extensive. Punishable offenses of minor importance would also be

included although according to extradition agreements concluded between continental European countries, there would be no obligation to extradite in such cases. In principle there would be two possibilities open to comply with the convention: Either to define the degree of the offense (f.i. by using the word “serious”) or to refer to the willful intention of causing heavy damage or creation of public danger (see f.i. Article 171 of the Austrian Criminal Code).

- b) The terms “misuse” as contained in para 1 lit. b and “seizure” as contained in para 1 lit. d would require further explanation as well as more detailed definition.
- c) The general term “Conspiracies to commit a crime” as contained in para 1 lit. e is unknown to the Austrian system of law. Although the intentional misuse of nuclear material or ionising rays could be prosecuted under Art. 277 and 278 of the Austrian Penal Law, there are no provisions against conspiracies to commit f.i. theft, physical damage or grave threat.

*Ad. Art. 7:*

Austria could comply with the provisions of Art. 7 only, if the offense committed abroad is of such serious nature that extradition could be demanded by the State, on whose territory the offense took place, if an extradition agreement existed between that State and Austria.

Referring to the remarks to Art. 6, a and c it can be stated, that Austria would not demand extradition or prosecution of an offender in every case.

*Ad. Art. 8:*

In analogy to the comments made on Art. 7 Austria would find the definition of Art. 6 as a basis for prosecution of an offender in Austria only acceptable with the above-mentioned reservations.”

**B. BELGIUM**

(Original: French)

11 August 1977

“.... various provisions of the draft will have to be submitted for approval to the Chambers, particularly those which refer to the legislative action to be taken and the extension of the list of offences calling for extradition.

For the present, however, I am able to communicate the following:

*Article 3.1.*

- (a) The question arises whether the text, in its present wording, satisfactorily expresses the intention of its author. If each Party is obliged

to ensure that measures are taken to achieve the objective in view, the text could be worded as follows: "Each State Party to the Convention shall take appropriate legislative or regulatory measures to prevent ...."

- (b) Does the concept "under its jurisdiction" not also imply "within its territory"?
- (c) This paragraph, as worded at present, gives a restrictive enumeration of the offences and does not provide for all possibilities. (What about the case of destruction?)

#### *Article 3.2.*

This paragraph contains a reference to document INFCIRC/225 (corrected), which contains no regulatory provision; besides, this document is liable to be modified or replaced. It is open to question whether Article 3.2 really belongs in the operative part of the treaty.

#### *Article 4.3(c)*

The last sentence in this paragraph, which also applies to (a) and (b), is not regulatory in scope. Is it necessary in the operative part?

#### *Article 4.5.*

The text would gain in clarity if it were drafted as a separate article governing transit through the territories of State Party and States not party to the Convention.

#### *Article 6.1.*

The phrases "consistent with its domestic law" and "to make the following offences punishable under its criminal law" are repetitions.

This paragraph, in its present wording, gives a restrictive enumeration of the offences; does it provide for all possibilities?

#### *Article 6.2.*

When a treaty includes a specific article containing definitions, it is not advisable to give other definitions elsewhere in the text of the treaty. It would therefore be more suitable for this paragraph to be included among the definitions given in Article 1.

#### *Articles 7–13*

These are based on the conventions which have already been concluded in connection with the hijacking of aircraft and the protection of diplomatic staff and which entail, on the part of States the obligation to extradite the offender or to bring the case before its competent authorities for the purpose of prosecution. This is a new case of application of the standard rule: "dedere aut punire".

*Article 10*

In so far as the States Parties to the treaty are States governed by the rule of law, it is open to question whether this article is necessary.

*Article 13.2.*

Article 19 of the Vienna Convention on the Law of Treaties provides *inter alia* that States may make reservations at the time of ratifying a treaty, provided that such reservation is not forbidden by the treaty. Article 13 of the draft provides that a reservation may be made in a specific case. Is it to be inferred from this wording that there is no other possibility of making a reservation? If so, this should be stated clearly.

*Articles 15 and 16*

It would be more logical to reverse the order of these two articles.

*Article 18*

The words “*inter alia*” introduce an element of vagueness without adding anything to the text and are liable to lead to confusion.”

C. BULGARIA

(Original: English)

12 August 1977

“We entirely agree with the “Draft Convention” and have no remarks.”

D. INDIA

(Original: English)

27 July 1977

“The Draft Convention seems to go far beyond the scope of the recommendations of the Advisory Group that had considered this matter and recommended preparation of an International Convention on the Physical Protection of Nuclear Materials during international transport. In view of this material change between the recommendations of the Advisory Group and the Draft Convention, the Government of India would require more time to study and formulate its comments.”

E. IRAN

(Original: English)

20 July 1977

*“Article 1.(a)*

The definition of “Nuclear Material” given is not consistent with definition of “Nuclear Material” as given by article 112 P.28 of INFCIRC/153 and



article (XX) of IAEA statute. It is suggested that the definition as given in INFCIRC/153 be accepted.

*Article 3.2.*

The document INFCIRC/225 (corrected) has been updated by an Advisory Group which met in Vienna Feb. 28 to March 4, 1977. It is suggested that everywhere the reference be made to document IAEA-AG-117 as well as to INFCIRC/225 (corrected).

*Article 4.1.*

Needs further elaboration. It is not clear what the implications of this article would be if approved in terms of obtaining certain minimal assurances on Physical Protection from the states involved.

*Article 4.4.(a), (b)*

It is suggested that the clauses as given in Article 6.4, 6.5 and 6.2 of INFCIRC/225 (corrected) be used. For example the notion of "carrier" is used in draft in which no mention of this is made either in INFCIRC/225 or AG-117. It suggests to be noted that neither receiver nor shipper can delegate its responsibility to "carrier". This article must be re-written totally.

In general, since the draft is prepared only by one member state, it is only fair to state that much discussion is needed before a final version can be drafted on an international scale. It is suggested that a special advisory group (or consultancy meeting) be convened by the IAEA in order to set up the framework for a larger international convention on "Physical Protection of nuclear materials, facilities, and transports".

In the material classification subject to Physical Protection, the minimum quantity is not mentioned, and would therefore cause series of formalities for small amounts of nuclear material. It is suggested to exclude materials with no radiological significance from the Physical Protection convention."

**F. IRELAND**

(Original: English)

3 August 1977

".... the Irish authorities have no observations to offer on the draft convention."

**G. ITALY**

(Original: French)

1 August 1977

"In general, Italy accepts the aims of such a convention believing that international co-operation to ensure the physical protection of nuclear materials

is necessary. To be effective, however, the provisions of such a convention must be adhered to by a fairly large number of States, and especially by all States engaged in industrial activities in the nuclear field.

As regards the preamble, more specific mention should be made of the prevention objectives set forth in the convention itself; one might insert, in the fourth paragraph of the preamble, a sentence in which the prevention objectives are recalled.

In Article 1, the definition of “nuclear material” and the subsequent enumeration appear to be incomplete. The experts might express an opinion on this point when discussing the final text.

Article 4 does not mention special standards for international maritime transport. The convention should contain more detailed and rigorous standards for this type of transport.

The first word on the fourth line of sub-paragraph 4(b) of Article 4, “sans” (in French version), should be replaced by the word “avec”.

As regards sub-paragraph 4(a) of Article 4, there is need for clarification, for the prior arrangements among sender, receiver and carrier might hamper and delay the supply of nuclear material. Each State party to the convention should undertake to give a single national authority the powers necessary for assisting and collaborating in the implementation of the procedures set forth in the convention. It should be noted that the problem of the ways and means of securing the same kind of assistance from States which are not party to the convention but whose territory is crossed during the international transport of nuclear material would remain unsolved.

The procedures in Article 5 whereby the receiving State and third States would have to undertake to co-operate and the obligations which derive from such co-operation are not very clear.

As regards Article 6, it should be made clearer whether the convention is to provide for special prosecution in the case of offences concerned with nuclear material. If it is not, such offences are already punishable under the Italian penal code. If it is, the legislative system at present in force in Italy would have to be modified.

As regards Article 7, we wonder whether the communication to international organizations of information about the measures taken against offenders does not go beyond the aims of the convention. The same question arises in relation to paragraph 2 of Article 12.

As regards the annex, we do not see any justification for excluding plutonium with an isotopic content exceeding 80% of plutonium-238 (footnote a): it is true that plutonium-238 is not involved in the manufacture of explosive nuclear weapons, but — because of its high radioactivity — it would represent a non-negligible hazard in the event of sabotage.

In the case of uranium, the annex should include only uranium enriched to over 20% in uranium-235, for lower values would appear to be of only minor importance from the point of view of physical protection.

The Italian Government reserves the right to make additional comments.”

#### H. KOREA, REPUBLIC OF

(Original: English)

23 August 1977

“.... the Government of the Republic of Korea has no objection to the present text.”

#### I. POLAND

(Original: English)

6 August 1977

“The definition of terms used in the draft convention should be in conformity with the definitions of terms used in other documents of the IAEA. This refers to the terms: “nuclear material” and “nuclear facility”. Definitions of the nuclear material used in documents: IAEA Legal Series No. 4 “Vienna Convention on Civil Liability for Nuclear Damage”, IAEA INFCIRC/153 and those used in the draft convention differ from each other. Likewise the definition of the nuclear facility as provided for in Art. 106 of the document IAEA INFCIRC/153 is different from that used in Art. 1 para c/ of the draft. Different definitions for the same terms may cause misunderstanding. Therefore it is proposed

- not to define the term “nuclear material” but to change as follows the Article 1 para a): “Nuclear material, to which the provision of this Convention refers, are:”
- adjust the definition of “nuclear facility” in the Article 1 para c) accordingly to the definition used in the Article 106 of the document INFCIRC/153:
- establish the lowest limit from which the nuclear material is subject to physical protection. In the draft Convention it is uranium enriched less than 10% in U-235:
- it seems that provisions ii) and iii) of Article 5, para 2, point b) have excessive obligatory character;
- in the Article 7 para 2 points a) and b) diplomatic representatives and consuls should also have the right to contact their nationals arrested in the receiving State.

Otherwise the decision whether to accord the diplomatic representatives or consuls the right to such a visit may be taken arbitrarily by the authorities of the receiving State.”

## J. SOUTH AFRICA

(Original: English)

1 August 1977

“In general it would appear that the approach adopted in the draft is reasonable and that no insurmountable problems should be experienced in the event of South African ratification of such a convention provided that it could be accommodated in the existing legal system.

There are, however, several points which, in our view, require improvement:

### *Article 1.(a)*

The use of the concept “nuclear material” is misleading and confusing. This terminology is used in Agency circles and documents to indicate both special fissionable and source materials. It is clear that the draft refers to special fissionable material but with a meaning slightly different to that assigned to in the Agency’s Statute. It is consequently suggested that some other terminology be adopted e.g. “Special Nuclear Material” or “Weapons Potential Material” or “Sensitive Material”.

### *Article 1.(c)*

The same argument applies to “Nuclear Facility” and it is considered appropriate that this be replaced by something like “Nuclear Establishment” or even “Nuclear Installation” – whilst in the latter case the subsequent “installation” be replaced by “facility”.

### *Article 1.(b)*

The word “contained” in line 2 should be presumably “occurring”.

### *Article 5.2*

#### *Page 7, lines 5, 13 and 20*

In several cases reference is made to “transports” whereas “nuclear transports” is intended.

### *Page 8, line 6*

It is difficult to see how subclause 2.b.(iii) could be enforced. No state could be forced to accept assistance offered by other Parties. This provision can be misused and is better deleted.

### *Article 6.1*

The following additional subclause is suggested:

“(f) Negligence or failure to take steps to ensure physical security by guarding against (a) to (e) above”.

#### *Article 14*

It is not quite clear why the Convention should be limited to member states of the IAEA – China for example is automatically excluded by this provision. We are of the opinion that it should be open to all countries.

#### *Article 18*

This article apparently contains a few typing or drafting errors. In (a) “Articles 12, 13 and 14”, should presumably read “Articles 14, 15 and 16” and in (b) “Article 15” should presumably be replaced by “Article 17”.

In the Annex the definitions of the three Categories are not sufficiently accurate. According to definition, it would appear that it would be possible to ship a large quantity of plutonium in separate parcels – each less than 2 kg – on the same vessel without attracting the measures required for Category I material. We suggest more accurate definitions.”

#### K. SWITZERLAND

(Original: French)

17 August 1977

“The few remarks below are more of a legal or political nature. The more specifically technical comments are given in an annex to this letter.

#### *Article 1.(a)*

The extension of the definition of “nuclear material” to include all plutonium – in contrast with the text in the Agency’s Statute – should not constitute a precedent for other purposes, e.g. those of the Non-Proliferation Treaty. In conformity with the statement made when NPT was ratified, we take as our basis the definition of “nuclear material” given in the Agency’s Statute at the time of ratification.

#### *Article 1.(c)*

The Swiss Atomic Energy Association was also consulted about the draft, and it would like the expression “nuclear facility” to be defined more precisely; the term should include the entire area of the facility. The Association also wishes to point out that the draft convention provides for no procedure for denunciation of the convention.

#### *Article 13.*

We think it would be wise for Article 13 to provide for a system of arbitration. In view of past experience in that connection, we would give preference to a procedure that was binding on all parties and excluded the possibility of expressing reservations (paragraphs 2 and 3).”

## *Annex*

### *General comments*

1.1 From the technical point of view, there is no reason for objecting to this convention.

1.2 Articles 6–19 do not fall within the competence of the Office of the Energy Economy. With a few exceptions, no comments have therefore been made on their substance.

1.3 The requirements concerning the modalities of carrying out transports (international, or perhaps internal) are in principle comparable with those already partially in force (of RID + ADR; previous notifications; multilateral agreements/authorizations, etc.).

There appears to be no incompatibility or contradiction. This convention reinforces -- in places very strongly -- precautions that are already partly in force.

### *Detailed comments*

#### *Article 1.(a)*

This definition is not sufficiently clear to be used in the “categorization” by number given in the annex to the convention. See the comments on that annex.

#### *Article 1.(b)*

“.... à la normale; ....” in the French text is not clear. Proposal: “.... inférieure à la concentration naturelle; ....”

#### *Article 3.3.*

“.... improving techniques of physical protection.” It seems preferable to speak of measures, as in the last line of paragraph 2, in order to make paragraph 3 more general (techniques are particular measures, in the same way as administrative procedures).

#### *Article 4.4.*

The French text should read “sous la surveillance”, not “sans la surveillance”.

#### *Article 4.5.*

The sentences in the French version formed with the expression “.... l’expédition est faite ....” are not clear. Proposals:

(1) “.... l’Etat Partie sur le territoire duquel l’expédition est organisée ....” or better: “.... l’Etat Partie qui est pays d’origine du transport ....”

(2) “Si l’expédition est organisée à partir du territoire d’un Etat non partie ....” or better: “Si le pays d’origine du transport est un Etat non partie à la convention ....”

(3) “....., ainsi qu’à l’Etat à partir du territoire duquel l’expédition est organisée ....” or better: “ .... ainsi qu’à l’Etat qui est pays d’origine du transport ....”

The expression “ .... receive assurances in advance ....” may be meaningless if one of the States affected by the transport does not give the desired assurance.

Proposals:

- “weak” formulation: expression of a recommendation:  
“.... and it shall seek to/attempt to obtain assurances in advance ....”
- “strong” or imperative formulation, implying or stating explicitly a condition to be satisfied before a transport can be carried out (in other words, if this condition is not satisfied, the transport is prohibited):  
“..... and it must obtain assurances in advance ....”  
or  
“Unless it has obtained assurances in advance .... during transfer, the shipment of nuclear materials cannot take place.”

There would also be transport regulations for the case where neither the country of origin nor the country of destination of the transport are parties to the convention, but where the nuclear material does have to pass through a country party to the Convention.

#### *Article 5.2.(b)(ii), (iii)*

It would be useful to define the concept of “assistance” (provided or received).

#### *Article 5.2.(b)iv*

“.....expedite the return of ....” Two remarks:

(1) The practicability of this obligation is doubtful: it suggests that lost nuclear materials are always found which is not a foregone conclusion:

(2) The interpretation of this is difficult. In fact, two aspects have to be distinguished:

(a) The “market value” must be reimbursed in accordance with commercial responsibility;

(b) The nuclear materials must be found in order to eliminate a risk (criminal use) to some victim known in advance.

#### *Article 11.2.*

Meaning not clear.

#### *Annex*

The Annex is a variation on the table for categorizing nuclear materials published in document INFCIRC/225/Rev.1. As far as I know, the Office of the

Energy Economy has never had an opportunity of commenting on this table. I think I should therefore communicate the following remarks to the IAEA:

(a) It should be clearly indicated whether the numerical values defining the limits of categories I, II and III refer to

- the actual mass of the fissionable isotope present in the nuclear material, or
- the total mass of nuclear material containing the fissionable isotopes.

(b) Note a (plutonium): There is no objection to the exception of plutonium “with an isotopic content exceeding 80% of plutonium-238”, but it is not clear of what purpose this note may serve.

(c) Note b: The reasons for regarding slightly active fuel (up to 100 rad/h at 1 m unshielded) as not irradiated might have been mentioned.

(d) Note c: In column III incorrectly numbered I (in French version), note c also applies to

- plutonium;
- uranium enriched to 20%  $^{235}\text{U}$  or more;
- uranium-233.

(e) The sections concerning irradiated fuel (Table and Note f) should be explained. In particular: what is the dominant effect of radiation from the physical protection point of view — reduction in risk of theft or increase in danger to population in case of criminal use?”

## L. TURKEY

(Original: English)

29 August 1977

“The text of the Draft Convention deserves a thorough and careful study by a number of relevant national authorities. Although the studies of these authorities have not been yet completed, it was worthwhile to note some positive aspects of the Convention as follows:

1) The participation of a large number of States to the security measures, to be taken in relation to the transport of the nuclear material within their territory, would allow a more safe transport.

2) The authorities of the country in which the nuclear transport would be done, would be able to take the necessary measures for the physical protection of the shipment.

3) The physical protection of the nuclear transport would be largely assured by the joint studies and by the exchange of information on the improvement of physical protection techniques.



4) A setting up of a common action by a large number of States against possible illegal actions directed towards the nuclear facilities, material and transport, would discourage the recourse to these kind of actions.

To sum up, the contents of the Draft Convention is found technically satisfactory. But it is to be noted that, according to the results of the afore mentioned studies, my Government may have further considerations on the Draft Convention which can be heard of during the series of meetings to be held for the elaboration of the final text.”

ANNEX

Where Member States have made general remarks regarding, for example, the scope of the draft convention and its bearing on domestic law and where they have commented on specific parts of the text of the draft convention on physical protection of nuclear materials, facilities and transports, this fact is indicated below.

I. GENERAL REMARKS

Scope of the convention	India
Legislative implications	Belgium South Africa
Other	Austria Bulgaria Iran Ireland Italy Korea, Republic of South Africa Switzerland Turkey

II. SPECIFIC COMMENTS

Preamble	Italy
Article 1.	Iran Italy Poland South Africa Switzerland

<i>Article 3.</i>	
3.1.	Belgium
3.2.	Belgium Iran
<i>Article 4.</i>	Italy
4.1.	Iran
4.3.	Belgium
4.4.	Iran Italy Switzerland
4.5.	Belgium Switzerland
<i>Article 5.</i>	Austria Italy
5.2.	Poland South Africa Switzerland
<i>Article 6.</i>	Italy
6.1.	Austria Belgium South Africa
6.2.	Belgium
<i>Article 7.</i>	Austria Italy
7.2.	Poland
<i>Articles 7. – 13.</i>	Belgium
<i>Article 8.</i>	Austria
<i>Article 10.</i>	Belgium
<i>Article 11.</i>	
11.2.	Switzerland
<i>Article 12.</i>	
12.2.	Italy

*Article 13.*

13.2.

*Article 14.*

*Articles 15. and 16.*

*Article 18.*

Switzerland

Belgium

South Africa

Belgium

Belgium

South Africa

### III. ANNEX:

*Categorization of Nuclear Material*

Iran

Italy

Poland

South Africa

Switzerland

**COMMENTS ON THE DRAFT CONVENTION  
ON PHYSICAL PROTECTION OF NUCLEAR MATERIALS,  
FACILITIES AND TRANSPORT**

(CPNM/2/Add.1)

7 October 1977

**NOTE BY THE DIRECTOR GENERAL**

Those comments on the draft convention on physical protection of nuclear materials, facilities and transports which Member States had communicated to the Director General between 1 September and 7 October 1977 are reproduced overleaf. The Annex hereto contains a list of articles of the draft convention upon which Member States have made specific comments.

**COMMENTS BY**

A. Australia

B. Finland

C. India<sup>72</sup>

D. Norway

**A. AUSTRALIA**

(Original: English)

14 September 1977

“... In addition to these specific suggestions we are also interested to explore the possibility of including specific provisions of source materials in the convention. We appreciate that the form and content of the convention, including the question of its application to source materials, is a complex matter and a degree of flexibility might be required to gain broad acceptance in the international community ...”

“Australian authorities have given detailed consideration to the draft convention and are in agreement with its aims and general direction. We regard it as a major step forward in promoting widespread international acceptance of INFCIRC/225. However, we feel that the draft needs clarification at some points and tightening of the language at others.

*Article 1:*

“International transfer”, as used in Articles 4 and 6, should be defined, particularly where international transfer starts and ceases. The definition of “nuclear material” appears to need a minimum level such as that in item (c) of the Annex and the table of INFCIRC/225/Rev.1.

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<sup>72</sup> See also comments in working paper CPNM/2.

*Article 2:*

We assume that the convention will apply where military transport or facilities are used for civilian purposes.

*Article 3.1:*

We are concerned at the possible implications of the phrase “consistent with its domestic law”. In particular, it may afford states the possibility of not honouring their obligations under the convention which, in some cases, may require new legislation. In our view, it should be omitted. We think that it would be preferable were this paragraph to require states to take appropriate measures to prevent commission of all the offences listed under Article 6. At present, not all these offences are covered by this paragraph. See also the comment on Article 6.

*Article 3.2:*

We would suggest that the words from “prepared from time to time” to “are a useful basis for guiding” be replaced by “recognised by the IAEA shall be used as a basis by”. We are concerned to identify *which* documents and *which* experts, and to emphasise an obligation.

*Article 4.2:*

Refer to comment on footnote (c) at Annex.

*Article 6:*

It may be preferable, for impact purposes, to move the proscribing provisions in Article 6 to an earlier position in the draft convention and before the protective measures proposed in Article 3.

*Article 6.1:*

In accordance with the comments on Article 3.1, we suggest the deletion of the phrase “consistent with its domestic law”.

- (b) Add “unlawful and” before “intentional”.
- (c) Delete “intentional” before “entry”.
- (d) Add “unlawfully and” before “intentionally”.
- (e) This sub-paragraph should be extended to include accomplices.

In addition, we consider that there should be a sub-paragraph covering demands for nuclear material by means of threats, e.g. extortion and blackmail. Furthermore, we consider that states party should agree that under no circumstances would they release nuclear material under threat. This may require a separate Article. It should be noted that parties to the NPT are already under such an obligation.

*Article 6.2:*

This paragraph limits international offences to offences which occur during international transfer. The reason for this is not apparent. Moreover, we are not persuaded that Articles 9, 10 and 11 should apply only to international offences, however defined. For both these reasons, Article 6.2 should be deleted and consequent changes introduced into Articles 9, 10 and 11.

*Article 13.2:*

Does this paragraph preclude the making of reservations to any provisions other than Article 13.1 (See Article 19) of the Vienna Convention on the Law of Treaties)?

*Annex:*

We assume that footnote (c) applies to the same items of Category III as in the INFCIRC/225/Rev.1 table. We are concerned that something in the nature of an obligation is set out in footnote (d) and would find a clarification helpful. Footnote (e) has no point of reference. We assume that it refers to the whole Annex. We suggest the following redraft: "although the levels of protection in this Annex are recommended, it would be open to states upon evaluation of the specific circumstances, to assign higher categories of physical protection."

**B. FINLAND**

(Original: English)

31 August 1977

"Finland greets with satisfaction the initiative made to establish an International Convention on the Physical Protection of Nuclear Materials, Facilities and Transports. Finland is very much aware of the importance of physical protection both from the point of view of non-proliferation of nuclear weapons and general security, and therefore considers an international convention in which the minimum standards for physical protection are clearly defined, extremely urgent.

Finland also finds it particularly positive that the matter should have been brought forth within the IAEA, whereby the best possible opportunities for its preparation are guaranteed.

The Finnish authorities have made a preliminary examination of the draft convention attached to the letter of the Director General, dated on 16 June 1977. Due to lack of time Finnish views on Articles 6–19 concerning provisions on criminal law and the entering into force of the convention will be presented

at a later stage. As regards the provisions set forth in Articles 1–5 concerning the minimum level of physical protection, the Finnish authorities consider that the draft text should be given some more reflection but that it could serve as a basis for a further elaboration of the convention, taking into account comments to be received from interested governments. In particular, the Finnish authorities would wish to draw attention to the following points:

1. The draft includes provisions on the security measures to be applied on nuclear activities within the territory of each state party to the convention as well as during international transports of nuclear material. For the first mentioned category the minimum level is loosely tied to the recommendations of the IAEA, prepared from time to time and updated as appropriate. As regards international transport the convention would, however, include detailed provisions on a par with the IAEA recommendations. The way in which the security measures are to be put into practice is, however, still being worked out and it is fairly certain that these provisions will be amended in the future. Therefore the convention should include a mechanism allowing amendments to these technical details through more flexible procedures than those necessary to modify the convention.

2. According to the provisions of the draft convention, a state party to the convention shall take appropriate measures to protect nuclear material “within its territory under its jurisdiction or under its control anywhere” and make sure before any international transfer of such material that the security regulations are being observed everywhere. Although the problem of jurisdiction has been briefly referred to in the explanatory annotation accompanying the convention, it seems, on the basis of Finnish experience, that greater attention should be attached to this problem which can arise in connection with transportation on ships registered in third countries, particularly when these ships are sailing in international waters.

3. The draft convention presupposes, especially in connection with international transport, a fairly extensive communication between the authorities of the sending, receiving and transit states. At the final formulation of these provisions it should be elaborated in detail how this communication is to be organized in practice. In the same context or later it should be made clear to what extent the communication could be combined with, on the one hand, the communication required by the application, of safeguards and, on the other, the communication presupposed by the IAEA radiation protection recommendations. The IAEA could perhaps draw up a recommendation on the standard forms of communication and keep a record of authorities responsible for the security measures.

4. Article 5 of the draft convention includes provisions on the mutual assistance between the states party to the convention in the recovery of nuclear materials which have fallen into the wrong hands.

The forms of this assistance, both as regards the assistance a state shall offer and accept, should be further defined.

5. There should be included in the convention a provision on the obligation of the authorities to keep secret the information they have, by virtue of the convention, received on the physical protection systems of other states.”

### C. INDIA<sup>73</sup>

(Original: English)

13 September 1977

“The title may be amended as “Draft Convention on the Physical Protection of Nuclear Material during International Transport”.

First pre-ambular paragraph: No change.

Second pre-ambular paragraph may be amended to read as: “*Concerned* over the grave dangers posed by the potential of theft and misuse of nuclear material during international transport”.

Add the words “during international transport” at the end of the third pre-ambular paragraph.

The fourth pre-ambular paragraph may be corrected to read as “*Determined* to cooperate and coordinate efforts designed to effect the speedy recovery of nuclear material lost or stolen during international transport”.

*Article 1(a)*: No change.

*Article 1(b)*: No change.

*Article 1(c)*: The present Article 1(c) may be deleted and in its place the following new Article 1(c) may be introduced:

“(c) ‘international transport’ means transport of nuclear material from the territorial jurisdiction of one State to that of another.”

*Article 1(d)*: May be deleted.

*Article 1(e)*: May be renumbered as Article 1(d).

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<sup>73</sup> For general comment see CPNM/2.



*Article 2:* May be amended to read as:

“This Convention shall apply to all nuclear material during international transport.”

In *Article 3.1* add the words “during international transport” after the words “nuclear material”.

*Article 3.2:* The words “document INFCIRC/225 (corrected) appearing in the first line may be substituted by the words “document INFCIRC/225/Rev.1” and the words “for nuclear materials during international transport” may be added at the end of this paragraph.

*Article 3.3:* The words “of nuclear material during international transport” may be added at the end of this paragraph.

*Article 4.1:* This Article may be amended to read as follows:

“1. Each State Party to the Convention agrees to ensure that nuclear material will at all times during international transport be subject to the precautions described in paragraphs 2, 3 and 4 of this Article before agreeing to import or export or permitting the import or export of such material.”

*Article 4.2:* No change.

*Article 4.3:* No change.

*Article 4.4(a):* No change.

*Article 4.4(b):* It is felt that detailed discussions with the Agency on the method of implementing the provisions of this Article would be required.

*Article 4.5:* No change.

*Article 5.1:* The words “nuclear facilities and nuclear transports” appearing in line 4 may be substituted by the words “during international transport” and the word “transfer” appearing in the second last line may be substituted by the word “transport”; the words “and on other matters of mutual concern” appearing at the end of this paragraph may be deleted.

*Article 5.2:* This paragraph may be amended to read as follows:

“2. In the case of loss or theft of nuclear materials during international transport or in the event of threats to nuclear materials during international transport, States Party to the Convention shall cooperate and assist one another to the maximum feasible extent in the recovery or protection of such material. In particular:”

*Article 5.2(a):* The words “during international transport” may be added after the words “nuclear material” appearing in line 2 and the words “a nuclear facility or transport” appearing in lines 3 and 4 may be substituted by the words “during international transport”.

*Article 5.2(b):* The words “nuclear facilities and transports” appearing in lines 3 and 4 may be substituted by the words “during international transport” and the words “during international transport” may be added after the word “material” in the last line.

*Article 5.3:* The words “during international transport” may be added after the word “material” appearing in the last line.

*Article 6.1:* This may be corrected to read as follows:

“1. Consistent with its domestic law, each State Party to this Convention shall take such steps as are necessary to make the following offences, hereinafter referred to as international offences, punishable under its criminal law:

- (a) Any theft of nuclear material during international transport;
- (b) Intentional misuse, damage or destruction of nuclear material during international transport;
- (c) Any intentional entry into a vehicle, vessel or aircraft containing nuclear material under international transport, with the intent to do any of the acts described in paragraphs (a) or (b) above;
- (d) Intentionally causing physical damage to, destruction of, or seizing a vehicle, vessel or aircraft containing nuclear material under international transport;
- (e) A conspiracy to commit, attempt to commit or threat to commit any of the offences described in this Article.”

*Article 6.2:* This may be deleted.

*Article 7:* No change.

*Article 8:* No change.

*Article 9.1:* No change.

*Article 9.2:* The words “these offences” appearing in the fifth line may be corrected as “the international offences”.

*Article 9.3:* The words “these offences” appearing in the second line may be corrected as “the international offences”.

*Article 9.4:* The word “international” may be added before the word “offences” appearing in the first line.

*Article 10:* The word “an” appearing in the second line may be changed to “any”.

*Articles 11–19:* No change.

The Annex may be substituted by the table appearing on page 6 of IAEA Document INFCIRC/225/ Rev.1.

The words “nuclear materials” may be changed to “nuclear material” wherever they appear in the Draft Convention”.

#### D. NORWAY

(Original: English)

31 August 1977

“I have been instructed to inform you that the Norwegian Authorities share your view on the usefulness of a convention on these matters, and that they find, in general, the draft text acceptable, although they think that problems in connection with transportation have, perhaps, not been taken sufficiently into account.

As far as the details of the Draft are concerned, I have been instructed to draw your attention to the following:

It does not seem to be conformity between the definitions in the Draft and IAEA’s recommendations regarding physical protection (INFCIRC/225). Furthermore, reference is made to an earlier edition of the recommendations than the current one.

The annex does not correspond to relevant tables neither in the earlier (INFCIRC/225/Corrected) nor in the new edition (INFCIRC/225/Rev.1). The draft would profit from a stricter and more precise usage of language. This especially applies to Article 3.2.

It might be a good idea to appoint a working group to look further into these questions — and perhaps streamline the Draft as a whole”.

#### ANNEX

Where Member States have made general remarks regarding, for example, the scope of the draft convention and its bearing on domestic law and where they have commented on specific parts of the text of the draft convention on physical protection of nuclear materials, facilities and transports, this fact is indicated below.

#### I. GENERAL REMARKS

Scope of the convention

Australia  
India

Other

Australia  
Finland  
Norway

## II. SPECIFIC COMMENTS

Preamble	India
<i>Article 1.</i>	Australia India
<i>Articles 1.–5.</i>	Finland
<i>Article 2.</i>	India
<i>Article 3.</i>	
3.1.	Australia India
3.2.	Australia India
3.3.	India
<i>Article 4.</i>	
4.1.	India
4.2.	Australia India
4.3.	India
4.4.	India
4.5.	India
<i>Article 5.</i>	
5.1.	India
5.2.	India
5.3.	India
<i>Article 6.</i>	
6.1.	India
6.2.	India
<i>Article 7.</i>	India
<i>Article 8.</i>	India

*Article 9.*

9.1.	India
9.2.	India
9.3.	India
9.4	India

*Article 10.* India

*Articles 11.–19.* India

III. ANNEX:

*Categorization of Nuclear Material*

Australia
India
Norway

**COMMENTS ON THE DRAFT CONVENTION  
ON PHYSICAL PROTECTION OF NUCLEAR MATERIALS,  
FACILITIES AND TRANSPORTS**

(CPNM/2/Add.2)

31 October 1977

**NOTE BY THE DIRECTOR GENERAL**

Those comments on the draft convention on physical protection of nuclear materials, facilities and transports which Member States had communicated to the Director General between 8 and 28 October 1977 are reproduced overleaf. The Annex hereto contains a list of articles of the draft convention upon which Member States have made specific comments.

**COMMENTS BY**

- A. Japan
- B. Netherlands
- C. Spain

**A. JAPAN**

(Original: English)

11 October 1977

“ . . . I have the honour to transmit hereafter preliminary comments of my Government on the draft Convention: .

*Article 1:*

For the sake of clarity, it would be desirable to have a definition of the *significant quantity* of nuclear material over which physical protection is called for.

*Article 3:*

Paragraph 1 — Regarding the last sentence, “nuclear material within its territory . . . under its control anywhere”, it would be needed to define more precisely the circumstances under which nuclear material is placed *under control* of a State outside its territory and jurisdiction.

Paragraph 2 — The appropriateness of this paragraph, as part of a State’s undertakings, could be reconsidered.

*Article 4:*

- (i) The following issues would have to be further discussed;
  - (a) How it becomes feasible to verify, prior to respective import or export of nuclear materials, whether physical protection measures of the required level are taken in respect of such materials?
  - (b) How to secure appropriate practical measures for physical protection of nuclear material under international transfer in the open sea and air?
  - (c) How should transfer or ramification of responsibilities between relating States such as Sending State and Receiving State be regulated and how should the relation to the Flag State be?
- (ii) The levels of physical protection measures are specified in paragraphs 3 and 4 for respective categories of nuclear material. However, the Convention might require further precision.
- (iii) It would be necessary to make the following points clear:
  - (a) What precise set of circumstances is understood to comprise “holding and storage” in the first line of paragraph 3?
  - (b) What kind of organizations are considered as “appropriate response forces” in the end of the first sentence of paragraph 3(c)?
  - (c) May “escorts” in paragraph 4(b) be taken as not requiring armed escorts?
  - (d) What kind of communication system is considered for “close communication” in paragraph 4(b)?

*Article 6:*

- (i) In order to make, in application of the so-called *principle of universality*, items under sub-paragraphs (a), (b), (c), (d) and (e) committed outside the jurisdiction of State Party A punishable offenses under its criminal law, there would be a need for that State Party to take the legislative steps necessary to make punishable such offenses. It does not seem, however, to be an easy task for a State Party.
- (ii) What is considered, to be concrete, as constituting crime by “misuse” in paragraph 1(b) and “conspiracy” in paragraph 1(e)?

*Article 7:*

Unless offenses committed outside the jurisdiction of State Party A are made punishable under its criminal law, which does not always seem to be easy, that State Party would find no legal ground, under its domestic law, to restrain criminals and, hence, to take “appropriate measures” as provided in paragraph 1, in cases where offenses take place outside its jurisdiction.

*Article 8:*

What kind of organizations are considered "competent authorities"? We do not think it appropriate that the Convention assign a duty to participating States for prosecution of criminals.

In view of the complexity of the problems involved, my Government wonders whether it would be useful and worthwhile to hold an experts meeting besides the drafting meeting of representatives of governments."

**B. NETHERLANDS**

(Original: English)

28 October 1977

"These comments are of a tentative nature, due to the fact that in the draft convention attention has mainly been paid to technical aspects. As far as the legal aspects are concerned, additional remarks might be expected to be made for instance by the Netherlands delegation to the conference. Moreover, the implications of this draft for our national legislation may also lead to further observations.

With the foregoing in mind, the preliminary list of comments to the draft of this convention reads as follows:

*Title:*

In order to bring the title in line with earlier recommendations and because the proper physical protection of nuclear material will include precautions to related facilities and transports, it is proposed to use as title: "convention on the physical protection of nuclear material", or if it is deemed necessary to state such also explicitly in the title, the words "in use, transit and storage" could be added.

*Preamble:*

First consideration of the preamble has to deal with the international character of the danger which arises by the unauthorized removal of nuclear material for a nuclear explosive device. Therefore it is urgently needed to ensure an internationally recognized minimum level of effective physical protection. After such considerations also the statement can be made that nothing shall be identified as affecting the inalienable right of all nations to develop research, production and use of nuclear energy without discrimination.

Also the demand for international agreements in the field of international transport of nuclear material, e.g. as mentioned in the different editions of INFCIRC/225, has to be taken into the considerations.



*Article 1:*

a) The convention is effectively limited to “special fissionable material” as it is defined in the Statute of the IAEA article XX (excluding U with an enrichment below 10 per cent and Pu containing more than 80 per cent of the isotope 238). It should be appropriate to refer to the current definition of nuclear material as “source material and special fissionable material” as defined in the IAEA Statute, article XX.

b) and c) Is superfluous and can be deleted.

d) It is the adjective “nuclear” which is used wrongly in these definitions, because the intention is to make clear that the facilities or transports are “to be protected” in relation with the total amount of special fissionable material at hand in the facility or engaged in the transport. A reference to the table of the Annex should be made for the quantities and categorization.

e) Reference to “article VI” must be reference to “article 6”, but it would be clearer to have the definition fully in this first article.

*Article 2:*

The exclusion of that part of the fuel cycle, used for military purposes, is wrong; only as long as the material is in use for military purposes, it may be excluded from this convention. It is supposed that military protection measures (in peace-time) are at least ensuring a protection level which is equal to the physical protection level of the civil part of the fuel cycle.

*Article 3:*

The reference to INFCIRC/225, as an international recognized minimum level of physical protection, could be made stronger. Also it is not clear what is meant with “similar documents”. The scope of the convention has to be defined in one of the articles. This has to be done in relation with the table, which is derived from INFCIRC/225.

In the third paragraph the improvement of techniques is mentioned. However as techniques improve also related procedures can be changed and both have to be considered, therefore “measures” is a better word than “techniques”.

*Article 4:*

The first paragraph of this article deals with the obligation of the exporting State to satisfy itself that into eternity the nuclear material under the protection of this convention will remain so as long as it is engaged in international transfer. Such a statement is formulated too strongly. May be, a modification that “the receiving State will take over the obligations pursuant to this

convention in relation to the material under consideration” is what was intended to formulate under this article. In the point 5 of this article cooperation and assistance in the case of loss or theft is felt to be too limited. Also in all other instances cooperation is needed in order to ensure the physical protection needed and the undisturbed execution of the transport operations.

On the other hand one has to be careful to introduce international discrepancies for countries which are surrounded by non-convention countries. The absolute formulations in this convention article are too strong.

*Article 5:*

Paragraph 2b point iii. The obligation to accept assistance from other States may be a point of serious objection, if it is not carefully described.

*Article 6:*

It is understood that the offences to be made punishable under the domestic or internal law also can be committed in the territory of another state.

This article as well as the following articles have to be studied still carefully from the legal point of view, in connection with the existing laws, and possible changes needed, before the convention can be implemented.

*Annex:*

The table of the Annex is clearly a not fully authentic replica of the table in INFCIRC/225/Rev.1: categorization of nuclear material. The table of INFCIRC/225/Rev.1 is preferred due to the improvements:

- irradiated fuel is treated in a more consistent way, viz. it may be reduced by one category if the radiation level exceeds a fixed threshold;
- the difficult problem about dispersal of Pu is related to the credible dispersal threat to be evaluated by the competent State authority.

The table of INFCIRC/225/Rev.1 concentrated the measures for physical protection on nuclear material amounts, but it neglects the fact that dilution of nuclear material in large amounts of other material can be a reason to exempt the material from the physical protection. Also much larger amounts may be considered as special cases that require a special evaluation of the measures taken and the control of their effective operation.

*Annotation:*

A convention on the physical protection of nuclear material has to deal with the specific properties of the nuclear material. That means the danger to be considered lies in the possibility to create a nuclear explosive device with the nuclear material under consideration.

Another point is the radiotoxicity of Pu. In some publications the radio-toxic properties of Pu are exaggerated to such an extent that the conclusion is: "Pu is the most toxic substance known to man". This conclusion is disproved e.g. by Bernard L. Cohen in his quantitative analysis of this matter presented at the 1975 spring meeting of the American Physical Society, Washington D.C., 28 April – 1 May 1975, under the title:

Environmental hazards in radioactive waste-disposal, plutonium dispersal, and spent fuel transport.

From these evaluations it becomes clear that the physical protection measures, necessary to avoid dispersal of plutonium, have to be incorporated in the much more general problem of dispersal of toxic substances, of which radioactive materials can form a special class, including Pu.

With the development of modern nerve gases and the discovery of the extreme toxic biologic agents like botulism toxin and anthrax spores it becomes clear that new regulations have to be made and measures have to be taken to ensure an adequate protection against (unwanted) dispersal of these materials.

*General remarks:*

It is preferred to indicate "theft" and similar actions, by "unauthorized removal". The word "loss" could also include what in normal operating practices of facilities is called "normal operation losses", or what in safeguards context is called "nuclear loss", for the normal changes that occur under neutron irradiation in reactors. In the same line the wording "destruction of nuclear material" has to be defined as being something else than the fissioning of the atoms by normal operation of a reactor. The legal meanings of the words like "domestic law, internal law, loss, theft, misuse, stolen, damage, threat, intentional, etc." have to be clarified in connection with the national laws.

If the draft has to be discussed, it should be advisable to repeat in the paragraph numbering also the main number of the article, in order to avoid confusion."

## C. SPAIN

(Original: Spanish)

18 October 1977

"... I have the honour to transmit to you the comments of the Spanish Junta de Energia Nuclear concerning the draft convention on the physical protection of nuclear materials, facilities and transports.

## 1. *General remark*

The draft convention is so important that it should be considered carefully by a committee of all interested Member States before the diplomatic conference which will adopt it is convened; this committee should verify that there is an international consensus on the advisability of concluding the convention and should revise the text itself in order to obtain a more thoroughly thought-out draft reflecting the views expressed by the members of the committee.

## 2. *Specific comments*

The text has some faults requiring correction:

- (a) Paragraph 2 of Article 3 is simply an indication for the information of the States Parties and should not be included in the operative part of the convention; if it is to be retained at all, it should be given in an annex.
- (b) Paragraph 1 of Article 4 seems incompatible with paragraph 5, and both give rise to confusion unless their intention is to impede exports or imports in the case of States which are parties or which — not being parties — undertake to fulfil the conditions laid down in the Article. Moreover, paragraph 5 says “shall . . . notify” without indicating who shall receive such notification. The importance of this Article for international commerce in nuclear materials should be stressed.
- (c) Sub-paragraphs 2(b) (iii) of Article 5 imposes an obligation to accept the assistance of other States Parties, without any qualification: this could lead to undue interference by other States in the internal affairs of a State Party. If this phrase is not deleted, it should therefore be revised, the scope of the obligation being defined more precisely.
- (d) Article 9, in particular paragraph 2, seems self-contradictory.
- (e) There is no denunciation clause, which is strange in a draft where the clauses customary in this type of convention are present in such detail.
- (f) The expression “appropriate international organizations” occurs frequently in the text. In order to avoid misunderstandings, the organizations meant should be named.”

## ANNEX

Where Member States have made general remarks regarding, for example, the scope of the draft convention and its bearing on domestic law and where they have commented on specific parts of the text of the draft convention on physical protection of nuclear materials, facilities and transports, this fact is indicated below.

### I. GENERAL REMARKS

Scope of the convention	Netherlands
Procedures of elaboration of the convention	Japan Spain
Other	Netherlands

### II. SPECIFIC COMMENTS

Preamble	Netherlands
<i>Article 1.</i>	Japan Netherlands
<i>Article 2.</i>	Netherlands
<i>Article 3.</i>	Netherlands
3.1.	Japan
3.2.	Japan Spain
3.3.	Netherlands
<i>Article 4.</i>	Japan
4.1.	Netherlands Spain
4.3.	Japan
4.4.	Japan
4.5.	Netherlands Spain
<i>Article 5.</i>	Spain
5.2.	Netherlands Spain

*Article 6.*

Japan  
Netherlands

*Article 7.*

Japan

*Article 8.*

Japan

*Article 9.*

Spain

9.2

Spain

### III. ANNEX:

Categorization of Nuclear Material

Netherlands

**PRELIMINARY COMMENTS OF THE DELEGATION  
OF THE FEDERAL REPUBLIC OF GERMANY  
ON THE DRAFT CONVENTION  
ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIALS,  
FACILITIES AND TRANSPORTS**

(CPNM/2/Add.3)  
1 November 1977

*Title*

The Federal Republic of Germany would prefer the title of the convention to be in line with the text of document INFCIRC/225 and read "Convention on the Physical Protection of Nuclear Material in Use, Storage and Transport" (alternatively the title of the document — The Physical Protection of Nuclear Material — could be adopted).

*Preamble*

*Para. 2* The delegation of the Federal Republic proposes the following text:

"Concerned over the grave dangers posed by the potential of illegal seizing or misuse of nuclear materials for nuclear materials for nuclear explosions or release of radiological material,".

*Para 4* The following words should be added:

". . . and the prosecution of offenders."

*Art. 1(c)*

The definition of "Nuclear facility" should be more precise, so as to cover only facilities in which a significant amount of nuclear material exists.

*Art. 1(d)*

This paragraph should read as follows:

"Nuclear transport" means the carriage of nuclear material by any vehicle, vessel or aircraft."

*Art. 2*

This article should be deleted since the grave danger deriving from subnational misuse of nuclear material is independent of the military or civilian use of the nuclear material.

*Art. 3.1.*

Thought should be given to whether the words “consistent with” are appropriate. Would it not be better to write “subject to”?

*Art. 3.2.*

The concept “Similar documents” is not precise. On the other hand, provision should be made for an adaptation of the convention to subsequent developments. Some mechanism permitting extension of the provisions of the convention should therefore be added.

*Art. 3.3.*

To prevent misunderstanding, the words “as appropriate” should be placed as follows: “States Party to the Convention shall co-operate and consult, as appropriate, with each other directly or through international organizations, with a view to improving techniques of physical protection.”

*Art. 4.*

It is our understanding that Art. 3 covers all transport problems arising directly between States Parties to the convention. Accordingly, only transports which pass through the territories of States not party to the convention or take place between a State Party and a non-party State need to be regulated in Art. 4. Paragraph 1 of Art. 4 should therefore be revised. Furthermore, it is essential to provide for the determination of which State is responsible for assuring the necessary protection. There should also be provision for the transfer of responsibility for assuring adequate protection during international transport by agreement between two or more States Parties to the convention.

*Art. 5.3.*

The detection of nuclear materials is a matter for the Treaty on the Non-Proliferation of Nuclear Weapons. It is our understanding that the convention under consideration is concerned with “prevention”. We feel, therefore, that the word “detect” should be replaced by “prevent”.



**STATEMENT MADE BY THE REPRESENTATIVE  
OF THE NETHERLANDS ON 2 NOVEMBER**

(CPNM/2/Add.4)  
8 November 1977

*Article 6*

Article 6 is the first article of a series of provisions of a penal nature in the draft convention. My delegation highly appreciates the efforts made by the drafters to provide for a coherent system of penal provisions aimed at an effective implementation of the convention.

Nevertheless, we are confronted with many questions in this respect.

Article 6, a key one in the third part of the convention, obliges States to incorporate in their national legislation a number of dispositions by virtue of which certain behaviour with regard to nuclear material, nuclear facilities and nuclear transport becomes a punishable offence.

In the first place, any theft of nuclear material should be punishable. We agree with that, but the question is justified why national legislation should confine itself to theft. In our view there are other forms of behaviour in the sphere of criminality against property which should equally be covered by Article 6.1(a).

Secondly, intentional misuse, damage or destruction of nuclear material is mentioned. Bearing in mind that penal provisions should be precise, we wonder what has to be understood by intentional misuse.

The distinguished delegate from the United States yesterday gave a certain clarification by substituting for "misuse" the term "unauthorized use". We appreciate that as an improvement, but still the question remains whether this expression includes, for instance, some use of nuclear material for purposes of warfare or use without certain formalities having been fulfilled. With regard to damage or destruction of nuclear material, the question arises whether the proposed prohibition does not go too far. There is destruction of nuclear material which is highly desirable. The convention should confine itself to illegitimate damage or destruction.

Thirdly, the draft article affects any intentional entry into that area of a nuclear facility or nuclear transport containing nuclear material, with the intent to steal, to misuse, to damage or to destroy that material. Apart from

the question what has to be understood by an area of a transport — this by the way affects the question earlier discussed, of the definition of “nuclear transport” — we wonder how the relationship should be conceived between this provision and the attempt to commit an offence, mentioned in Article 6.1(e). In other words, has sub-paragraph (c) an intended meaning other than that of sub-paragraph (e)?

Finally, sub-paragraph (e) obligates States Parties to incorporate in their penal law, apart from the attempt, a conspiracy to commit and a threat to commit any of the offences described in Article 6. We must confess that in this context the notion of conspiracy is not extremely clear to our minds. We have noted that forms of participation in offences such as complicity are not expressly mentioned. Is the expression “conspiracy” meant to cover all those forms of participation and — if not — is it really desirable to make conspiracy a separate offence throughout the broad field of Article 6? On the other hand, in our opinion it may go too far to punish the mere threat to commit an offence.

Apart from these, and perhaps other, critical remarks concerning the text of Article 6, this article gives rise to a more general question already pointed out in written comments. I have in mind the question whether the envisaged provisions of national penal law should have the normal scope of application or an enlarged one. As you may be aware, in many States penal law is based upon the principle of territoriality — that is to say, it applies to offences committed within the territory of the State. It might be justifiable to give at least a number of these offences a wider application. To that end it would be necessary to extend the State’s jurisdiction to certain offences committed outside its territory.

In this connection, it may be recalled that yesterday we had a discussion on the question whether the convention should apply to all nuclear facilities, nuclear material and nuclear transports, or whether facilities, materials or transports for military purposes should be excluded from the application of the convention. The draft adopts the second solution. In our view, it is, however, obvious that military facilities etc. cannot be excluded with respect to the penal provisions. It would be illogical and damaging to the application of the convention if, for instance, theft of nuclear material from military facilities or transports was not brought under the national penal laws envisaged by the convention.

In conclusion, all I have said tends to underline that the Chairman was right in suggesting, as a way of proceeding, the establishment of a working group for the examination of the penal provisions to be incorporated in the convention after a first general discussion in the plenary. I am sure that the

need for such a working group — a relatively small one — will become still more clear when we discuss the following articles about international legal co-operation. I doubt, however, whether a sufficient number of experts in penal law are participating in this meeting. It might, therefore, be preferable to convene in the near future a special meeting of the working group which the Chairman had in mind which should report before the next plenary meeting.

**COMMENTS ON THE REPORTS OF THE FIRST SESSION  
OF THE MEETING OF GOVERNMENTAL REPRESENTATIVES  
TO CONSIDER THE DRAFTING OF A CONVENTION  
ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL  
(31 October – 10 November 1977)**

(CPNM/30)  
7 April 1978

**NOTE BY THE DIRECTOR GENERAL**

The comments on the working groups' reports of the first session of the Meeting of Governmental Representatives to Consider the Drafting of a Convention on Physical Protection of Nuclear Material as well as those additional comments on the original draft convention which the Member States have communicated to the Director General between 11 November 1977 and 7 April 1978 are reproduced overleaf. The Annex hereto contains a list of articles of the draft convention upon which Member States have made specific comments.

**COMMENTS BY**

A. France	D. Netherlands
B. Greece	E. South Africa
C. Ireland	

**A. FRANCE**

(Original: French)

22 February 1978

"I have the honour to inform you that the content of these reports accurately reflects the discussions which took place and that the competent French authorities have no comments to make thereon.

Let me take this opportunity to recall that the debate on the scope of the Convention did not lead to a consensus. In that connection our representative had indicated that the French Government wished to record its preference for a Convention limited to the protection of international transports.

It is well to recall also that the working group on legal questions only provisionally accepted the report that was established, subject to adjustment of the texts to take account of the legal systems of the different participating countries.

Finally, it would be necessary to ensure that, on the legal plane, the definitions used in the report of the working group on technical questions are compatible with those used in the report of the working group on legal questions."

## B. GREECE

(Original: English)

7 December 1977

“... the Greek competent authorities have examined the legal, scientific and technical aspects of the original draft convention on physical protection of nuclear materials, facilities and transports, attached to your above-mentioned letter, and agree to the proposed text.”

## C. IRELAND

(Original: English)

8 February 1978

### *“Article 3(1)”*

In general, it seems desirable that the Convention should have as broad a scope as possible, taking into account the Declaration of the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons on 30 May 1975 and the Resolution of the IAEA General Conference in September 1975 referred to in the IAEA letter of 16 June 1977. We would support the extension of the Convention to materials being processed, used and stored as well as to those in transit.

### *Article 3(2)*

As drafted, this amounts to a mere statement, which appears inappropriate in a legally binding instrument. Perhaps the phrase “States Parties shall take into account as guidelines when designing a system of physical protection IAEA document INFCIRC/225/Rev.1 entitled “The Physical Protection of Nuclear Material” contained in Annex III”, would be better. In any event, if anything on the lines of Article 3(2) is included, it seems desirable that the Convention should also make provision for revision of the Annex, as was done, for example, by Article 98 of Protocol I to the Geneva Conventions.

### *Article 6 bis*

We would not concur with the opinion at footnote 2. Article 6 bis 1(b) must be included for the purpose of ensuring that an offender does not go unpunished, as extradition may be refused under national regimes for reasons other than the fact that the alleged offender is a national of the State in which he is present.

### *Article 7(3)*

We see no objection to the inclusion of the bracketed provision relating to stateless persons.

#### *Article 8*

The phrase "through proceedings in accordance with the laws of that State" is unclear and could imply that the State is obliged to prosecute an alleged offender even where its preliminary enquiry has established his innocence beyond doubt. The terminology used in other Conventions would be preferable, i.e. a fresh sentence "These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State."

#### *Article 9(2)*

In our view, a State Party which makes extradition conditional on the existence of a treaty (such as Ireland) should be able to choose whether or not to regard the draft Convention as a legal basis for extradition. "May at its option" is therefore preferable to "must".

#### *Article 11(1)*

There was a proposal to the effect that this Article should follow similar provisions in the Hague and Montreal Conventions by providing that "the law of the State requested shall apply in all cases". This is not reflected in the revised draft and we would strongly support its inclusion.

#### *Articles 12(2)*

Of the two alternatives we prefer the second in principle, but the latter should be more specific as to what other States are concerned.

#### *Article 13*

This will presumably be considered along with the other final clauses at the next conference. Since paragraph 3 makes specific provision for reservations, it would be desirable to state clearly whether or not reservations to other Articles are permissible."

### **D. NETHERLANDS**

(Original: English)

23 March 1978

#### *"Article 1*

The Government of the Netherlands has a definite preference for the definition "nuclear material" as opposed to "strategic special nuclear material". Not only because the first, with exception of the words "or 233", fits well into the order used in the information circular/255, but also because, with the use of this definition, lightly enriched uranium, in all amounts, would not fall under the convention.

In the opinion of the Government of the Netherlands the necessity of making lightly enriched uranium subject to the jurisdiction of the convention is debatable. The process of making atom bombs out of source material is both too extensive and too complex for this to become necessary. In addition it would be practically impossible to effectuate stringent security measures in respect to these raw materials, which could also be of extensive non-nuclear use.

In the opinion of the Government of the Netherlands it is desirable that nuclear institutions should fall within the jurisdiction of the convention. If this happens the third type of institutions, presently defined as “nuclear facility” should be described as “fuel fabrication plants”.

In connection with the definition “nuclear transport” the Government believes that this term should begin to become applicable when loading takes place and cease to be so when unloading of the nuclear material is effected. Both the transport-vehicle and the load should be subjected to a check for possible terrorist or sabotage action, on the completion of which the vehicle should be loaded and locked.

Those performing the transportation should be responsible for these procedures. The Government considers it undesirable that the national part of an international transport should fall outside the jurisdiction of the convention. The last definition between square brackets can therefore not be accepted.

#### *Proposed new article*

A specification that the partners of the convention should treat information concerning security measures confidentially seems, as this is only natural, unnecessary, but there would be no opposition to one.

#### *Article 3*

In connection with part of the first paragraph, “and the subsequent need to provide for search and recovery” it is pointed out that, in the event of the misappropriation of nuclear material, only the normal judicial means can be used to effectuate recovery. The expression in the second paragraph “is a useful basis for guiding” is extremely vague. At least a clearer connection to the security measures (from annex II) is considered to be necessary, for example as stated in annex b, item 5 of the London Suppliers Guidelines.

#### *Article 4*

In the opinion of the Netherlands the formulation used in this article presents some difficulties as the states could not possibly guarantee a factual situation

which falls outside their jurisdiction. The above is in reference to the words "unless such material will be, at all times, or at any stage, subjected to the measures described in annex II". More acceptable would be words such as: "unless sufficient guarantees are considered to be available that" etc. etc. In addition it is objectionable that the state concerned should be held responsible for the entire international transportation, as can be deduced from the last sentence of the first paragraph. In each case, the state organising the shipment can only ensure that the convention's packing standards and such are met and that the member states of the convention across whose territory the shipment will travel are informed in due time of the transportation. From non-member states an assurance, such as mentioned in the third paragraph, should be required. Also in the other paragraphs and articles the terms of responsible state and state responsible for security are unjustly used.

### *Article 5*

A stipulation such as described under 5.0 cannot be realised in such an absolute form.

### *Annex I (table)*

In reference to what is mentioned within the first article it is stated that in the opinion of the Netherlands the first table is correct. As a result of this the Government of the Netherlands concludes that only nuclear material is a subject of discussion. Noted must be the fact that, by maintaining the current definition of nuclear material in the table under 2, also U-233 must be mentioned. In addition, the Government of the Netherlands is of the opinion that although, in the case of irradiated fuel in respect to protection against radiation, extensive security measures have been taken; it would be advisable to insert a clause in the present agreement that in the event of the transportation of fuel elements which have been exposed to radiation, measures will be taken to ensure continual communication with the transport centre or the police. This being more extensive than what is stipulated in the information circular number 225/rev.1. The obligation is only applicable when p.u. is transported. Additionally, the following comments of a general judicial nature should be made. Especially in connection with the control by the convention of the physical protection measures, the Government of the Netherlands would appreciate it if the I.A.E.A. would play an important part in both the creation and the use of the convention. It is clear to the Government that the I.A.E.A.-statutes do not allow much room in this connection. Article number three empowers the I.A.E.A. to guard atomic materials, but as physical protection cannot be seen as a part of the general safeguard regulation, the I.A.E.A. is not judicially empowered to take steps on its own initiative. On the other hand, a flexible interpretation of article III a.1.



“and to perform any operation or service useful in the research on or development or practical application of atomic energy for peaceful purposes”, some possibilities might be available. The Government of the Netherlands would welcome the secretariat’s point of view in this connection.

Lastly can be stated that there is almost no separation between concrete physical security measures and their judicial consequences. Due to the different natures of these subjects the Government of the Netherlands should like to see these two aspects dealt within separate agreements. If this should prove to be impossible for the other delegations, the two subjects should at least be divided into two chapters.”

## E. SOUTH AFRICA

(Original: English)

13 March 1978

“The South African Atomic Energy Board has considered the reports of the two Working Groups, on Legal and Technical Issues, documents CPNM 28 and CPNM 29 respectively, and has requested that the following comments be conveyed to the Agency:

“In the absence of agreement on the fundamental issues such as the scope, preamble and final clauses of the Convention, it is extremely difficult to comment on individual articles. The various alternatives put forward in the draft are accordingly confusing, especially in view of the fact that the final choice would undoubtedly also influence other provisions. It is therefore strongly suggested that a further draft should be prepared after the fundamental issues have been settled and that all Member States should then again have the opportunity of commenting on individual aspects.

The present draft convention refers to “Nuclear Transport”. It is therefore assumed that this Convention will take into account the provisions of other existing international agreements, such as the Brussels Convention of 25 May 1962 on the **Liability of Operators of Nuclear Ships** and the 1971 **Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material** so as to prevent any conflicts and the existence of two sets of rules applicable to one and the same set of circumstances.”

Subject to the above reservations the following comments on points of detail are offered: —

### *Article I*

Source material is not considered to be of significance for the purpose of the Convention and should be deleted from the definition of “Nuclear Material”.

Consequently, in subsequent paragraphs, the use of “nuclear material excluding source material – NMESM” is deemed to be the most appropriate of the various suggestions.

*Proposed new Article (page 3 of doc. CPNM/29 of 10/11/77)*

It is difficult to see what steps states can take to *ensure* that the confidentiality of information provided to international organizations is protected. At best, they could only seek assurances to this effect.

*Article 4.4*

It is presumably the intention of this article to assign responsibility to the relevant State Party to the Convention only while the material is in transit in the territory of that State. If this is the case, it should be so stated.

*Article 5.0*

The wording of this Article does not appear to convey its intention accurately. A more satisfactory redraft might be: “. . . . hand over control of (NMESM), etc. to any unauthorized individual or group of individuals.”

*Article 6(1) (b)*

It is not clear what is meant by “damage to or destruction of nuclear material.” If it refers to an intent to cause nuclear damage it should be so stated.

*Article 6(1) (c)*

If the new definition of “nuclear transport” is to be adopted (Document CPNM/29, page 3) it is clearly incorrect to refer to “nuclear transport” in Article 6.1(c). This should be replaced by “nuclear transportation device” or some similar expression.

*Annex I: Table: Categorization of (NMISM) (NMESM) (SSNM)*

As previously indicated the categorization is not sufficiently accurate and should be coupled to the amount of material in any one vehicle at any given time. This could perhaps be achieved by inserting the words “total mass” in each case, e.g.

	I	II	III
Plutonium	2 kg total mass or more	less than 2 kg total mass but more than 500 g	500 g total mass or less

*Alternative to Annex I: Table I*

(a) Item 2: Category II should read “less than 5 kg but more than 1 kg.”

(b) Footnote (a): It is not clear what the intention of this footnote is and to what extent states would be at liberty to assign a different categorization of physical protection.”

Annex

Where Member States have made general remarks regarding, for example, the scope of the draft convention and its bearing on domestic law and where they have commented on specific parts of the text of the draft convention on physical protection of nuclear materials, facilities and transports, this fact is indicated below.

I. GENERAL REMARKS

Scope of the convention	France
Other	France Greece South Africa

II. SPECIFIC COMMENTS

<i>Article 1.</i>	Netherlands South Africa
1.1.	Ireland
<i>Proposed new article</i>	Netherlands South Africa
<i>Article 3.</i>	Netherlands
3.2.	Ireland
<i>Article 4.</i>	Netherlands
4.4.	South Africa
<i>Article 5.</i>	Netherlands South Africa

<i>Article 6 bis</i>	Ireland
<i>Article 6.</i>	
6.1.	South Africa
<i>Article 7.</i>	
7.3.	Ireland
<i>Article 8.</i>	Ireland
<i>Article 9.</i>	
9.2.	Ireland
<i>Article 11.1.</i>	Ireland
<i>Article 12.2.</i>	Ireland
<i>Article 13.</i>	Ireland

### III. ANNEX:

<i>Categorization of Nuclear Material</i>	Netherlands South Africa
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PRELIMINARY COMMENTS OF THE FEDERAL REPUBLIC OF GERMANY  
ON THE REPORTS OF THE FIRST SESSION  
OF MEETING OF GOVERNMENTAL REPRESENTATIVES  
TO CONSIDER THE DRAFTING OF A CONVENTION  
ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

(CPNM/31)<sup>73</sup>

10 April 1978

SCOPE OF THE CONVENTION

The Federal Republic of Germany gives preference to a comprehensive scope of this convention, encompassing the physical protection of nuclear material on the national level, as envisaged mainly in Article 3, and international transport, as envisaged mainly in Article 4. On the other hand, the delegation of the Federal Republic of Germany is aware of the necessity that the scope of the convention should be formulated in such a way as to be acceptable to as many countries as possible.

ARTICLE 1

*Definition of "nuclear material"*

The delegation of the Federal Republic of Germany is still not convinced that the definition of "nuclear material" should include "source material", even when taking into account that ore and ore residues are not considered to be covered by "source material". This attitude is mainly guided by the consideration that "source material" can only be converted into explosive devices with great difficulty and that it poses only a low radiological potential hazard to the public in case of sabotage. Besides, we do not see how protection measures for "source material" could be implemented because so far there is no definition of the term "prudent management practices".

*Definition of "nuclear facility"*

Only those facilities should be covered by this definition which actually do contain nuclear material. A wider definition would entail the risk of costly protection effort although no nuclear material would be involved.

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<sup>73</sup> Please note that this document is identical to CPNM/30/Add.1 which was incorrectly numbered.

### *Definition of “nuclear transport”*

In order to ensure a comprehensive protection, the alternative formulation “. . . starting with the loading in the facility etc. . . .” is favoured.

The term “international nuclear transport” should also cover those parts of the international transport which do not go beyond the territory of the respective states.

### *Article 3*

Discussion of this article requires consensus as to a wide scope of the convention.

#### *Para. 1*

A formulation is favoured whereby physical protection covers nuclear material as well as nuclear facilities and nuclear transports.

#### *Para. 2*

A direct reference to INFCIRC/225/Rev.1 or its contents is favoured. However, other possibilities, including reformulation, may be considered. A reformulation would require extensive additional drafting work. In any case a revision procedure of the convention, in this connection, should be provided for. It seems advisable to insert a simplified revision procedure, for which examples exist.

### *Article 7, Para. 3*

For clarification purposes the first two lines should read: “Any person in custody pursuant to paragraph 1 of this Article **shall be entitled to:** (a) be assisted . . .”.

The word “be entitled to” at the second to last line can be deleted.

**PRELIMINARY COMMENTS OF EGYPT  
ON THE REPORTS CPNM/28, 29  
ON THE MEETING OF GOVERNMENTAL REPRESENTATIVES  
TO CONSIDER THE DRAFTING OF A CONVENTION  
ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL**

(CPNM/38)  
11 April 1978

*Article 1.*

Definition of "nuclear material"

The delegation of Egypt is of the opinion that the definition of "nuclear material" should include "source material" and therefore proposes the deletion of the square brackets that appear on page 2 of CPNM/29 whenever "source material" is mentioned.

The Egyptian delegation feels that there is no need to include the word [customarily] which appears three times in the sixth paragraph in Article 1 on page 3 of CPNM/29.

*Article 2.*

Egypt gives preference to a wider scope of this convention.

Due consideration should be given to the physical protection of nuclear-powered merchant ships, possibly by the elaboration of special provisions. The "party" or "the international body" which will bear the responsibility and costs of the physical protection during the passage of these ships in waterways or during their anchorage in a harbour, should be specified. Egypt is also of the view that the Convention should provide that physical protection measures to be applied to military activities should be at least as stringent as the measures to be applied to civil activities, even if the military activities would not otherwise be subject to the Convention.

The Convention should be applied even if the nuclear material intended for peaceful civilian use is transported by military transport.

*Article 3.*

Bearing in mind that the Committee which drafted INFCIRC/153 was unable to agree on the meaning of "control" as used in a similar phrase in the NPT, and the difficulty that would arise in a situation where a State would have control of nuclear material without having jurisdiction, the Egyptian delegation favours the deletion of the words "under its control anywhere".

*Article 4.*

Egypt considers it important that the “prior consent” of a State be obtained before nuclear material is shipped through the territory of that State.

*Article 9.*

Paragraph 1 of this Article should be deleted.

*Article 14.*

The Convention should be open to all States; this would call for amendment of the final clauses wherever reference to “all States Parties to the Statute of the IAEA” is made.



**GENERAL COMMENTS BY THE MEXICAN DELEGATION  
ON THE DRAFT CONVENTION  
ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL**

(CPNM/39)  
11 April 1978

*Scope of the Convention*

We consider that this Convention on the Physical Protection of Nuclear Material should cover the transportation, use and storage of such material.

As the physical protection of nuclear material within a Member State is the responsibility of the Government of that State, but at the same time it may be desirable for other Member States to have an assurance that the conditions of physical protection of the nuclear material are adequate, it is necessary to establish appropriate verification procedures.

*Physical Security Inspections by the IAEA*

The possibility should be studied of setting up an inspection system, similar to the IAEA's safeguards system, for verifying the measures employed for the physical protection of nuclear material.

This function would be performed by the IAEA at the request of a Member State wishing to demonstrate that its conditions for the protection of nuclear materials are adequate, and would serve as a viable alternative which would not require bilateral treaties.

Although this function of verifying and inspecting the physical protection of nuclear materials is not explicitly laid down in the Agency's Statute, it is stated in Article III, which deals with the Agency's functions, that the Agency is authorized "to perform any operation or service useful in research on, or development or practical application of, atomic energy for peaceful purposes" (Article III.A.1).

**AMENDMENTS PROPOSED BY MEXICO**

*Article 6*

This Article seems unnecessarily reiterative and we would propose the following wording: "The intentional commission of theft, deprivation of use, terrorism, sabotage, hijacking on land, sea or in the air, conspiracy or assault against nuclear material, facilities or transports shall be made a punishable offence by each State Party to this Convention under its internal law".

#### *Article 7*

It is proposed that the words “in conformity with international law on extradition” be added at the end of paragraph 1.

#### *Article 8*

It is proposed that the following be added: “. . . taking into account any treaties in force with the State(s) seeking extradition.”

#### *Article 9, paragraph 4*

It is not advisable to retain this paragraph because of the confusion which could arise between different legal systems in such a case.

#### *Article 12*

The following wording is recommended: “Each State Party shall inform the Director General of the International Atomic Energy Agency of the laws and regulations deriving from the present Convention, and the Director General, in his turn, shall communicate this information periodically to all States Parties to the Convention.

The State Party where an alleged offender is prosecuted for an offence set forth in Article 6 shall notify the Director General of the International Atomic Energy Agency of the final decision.

# COMMENTS ON THE DRAFT CONVENTION ON PHYSICAL PROTECTION OF NUCLEAR MATERIAL

(CPNM/51)  
11 December 1978

## NOTE BY THE DIRECTOR GENERAL

Those comments on the draft convention on physical protection of nuclear material which Member States had communicated to the Director General after 21 April 1978 are reproduced in the attachment. The Annex hereto contains a list of articles of the draft convention upon which Member States have made specific comments.

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### COMMENTS BY

- A. Morocco
- B. South Africa
- C. Switzerland

#### A. MOROCCO

(Original: French)

8 May 1978

- “(1) The draft Convention provides for a system of regulation common to all the States on the subject of the physical protection of nuclear materials and facilities, whereas certain Governments consider that this protection should be the concern of the domestic legislation of each State. However, the adoption of a common system of regulations is preferable since:
- nuclear materials diverted from one country can be used in another country to carry out acts of sabotage;
  - the risks to which nuclear material and facilities are subject are substantially the same from one country to another.
- (2) The physical protection of nuclear materials and facilities creates an appreciable need for material resources and manpower. From this point of view it is desirable that the draft convention should make provision for forms of technical assistance which would be of benefit to the developing countries in establishing the necessary protection systems.”

## B. SOUTH AFRICA

(Original: English)

20 November 1978

### “1. CPNM/46/Corr.1.

1.1. To accord with paragraph 3 of the memorandum to the meeting of February 5–16, 1979, it is felt that Article 2 should read: “This convention shall apply to all nuclear material and nuclear transports other than those materials or transports used for military purposes.”

1.2. Article 5.3 calls for steps to be taken when information is provided in confidence to international organisations to ensure the confidentiality of such information. It is not clear, exactly what steps will be taken, and by whom, in order to ensure such confidentiality.

### 2. CPNM/47/Corr. 1.

2.1. Article 6.1(d) refers to the retention, removal, disposal or sale of nuclear material. It is suggested that the intentional commission of acquisition or purchase should also be a punishable offence.”

## C. SWITZERLAND

(Original: English)

13 November 1978

### “Preliminary Notes:

- (1) This document is divided in two parts:
  - the “First Part” contains our comments
  - the “Second Part” contains our proposals for amending the draft text of the Convention.
- (2) Terminology for the subdivision of the draft:  
article (e.g.: 1) – paragraph (e.g.: 3.1) – section

## FIRST PART

### 1. Bases for our comments

According to the letter SAF/412 of May 17, 1978, from the Director General of the IAEA, the comments should be based on the documents CPNM/46/Corr.1 and CPNM/47/Corr.1 dated April 20, 1978.

The following comments however take also into account the document “Memorandum to the meeting of February 5–16, 1979” dated September 7, 1978,

which was elaborated during the meeting of September 4–7, 1978 at the IAEA. As a consequence we do not give any comments to Articles 2 and 3 and on Annex III of the draft.

## 2. Article 1

2.1. The notions “nuclear facility”, “nuclear transport”, “international nuclear transport” and “irradiated fuel” (if the latter does appear in Annex I) need to be defined. These definitions call for the following comments:

- the definition of “nuclear material” first should give the general characterization and then, possibly, mention a (non exhaustive! ) list of examples;
- the definition of “international nuclear transport” should be based on that of (national) “nuclear transport”.

See Second Part.

2.2. In none of the draft text’s articles “Annex I” has been mentioned. It appears advisable to extend Article 1 to include an indication relating to this Annex I, the place of which will depend on the content of the Annex (only “nuclear materials” or “nuclear materials and irradiated fuel”).

See Second Part.

## 3. Annex I

Two remarks can be put down at this stage:

- (1) It is necessary to make clear whether the given weight represents the weight of the fissile part of the nuclear material or the total weight.
- (2) It is also necessary to make it possible to deal with mixtures of nuclear materials (e.g. by means of a formula similar to the one used by US-NRC).

## 4. Article 4, Paragraphs 4.1 and 4.2

We think it is more appropriate to place the provisions concerning the import and the export of nuclear material in a specific article (**new Article 3bis**) under the title “Export and Import”.

As follows from our proposal concerning Paragraphs 4.3 to 4.6, we furthermore think that the assurances mentioned in Paragraphs 4.1 and 4.2 relating to the physical protection during international nuclear transport could also be given by another State Party to this Convention, e.g. the State organizing the physical protection of the transport.

## 5. Article 4, Paragraphs 4.3 to 4.6

These Paragraphs 4.3 to 4.6 should settle the aspects related to the international nuclear transport. After having thoroughly studied them, we however draw the conclusion that this aim has not been attained as fully as needed.

This is the reason for our proposal, presented in the Second Part, for a new formulation of Article 4 which of course does not cover any more the provision for export and import now incorporated in the proposed new Article 3bis.

The new formulation of Article 4 is based on the following considerations:

- (1) It is advisable to distinguish between
  - **the responsibility for the organisation of the physical protection**, i.e. the responsibility for coordinating the physical protection measures from the beginning to the end of the transport and
  - **the responsibility to ensure the physical protection**, i.e. the responsibility for applying the physical protection measures during the transport.
- (2) **The responsibility for the organisation of the physical protection** must be assumed by a State Party to this Convention which, according to an agreement between all the States concerned, could be:
  - in the first place, the State in which the transport begins,
  - then, the State in which the transport ends,
  - finally, one of the transit States.

It is however not necessary to mention these details in the Convention.  
See Second Part, new Paragraph 4.1.

- (3) **The responsibility to ensure the physical protection** should be assigned to each of the States concerned with the international nuclear transport within the limits of its territory. It is indeed hardly conceivable that, for instance, this Convention imposes on a State Party that an international nuclear transport be protected on its own territory by a **foreign escort** (either foreign official police or private guards). In any case Switzerland could not accept such a concept.

Particular cases should however be settled. These are the cases of

- transports using maritime or fluvial international waters or air space where the means of transportation is considered, according to the international law, as part of the territory of the State in which it is registered,
- (planned) calls at seaports or airports during transport.

See Second Part, new Paragraph 4.2.

However, for the cases where States would not object to the physical protection of nuclear material during the international nuclear transport being ensured within their territories by another State Party, or would even wish it, it is advisable to leave open such a possibility. The old Paragraph 4.6 of the Draft therefore can be retained with a minor amendment.

See Second Part, new Paragraph 4.5.

These provisions concern also the States not Parties to this Convention but do of course not impose obligations on them: if these States do not agree with these provisions at the time when the transport is organized, the transport shall be planned so as to avoid, as far as practicable, the territories of these States.

See Second Part, new Paragraph 4.3, second section.

It is worth to further note that the regulation we are suggesting should give satisfaction to the representatives of Brazil, India and Japan with respect to their statements related to the draft definition of international nuclear transport.

- (4) It seems useful to specify that the determination of **the procedures for the transfer of the responsibility for ensuring the physical protection** between one State and another is one of the conditions for carrying out the transport (“the procedures for the transfer” can include “the time and the place of the transfer”).

See Second Part, new Paragraph 4.3.

- (5) Paragraph 4.4 of the draft could be deleted from the new Article 4 which we are proposing. If indeed for this particular State Party the means of transportation is registered in that same State, such a transport is reduced to a plain national nuclear transport. If this is not the case, the second section of the new Paragraph 4.2 gives a means to reduce such a transport to a plain national nuclear transport.

The reservation expressed by the Delegate of Japan would then be covered. In the Second Part, this paragraph is however kept, but placed between squared brackets (new Paragraph 4.6).

## 6. Annex II

The provision in the Section 2, letter a, for

“prior agreement between natural and legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility”

has not the merit of clarity.

At all events it is only in particular cases sufficient to consider exclusively the exporting and the importing States for the transfer of the responsibility of the physical protection in an international transport; such a transfer must also take place at each border crossing, e.g. from one transit State to another.

Based on the fact that, **in our view** and as far as the physical protection during the transport is concerned, **an international nuclear transport is made up of a succession of national transports**, we suggest to include the provision dealing with the transfer of the responsibility from one State to another in Paragraph 4.3 and to leave in Annex II only the provision dealing with the prior arrangements between sender, receiver and carrier.

## 7. Article 5

### 7.1. Paragraph 5.0

We cannot agree with the formulation proposed in the draft. Such an imperative engagement would simply strip the States Parties of any freedom of action and deprive them of any negotiation capacity.

It would in fact force a priori and without thinking the States Parties to a political decision “established” and known in advance. On the contrary such a decision must correctly be reached in each particular case on the basis of various criteria of judgement and by balancing carefully contradictory interests. In this area sufficient freedom for appropriate negotiations and decisions should be ensured.

We would nevertheless agree with a formulation in the form of a recommendation saying that a State Party should, as far as practicable, resist exaction or blackmailing and try to avoid to give in to individuals or groups of individuals making use of threat.

It might be very difficult to find a formulation agreeable to all delegates. This is the reason for which we would support the complete deletion of Paragraph 5.0.



## 7.2. Paragraph 5.2

The enumeration

“In case of theft, robbery or any unlawful taking of nuclear material, . . .”  
is not satisfactory (see also comment in Section 8. below).

See Second Part.

## 7.3. Paragraph 5.3

The problem associated with the treatment of confidential information by international organisations cannot be solved by a trick of editing (passive instead of active form).

The communication of confidential information to an international organisation can be envisaged by Switzerland only if the following conditions are fulfilled:

- the international organisation agrees to take, and takes effectively the measures suited to ensure the adequate treatment of such information, in particular by applying the principle of the “need to know”;
- penalties can be imposed by the international organisations on their personnel which have transgressed the measures taken.

If this is not practicable, it is better to delete the sentence in Paragraph 5.3 related to this question.

## 8. Paragraph 6.1, letter (a)

The terms “theft”, “robbery” and “obtaining by fraud” do not cover the case where an offender already has the possession of the nuclear material and only misappropriates it (he neither steals nor robs nor obtains it). It is therefore suggested to insert the term “embezzlement” in order to avoid such kind of gap.

## 9. Article 6bis

In general, this article does not give rise to objections. However, it may be useful to add some remarks to it.

It is understood that its letter (b) brings an obligation for the States to establish an extraterritorial jurisdiction in order to prosecute and if necessary punish an offender whom they do not extradite and who neither is one of their nationals nor has perpetrated the offence in their territories.

Letter (a) goes without saying as it is the most logical consequence of Paragraph 6.1. In fact, it would make no sense if a State would undertake to create punishable offences without establishing its own jurisdiction if the offence has been committed in its territory or by one of its nationals. From this point of view, letter (a) does not add anything to the Convention. On the other hand, it may well be that said letter has been entered in order to stress the obligation of establishing the jurisdiction relative to the offences set out above. But then it is not quite clear why this engagement should only be valid in relation to Paragraph 6.2 and not also in respect of **Paragraph 6.1**. Consequently, the scope of Article 6bis, letter (a) ought to be broadened.

## 10. Article 7

This article has to be stressed for it encompasses unnecessary clauses which add nothing to the Convention purposes.

- (1) It is self-understood that the authorities of a State Party would only take a person into custody or restrain his liberty of movement if the circumstances so warrant. On the other hand there has to be given a legal context on which measures of restraint can be based. Accordingly Paragraph 7.1 should be amended as suggested in the Second Part.
- (2) Paragraph 7.2 gives no sense as a State Party's authorities will – according to the Convention rules – either extradite an offender or start their own criminal proceedings. In the first case there is no need for preliminary inquiries, in the latter investigations have to be carried out anyway.

## 11. Article 8

Article 8 has to be adapted to Article 6bis and needs some clarification to give the Articles 6 to 12 more effectiveness.

See Second Part.

Then it is to reconsider whether this article should not better be placed after Article 9, for extradition ought to be the primary obligation of the States Parties and starting criminal proceedings against a person for having committed offences abroad with relation to nuclear material has to be understood as a secondary concern.

## 12. Article 9

- (1) In Paragraph 9.2, “may at its option” is to be replaced by “shall”; otherwise the whole paragraph grants absolutely nothing.
- (2) For the sake of clarification, “consider” could take the place of “recognize” in Paragraph 9.3.
- (3) Paragraph 9.4 is unclear and might create difficulties if two States Parties request the extradition of a person at the same time and for the same offence. Therefore it should be either deleted or substituted by the provision suggested in the Second Part.

## 13. Article 11

Article 11 should also give the legal base for any measure which has to be taken in a State on behalf of another State. An appropriate sentence ought to be added to Paragraph 11.1.

See Second Part.

## 14. Article 12

Of the two variants for Paragraph 12.2, our preference is given to variant 2.

It is understood that “final decision” means only the verdict and not the reasons of a judgement.

## SECOND PART (Amendments to the Draft)

### Preliminary Notes:

- (1) Wherever a major part of the draft formulation is adopted, the amendments we propose are underlined.
- (2) (—) means deletion of a part of the draft formulation.

## Definitions

### Article 1 (modification)

.....

“Nuclear facility” means any facility containing nuclear material for use or storage (such as a reactor, a critical facility, a fabrication plant, a reprocessing plant or an isotope separation plant).

“Nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation, beginning with its departure from the shipper’s facility and ending with its receipt by the receiver within his facility, including intermediate storages.

“International nuclear transport” means a nuclear transport during which the consignment enters the territory of at least one State other than the one in which the transport has begun.

.....

(At an appropriate place:)

For the purpose of physical protection, nuclear material (and irradiated fuel) shall be categorized according to the Annex I to this Convention.

## Export and Import

### Article 3bis (new)

- 3.1. Each State Party to this Convention agrees not to export or to authorize  
bis the export of nuclear material unless it has assured itself **or received the assurance from another State Party** that such material will be protected during the international nuclear transport at the levels described in Annex II.
- 3.2. Each State Party to this Convention agrees not to import or to authorize  
bis the import of nuclear material from a State not Party to this Convention unless it has assured itself **or received the assurance from another State Party** that such material will be protected during the international nuclear transport at the levels described in Annex II.

## International Nuclear Transport

### Article 4 (new)

- 4.1. The responsibility for the organization of the physical protection during an international nuclear transport shall be assumed by one of the States Parties to this Convention involved in this transport, by mutual agreement.
- 4.2. The responsibility for ensuring the physical protection during an international nuclear transport shall be assumed by each State concerned with that transport, within the limits of its territory.

In the event of an international nuclear transport through the international maritime or fluvial waters or through airspace, this responsibility can be transferred by the State in which the means of transportation is registered to the State in which the loading takes place or to the State in which the unloading takes place, by mutual agreement.

In the event of a call at a seaport, riverport or airport, this responsibility can be assumed by one of the States assuming it before or after the call or by the State on which territory the call takes place, by mutual agreement.

- 4.3. The State Party responsible for the organization of the physical protection shall assure itself that each State concerned by an international nuclear transport according to Article 4.2 guarantees that the nuclear material involved in the transport will be protected at the levels described in Annex II and that (the time, the place and) the procedures for transferring the responsibility for the physical protection from one State to another have been settled.

If assurances as to the conditions mentioned in Paragraphs 4.1 and 4.2 and in the above section cannot be obtained from States concerned, the State Party responsible for the organisation shall, as far as practicable, not cause nuclear material to transit those States.

- 4.4. A State Party to this Convention shall not allow the transit of nuclear material through its territory unless it has assured itself or received the assurance that the nuclear material will be protected during the international nuclear transport according to the requirements of this Convention.
- 4.5. The responsibility to ensure the physical protection of nuclear material during an international nuclear transport may be assumed by a State Party

other than the State which ought to assume it in compliance with the present Article 4, by mutual agreement.

- (4.6. Each State Party to this Convention agrees to apply the physical protection at the levels described in Annex II in the event of nuclear material being transported from a part of that State to another part of the same State through international waters or through airspace.)

#### Article 5 (modification)

.....

- 5.2. In case of theft, robbery, **embezzlement or fraud bearing on nuclear material**, or in the event of credible threat thereof, the States Parties to this Convention shall cooperate and assist one another to the maximum feasible extent **for the recovery or the protection of such material.**

In particular:

- (a) . . . . . of any theft, robbery, **embezzlement or fraud bearing on nuclear material** or threat , . . . .

.....

.....

#### Article 6 (modification)

- 6.1. The intentional commission of:

- (a) Any theft, robbery, **embezzlement or fraud bearing on nuclear material**;  
.....

#### Article 7 (modification)

- 7.1. (new wording)

Any State Party to this Convention where a person suspected of or charged with an offence set forth in Paragraph 6.2 is present shall take appropriate measures to ensure his presence, according to its national legislation on extradition or criminal procedures.

- 7.2. (to be deleted)

**Article 8 (modification)**

A State Party to this Convention in whose territory the (–) offender is present shall, (–), if it does not extradite him, submit, (–), the case to its competent authorities for the purpose of prosecution through proceedings in accordance to its laws, despite the fact whether the offender’s extradition has been requested or not.

**Article 9 (modification)**

.....

9.2. .... no extradition treaty, it shall consider .....

9.3. .... the existence of a treaty shall consider those offences ....

**9.4. (new wording)**

Extradition shall not be refused under this Convention solely on the ground that the offence has not been committed on the territory of the requesting State. If extradition is requested for the same offence concurrently by more than one State Party, the requested State Party shall give preference to the State Party where the offence has been committed.

**Article 11 (modification)**

11.1. .... necessary for the proceedings. In any case the law of the requested State Party shall be applied.  
..... ”

**ANNEX**

Where Member States have made general remarks and where they have commented on specific parts of the text of the draft convention on physical protection of nuclear materials, facilities and transports, this fact is indicated below.

**I. GENERAL REMARKS**

Morocco

**II. SPECIFIC COMMENTS**

**Article 1.**

Switzerland

**Article 2.**

South Africa

<b>New Article 3 bis</b>	<b>proposed</b>	<b>Switzerland</b>
<b>Article 4.</b>		
4.1.—4.6.		Switzerland
<b>Article 5.</b>		
5.0.		Switzerland
5.2.		Switzerland
5.3.		South Africa
		Switzerland
<b>Article 6.</b>		
6.1.		Switzerland
<b>Article 6 bis</b>		Switzerland
<b>Article 7.</b>		
7.1.		Switzerland
7.2.		Switzerland
<b>Article 8.</b>		Switzerland
<b>Article 9.</b>		
9.2.—9.4.		Switzerland
<b>Article 11.</b>		
11.1.		Switzerland
<b>Article 12.</b>		
12.2.		Switzerland
<b>Annex I</b>		Switzerland
<b>Annex II</b>		Switzerland



## AMENDMENTS PUT FORWARD BY BELGIUM

(CPNM/52)

5 February 1979

### Title<sup>74</sup>

Draft Convention on the physical protection of nuclear materials, facilities and transports

should be replaced by

*Draft Convention on the physical protection of the international transports of nuclear materials.*

### Article 1.

For the purpose of this Convention,

“Nuclear Materials” means . . . .

“Uranium enriched in the isotopes U-235 or U-233” means . . .

“Nuclear facility” means . . .

“Nuclear transport” means . . .

“International transport of nuclear materials” means . . .

“Irradiated fuel” means . . .

should be replaced by

### Article 1.

For the purpose of this Convention, “Nuclear materials” means plutonium, with the exception of plutonium whose isotopic concentration in Pu-238 exceeds 80%; Uranium 233; Uranium enriched in U-235 or U-233; Uranium containing a mixture of isotopes found in nature; any material containing one or more of the above isotopes.

“Uranium enriched in U-235 or U-233” means uranium containing either U-235 or U-233 or both, in quantities such that the ratio of the sum of these two isotopes to the isotope U-238, is greater than the ratio of the isotope U-235 to the isotope U-238, as found in natural uranium.

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<sup>74</sup> N.B. In what follows, the amended phrases are in italics.

*By “Nuclear transport”, is meant the shipment of nuclear materials by any means of transport, from the moment these materials leave the shipper’s facilities, to the moment they arrive at the receiver’s installations.*

*By “international transport of nuclear materials”, is meant the shipment of nuclear materials by any means of transport, across the border of the State in whose territory the transport originates, from the moment these materials leave the shipper’s facilities, to the moment they arrive at the addressee’s installations.*

*“Nuclear facility” means any reactor, any critical installation, any fabrication, reprocessing or separation plant containing nuclear materials, as well as any other installation which contains or processes such materials or any storage facility for the latter.*

## **Article 2.**

This Convention shall apply to all nuclear facilities, nuclear materials and nuclear transports, other than those facilities, materials or transports used for military purposes.

**should be replaced by**

## **Article 2.**

The present Convention shall apply to nuclear materials, used for peaceful purposes and subject to international transports.

## **Article 3.**

Belgium wishes that this article be cancelled.

## **Article 4.**

Should become Article 3 and be amended as follows:

## **Article 3.**

3.1. *Each Party* to the present Convention shall undertake to export such nuclear materials as *listed in Appendix I*, or to permit their exportation, only if it has received assurances that the said materials shall be protected during their international transportation according to the security levels, referred to in *Appendix II*.

3.2. *Each Party* to this Convention shall undertake to import such nuclear materials as *listed in Appendix I*, or to permit their importation from a State not Party to this Convention, only if it has received assurances that the said materials shall be protected during their international transportation in conformity with the security levels specified in Appendix II.

3.3. *Any Party* to the present Convention agrees not to permit the transfer through its territory of the nuclear materials *listed in Appendix I*, originating from a State not Party to this Convention and having as destination another State which is not Party to the Convention either, unless it has received assurances to the maximum feasible extent, that the said materials shall be protected during their transfer, in accordance with the security levels referred to in Appendix II.

3.4. *Any Party* to this Convention shall undertake to apply the physical protection levels listed in Appendix II, to the transfer of the nuclear materials *listed in Appendix I*, even if this transfer is to take place through international waters or by air.

3.5. *The Party* held responsible to ensure that the nuclear materials *listed in Appendix I* shall be protected according to the security levels defined in Appendix II, in conformity with the above paragraphs 1–3, shall undertake to inform the States through which the said materials will be forwarded.

If it proves impossible to obtain adequate assurances as to the physical protection levels specified in Appendix II, *the responsible Party shall take every possible step, in order that such a transfer does not take place.*

## Article 5.

Should become Article 4 and be amended as follows:

### Article 4.

4.1. *The Parties to the Convention* shall identify and make known to each other, either directly or through the *Depositor* of this Convention, their national agencies or authorities having the responsibility of ensuring the physical protection of nuclear materials and of coordinating the recovery and response operations *in the event of any criminal act, affected by Article 5 § 1.*

4.2. a) *Any Party* shall take all necessary steps to inform as soon as possible *whichever Parties it may deem to be concerned by the criminal acts affected by Article 5 § 1.*

b) *Should the need arise, all Parties shall collaborate with the aim to:*

i) *exchange information.*

- ii) *coordinate their efforts through diplomatic and/or other appropriate channels.*
- iii) *afford each other mutual assistance, if so requested.*
- iii) *ensure the return of nuclear materials, missing as a consequence of any of the offenses referred to, in Article 5 § 1.*

*The collaboration between all Parties concerned, shall take place according to the provisions of the national legislation.*

*The clauses of this collaboration are left to the appreciation of the Parties concerned.*

4.3. *The Parties shall take adequate measures compatible with their national legislation, to protect the confidential character of any information they might receive in this respect from another Party, by virtue of the provisions of the present Convention or in the course of their participation in a joint action, in application of the present Convention.*

By virtue of the present Convention, *the Parties shall not be bound to supply* any information which their national laws and regulations forbid them to divulgate.

## Article 6.

The international perpetration of any of the following acts:

- a) the theft or any other fraudulent coming into possession of nuclear materials;
- b) the detention, use, alteration or dispersion of nuclear materials, unauthorized by competent authorities;
- c) (cancelled for the time being);
- d) the fact of receiving or the attempt to receive nuclear materials, or without being duly entitled thereto to retain, to displace, to dispose of or to sell nuclear materials, while knowing or having reasons to know that the said materials proceed from any one of the crimes or offenses listed in this paragraph;
- e) the threat to commit any one of the offenses listed above, with the aim to force a physical or moral person, an International Organization or a State, to take or to refrain from taking a certain action;
- f) the fact of exacting nuclear materials by resorting to violence or constraint;
- g) the attempt to commit any of the offenses listed sub litt. a) to g), shall be considered by any State Party to this Convention as a punishable offense, under its domestic law.

should be replaced by:

## *Article 5.*

*The Parties to this Convention shall undertake to take such steps as necessary to make the following, punishable offenses under their domestic law:*

- § 1.a) *Any fraudulent removal or fraudulent coming into possession of nuclear materials.*
- b) *The intentional damage or destruction of a nuclear transport.*
  - c) *The detention of nuclear materials, while knowing or having reasons to know that these materials proceed from any of the crimes or offenses referred to in the present article.*
  - d) *The threat to commit any of the offenses listed above, with the aim of constraining any physical or moral person, any State or International Organization, to take or to refrain from taking a certain action.*
  - e) *Any action establishing the complicity in any of the offenses listed sub litt. a) to g) of the present article.*

§ 2. *The Parties shall apply the provisions specified in articles 5A, 7 and 8 of this Convention, with respect to the offenses enumerated in Article 5 § 1.*

## **Article 6A.**

Should become Article 5A. and be amended as follows:

### *Article 5A.*

1. *Any Party shall take whatever measures as might prove necessary, in order to establish its competence to investigate the offenses referred to in paragraph 1 of Article 5, in the following cases:*

- a) *when the offense has been committed on its own territory or by one of its nationals.*
- b) *when the alleged offender is on its territory or when the said Party does not extradite him in conformity with Article 8.*

2. *This Convention does not overrule any penal competence embodied in the national legislations.*

## **Article 7.**

Should become Article 6 and be amended as follows:

#### Article 6.

1. *If it deems that the circumstances so warrant, any Party in whose territory the alleged offender is present, shall take appropriate measures under its national legislation so as to detain the said person or to ensure his presence for the purpose of prosecution or extradition.*

This detention or these measures shall be applied in conformity with the legislation of *the Party in question*, but may not exceed the period necessary to start proceedings of criminal prosecution or extradition.

2. *The Party in question shall proceed immediately with the preliminary investigation of the facts.*

3. Any person detained by virtue of the measures referred to in paragraph 1 of this article, shall be entitled:

- a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, which is willing to protect his rights.
- b) to be visited by a representative of that State.

#### Article 8.

Should become Article 7 and be amended as follows:

#### Article 7.

By virtue of its competence as established according to *Article 5A*, *the Party* in whose territory the alleged offender is present, shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case its competent authorities for the purpose of prosecution through *proceedings in accordance with its national legislation*.

#### Article 9.

Should become Article 8 and be amended as follows:

#### Article 8.

1. The offenses referred to in *paragraph 1 of Article 5*, are considered as extraditable offenses in any extradition treaty existing *between the Parties*. *The Parties* shall undertake to include those offenses as extraditable offenses in every future extradition treaty to be concluded *between them*.

2. If a *Party* which makes extradition conditional on the existence of a Treaty, *receives a request* for extradition *from another Party* with which it has no extradition Treaty, it may consider the present Convention as the legal basis for extradition in respect to those offenses. Extradition shall be subordinated to the other provisions of the legislation of the *requested State*.
3. Parties which do not make extradition conditional on the existence of a Treaty, shall recognize these offenses as extraditable offenses between themselves, subject to the procedural provisions and other conditions of the legislation of the requested State.
4. Each of these offenses shall be treated, for the purpose of extradition between Parties, as if it had been committed not only in the place in which it occurred, but also *on the territory of the parties bound to establish their competence in conformity with the provisions of Article 5 A*.

#### Article 10.

Should become Article 9 and be amended as follows:

#### *Article 9.*

Any person regarding whom, proceedings are being carried out, in connection with *any of the offenses referred to in Article 5*, shall be guaranteed fair treatment at all stages of the proceedings.

#### Article 11.

Should become Article 10 and be amended as follows:

#### *Article 10.*

1. *The Parties* shall afford one another the greatest measure of assistance in connection with criminal proceedings resulting from *the offenses referred to in Article 5*, including the supply of *evidence at their disposal*, necessary for the proceedings.
2. The provisions of paragraph 1 of this article, shall not affect obligations embodied in any other treaty, either bilateral or multilateral, which rules all or part of the mutual judicial assistance.

#### Article 12.

Should become Article 11 and be amended as follows:

*Article 11.*

1. Each Party shall communicate to the *Depositor of the Convention*, the laws and regulations giving effect to the Convention. *The Depositor shall communicate periodically this information to all Parties to the Convention.*
2. *The Party on whose territory an alleged offender is prosecuted for an offense referred to in Article 5, shall notify the final outcome of the proceedings to the States interested.*

**Article 13.**

Should become Article 12 and be amended as follows:

*Article 12.*

1. Any dispute between *two or more Parties* concerning the interpretation or the application of this Convention which is not settled by negotiation, shall at the request of one of them, be submitted to arbitration. If within ten months from the date of the request for arbitration, *the Parties* are unable to agree on the organization of the arbitration, *any one of the Parties* may refer the dispute to the International Court of Justice by depositing a request in conformity with the Statute of the Court.
2. *At the time of the signature, the ratification, the acceptance, the approval or the accession to the present Convention, any Party may declare that it does not consider itself bound by the provisions of paragraph 1 of this article. The other Parties shall not be bound by the said provisions, with respect to any Party which has made such a reservation.*
3. *Any Party* which has made a reservation in conformity with paragraph 2 of this article, may at any time withdraw that reservation by *notification to the Depositor.*

**Article 14.**

Should become Article 13 and be amended as follows:

*Article 13.*

1. This Convention shall be open for signature *by all Parties*, at the Headquarters of the U.N.O. in New York. It shall remain open for signature until the date of its coming into force.



2. This Convention is subject to the ratification, the acceptance and the approval *of the signatory Parties*.
3. After its coming into force, this Convention shall be open for accession to all the States.
4. The instruments of ratification, acceptance, approval or accession shall be deposited with the *Secretary General of the U.N.O., who acts as the Depositor of this Convention*.

#### Article 17.

Should become Article 14 and be amended as follows:

#### Article 14.

1. This Convention comes into force on the thirtieth day *following the date on which the twentieth instrument of ratification, acceptance or approval is deposited with the Depositor*.
2. For *each Party* ratifying, approving, accepting or acceding to this Convention *after the deposit of the twentieth instrument* of ratification, acceptance or approval, the Convention shall come into force on the thirtieth day following the deposit *by this Party* of its instrument of ratification or accession.

#### Article 17A.

Should become Article 14 A and be amended as follows:

#### Article 14 A.

1. *Any Party* may denounce this Convention by written notification to the Depositor.
2. The termination of this Convention *shall* take effect *three months* after the date on which the Depositor receives the notification.

#### Article 18.

Should become Article 15 and be amended as follows:

*Article 15.*

The Depositor shall notify promptly *all the signatory and adherent Parties*

- a) the date of each signature of this Convention.
- b) each deposit of instruments of ratification, acceptance, approval or accession.
- c) any declaration or any withdrawal of a reservation, *in conformity* with Article 12.
- d) *the coming into force of this Convention or any denunciation thereof made in conformity with Article 14 A.*

**Article 19.**

Should become Article 16 and be amended as follows:

*Article 16.*

1. The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited *with the Secretary General of the U.N.O.* who shall send certified copies thereof *to all the signatory Parties of this Convention.*
2. *This Convention shall be registered with the Secretariat of the U.N.O.* in accordance with Article 102 of the Charter of the United Nations.

In witness whereof the undersigned, being duly authorized thereto by their respective governments, have signed this Convention, open for signature in *New York*, on . . . . .

**RECONSIDERATION**

Five years after the coming into force of the Convention, the Parties to the Convention shall meet at the Headquarters of the U.N.O., in order to ensure that the aims put forward in the preamble have been reached and that the provisions set forth in the Convention have been applied.

Every five years, a majority of Parties to the Convention may call a new Conference in order to examine how the Convention is being applied. This shall be achieved by addressing to the Depositor of the Convention, a request to that effect.

## AMENDMENT

Any amendment to the Convention must meet with the approval of the majority of the contracting Parties.

The amendment shall come into force as soon as the notifications of the approval of the majority of the contracting Parties, shall have been received by the Depositor.

A Party shall be bound by an amendment, only if it has notified it.

## DURATION

Twenty five years after the coming into force of the Convention, a conference shall have to decide whether the Convention shall remain valid for an indefinite period, or if it shall be extended for one or more definite periods.

This decision shall have to be taken by a majority of Parties to the Convention.

**GENERAL COMMENTS ON THE DRAFT CONVENTION  
ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL  
BY THE REPRESENTATIVE OF THE REPUBLIC OF KOREA**

(CPNM/57)  
6 February 1979

The delegation of the Republic of Korea wishes to join with other delegations in congratulating Mr. Estrada Oyuela on his election as Chairman of the meeting. The Government of the Republic of Korea attaches great importance to this meeting in view of the urgent need for an international regime that would provide a basis for the physical protection of nuclear material.

The delegation of the Republic of Korea would like to record the following views:

1. The consensus reached at the informal meeting of September 1978 seems to be a major breakthrough in the drafting of the Convention. The delegation of the Republic of Korea wishes to endorse the Memorandum to the Meeting of February 5–16, 1979, adopted at the informal meeting.
2. The Convention should be formulated in such a way as to avoid any adverse effect on the peaceful uses of nuclear energy, especially in developing countries.
3. The interests of both suppliers and recipients should be reflected in the Convention on an equitable basis, so that the Convention is acceptable to as many States as possible.
4. It seems appropriate that the International Atomic Energy Agency should undertake a major role in implementing the Convention.

The delegation of the Republic of Korea pledges its full co-operation in drafting the Convention in the hope that the draft can be finalized within the period of this meeting.

# COMMENTS ON THE DRAFT CONVENTION ON PHYSICAL PROTECTION OF NUCLEAR MATERIAL

(CPNM/80)

31 May 1979

## NOTE BY THE DIRECTOR GENERAL

Those comments on the draft convention on physical protection of nuclear material which Member States had communicated to the Director General after 16 February 1979 are reproduced in the attachment.

### COMMENTS BY

- A. Australia
- B. Cuba
- C. France
- D. Spain

### A. AUSTRALIA

(Original: English)

15 May 1979

"In response to your invitation to submit comments on the Draft Convention, the following comments are submitted on behalf of the Australian Government:

- (1) Australia considers that the Draft Articles contained in CPNM/77/Corr.1 attached to the Director General's letter of 20 March 1979 constitute a satisfactory basis for a Convention.
- (2) Australia attaches considerable importance to the early entry into force of the Convention and continues to hope that negotiation of the Convention will be concluded at the next meeting.
- (3) Australia supports adoption of an agreed text of the Convention by the signing of a final act of the meeting. The final act would be the definitive record of the text agreed by the meeting. The Convention should then be opened for signature at a later date to be specified in Article 14. Signature of the final act would not commit the Governments of the delegations signing it to adhere to the Convention. Each Government would have time to consider the Convention before deciding whether to sign it in accordance with Article 14.

- (4) The participation in the Convention of the European Atomic Energy Commission as well as the Member States thereof is vital to the success of the Convention. Australia continues to support such participation.”

B. CUBA

(Original: Spanish)

25 April 1979

“We are pleased to inform you as follows:

- The Republic of Cuba has viewed with satisfaction the preparatory work undertaken by the Agency for the purpose of drafting a body of standards which will offer due protection to nuclear materials when they are the object of international transportation; this would result in the protection of these materials against any attempt at fraudulent diversion, theft or robbery or at any other form of unlawful appropriation;
- At the same time, we consider that in the present stage of work it is essential, first of all, to define clearly the range of application of the future Convention, since this will determine what should be the ultimate emphasis of its operative part;
- The attitude of our country in this respect has been to favour a restricted range, i.e. that the Convention should be limited to international transport and that its provisions should be drafted on that basis; this would not violate basic principles of international law like the sovereignty and will of States and would, in its turn, contribute to the achievement of the universality required by a Convention of this kind;
- As regards the provisions governing the use of nuclear materials for military purposes, we consider, for the same reasons as those given above, that concepts of this kind should be included in the Preamble to the Convention and not in its regulatory part;
- The Republic of Cuba would be gratified if the Convention on Physical Protection gave rise to its own regulatory provisions which could be used in dealing with situations arising from its application, as its legal objectivity differs in essence from that of the other Agency agreements on nuclear energy. Accordingly it might prove inappropriate to transpose articles from other conventions, even though regional or worldwide in character, which have so far been adopted only by a small number of countries, a fact which therefore prevents their entry into force and the achievement of their proclaimed universality. (This is the case with the European

convention on terrorism and the one on punishment of offences against internationally protected persons.) Following such a policy would not be a proper basis for reaching agreement on questions which differ from one another in substance;

- On 15 February 1979 the National Assembly of the Peoples' Power adopted the new Penal Code of Cuba, which was promulgated in the Official Gazette of the Republic on 1 March 1979 and will come into force in November 1979. This code specifies, among other things, the penalties that would be incurred by offenders against the provisions relating to the use and conservation of radioactive substances and other sources of ionizing radiation, which is in accordance with Article 6 of the draft Convention and is evidence of the importance attached by Cuba to the matter which is being negotiated. This penal provision stipulates as follows:

**Article 210.** A penalty consisting in the loss of freedom for a period of from five to fifteen years shall be incurred by any person who:

- (a) Deliberately commits acts which endanger or cause damage of any kind to means of nuclear materials transport, for the purpose of impeding their operation;
- (b) Intentionally releases nuclear energy, radioactive substances or other sources of ionizing radiation which endanger the life or health of persons or their property, even though no damage is caused;
- (c) Deliberately and unlawfully makes use of, removes or diverts from their route nuclear materials, radioactive substances or other sources of ionizing radiation;
- (d) Takes possession of or maintains in his possession radioactive objects or substances or other sources of ionizing radiation which are contaminated and are intended to be made unusable or to be decontaminated.

**Article 211.** (1) A penalty consisting in the loss of freedom for a period of from three to eight years shall be incurred by any person who:

- (a) Without due authorization places in operation a facility or means of transport in which use is made of nuclear materials, radioactive substances or other ionizing sources;
- (b) Without due authorization receives, transports, stores, supplies, deals in, throws out or removes nuclear materials, radioactive substances or other sources of ionizing radiation.

(2) A penalty consisting in the loss of freedom for a period of from four to ten years shall be imposed if, in connection with the acts referred to in the preceding section, the offender or any other person makes unauthorized use of the materials mentioned.

- Article 6 bis of the draft Convention refers to the measures which will have to be taken by States to establish their jurisdiction in any part of their territory in which the types of offence mentioned in Article 6 may be committed. In this connection we are pleased to report that, under Article 4 of the Penal Code, “Cuban penal law is applicable to all crimes committed in the territory of the country or on board Cuban ships or aircraft, wherever they may be, save for the exceptions provided for under treaties signed by the Republic; it is also applicable to offences committed on board foreign ships or aircraft present in Cuban waters or air space, whether committed by Cubans or by foreigners.

A crime is considered as having been committed in Cuban territory if the offender carries out preparatory or operative acts there, even though the result may have been produced outside the country”.

- It will be clear that in Cuba the control and prevention of offences to which the international transport of nuclear materials may give rise are guaranteed by our legal system and, in any event, penal action is exercised.
- The formulation of Article 8 is necessary in that it lays down the procedure which must be observed by the parties in connection with the extradition of the authors of the offences referred to in the above-mentioned Article 6; the Cuban authorities have reached a decision in this matter and have consequently taken measures against any attempted actions against air and sea transport; the Cuban position in this matter has been reiterated by our leaders in various statements and in the new Penal Code these acts are included among the offences subject to more rigorous penalty. In line with this policy, Cuba has concluded bilateral agreements in which, on the basis of the strictest reciprocity and equality, the authors of such acts against the safety of air and sea navigation have either been *returned* to the other party for indictment or have been *subjected to legal process in Cuba*.
- Article 9(1) of the draft Convention makes it a requirement that the offences referred to in Article 6 should be included in any extradition treaty existing between States Parties; this involves the retroactive application of the offences in question. Our country considers that the multilateral approach should not set precedents or lay the basis for the offences to be included in the bilateral agreements reached with other countries because in our opinion bilateral agreements are more effective in extradition matters.



It considers, further, that Article 9(1) should be formulated more flexibly so as to enable States to act in accordance with their domestic legislation, and in this way general agreement on it could be reached.

Article 9(2) offers the State which makes extradition conditional on the existence of a treaty (and on its receiving a request for extradition from other States with which it does not have an extradition treaty), the option of considering the Convention on Physical Protection as the legal basis for extradition in respect of the offence.

Article 9(4) creates the legal fiction that the offence was committed in places other than those in which it occurred. As we understand it, the purpose of this provision is to ensure the apprehension of the offender by increasing the number of States which may exercise extradition. However the paragraph fails to give priority to the State which can exercise penal jurisdiction.

As regards Article 13(2), we believe that the possibility of making reservations to the future Convention should be extended to other articles which are not the subject of this Convention and certainly to matters which relate to the positive right of States.”

#### C. FRANCE

(Original: French)

7 May 1979

The comments by French Government are reproduced in original language because they regard only the French version of the draft convention.

“Les observations qui suivent ne concernent que la version française du projet dont certains articles, discutés quant au fond sur la base d’un texte anglais, n’ont pas été examinés par le Comité de Rédaction.

Elles portent sur les articles suivants:

*Article 1—3<sup>ème</sup> alinéa — Définition du “transport international” —*

Aux 4<sup>ème</sup> et 5<sup>ème</sup> lignes de cet alinéa, il convient de lire: “à compter de son départ d’une installation de l’expéditeur dans cet Etat, et jusqu’à son arrivée dans une installation du destinataire”.

*Article 5 — paragraphe 1—4<sup>ème</sup> ligne —*

L’expression “les personnes avec qui se mette en rapport” n’est pas adéquate, nous préfererions traduire le terme anglais “Point of contact”, soit par “correspondants”, soit par “interlocuteurs”.

*Article 5 — paragraphe 3—3 ème ligne —*

Lire “en vue d’obtenir” au lieu de “en vue d’échanger”. Le texte anglais est d’ailleurs: “with a view to obtaining”.”

Additional comments

23 May 1979

*“Article 2*

It would be advisable to add the word “transformation” after the word “use” on the second line of paragraph 2, <sup>75</sup>as it seems that the term “use” does not completely cover all the operations involved in reprocessing and enrichment.

*Article 4.2*

To allow for possible difficulties arising in the case of a supplier State not party to the Convention, it would be better to add “as far as practicable” after “be protected” on line 4.”

**D. SPAIN**

(Original: Spanish)

3 May 1979

“The Government of the Kingdom of Spain wishes to make the following comments on the Draft Convention on the Physical Protection of Nuclear Materials, in the version prepared at the last meeting of Governmental Representatives, convened by the International Atomic Energy Agency in Vienna from 5 to 16 February 1979 (document CPNM/77/Corr.1 of 16 February 1979).

**1. General observations**

The present text has resulted from a series of meetings in 1978 and also this year when the group divided into two committees, one for legal and the other for technical questions.

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<sup>75</sup> Translator’s note: the English text of Article 2 would then read: “With the exception of articles 3 and 4 this Convention shall also apply to nuclear material used for peaceful purposes in domestic use, transformation, storage or transport”, which sounds rather odd. A better formulation might be: “. . . apply to nuclear material for peaceful purposes in the course of its use, transformation, storage or transport on national territory”.

The most important of these meetings, the one in which agreement was reached on the scope of application of the future Convention, was held in the guise of an “informal meeting” last September. Spain did not participate in that meeting.

This agreement — which is reflected in document CPNM/53 called “Memorandum to the meeting of 5–15 February 1979” — consists in an understanding that the Convention’s scope of application will be the international transport of nuclear materials for peaceful purposes, although the penalty clauses and those concerning mutual assistance will apply likewise to the protection and recovery of materials in internal use, storage and transport. It was also agreed that a clause should be included to the effect that, five years from the entry into force of the Convention, a Revision Conference would be held to evaluate its operation and reconsider the scope of its application.

This memorandum was referred to frequently at the February meeting. Nevertheless, apart from the fact that it has no value other than that of reflecting the result of consultations between the States represented there, it seems not to have been satisfactory to certain of the States which participated in those consultations, as is demonstrated by the reservations formulated with regard to various articles drafted in February, in harmony with the September agreements.

In general, the present Draft would, as a whole, be more coherent from the legal point of view if it referred only to the international transport of nuclear materials. Another point that must be stressed is that broad acceptance of the Convention by States would be favoured if its application were so limited, since obligations such as those spelled out in Article 5 — notification in the event of commission of any of the offences covered by the Convention, information to other States and to international organizations concerning measures of protection, and so on — would be viewed with misgivings if the Convention’s application were extended to all the other cases.

Lastly, we should point out that, despite the September compromise which was referred to so frequently, some States expressed the opinion at the February meeting that the Convention should also apply to nuclear materials for military purposes.

## **2. Observations concerning the text**

Although it is possible that certain articles could be better drafted, the following remarks concern fundamental rather than formal questions.

### *2.1. Article 2*

It is to this article, which defines the scope of application of the Convention, that the general observations set out above mainly refer. In fact the drafting of this article is bizarre in the extreme, since the first paragraph is cancelled out by the second. For this reason, given the arguments based on logic, acceptability and so on which have already been advanced, we suggest that paragraph 2 should be omitted and that paragraph 1 should constitute the whole text.

### *2.2. Definition of international nuclear transport*

The definition of international nuclear transport contained in Article 1 is too complicated and could perhaps be simplified”.

**POSITION OF THE INDIAN DELEGATION ON ARTICLE 2:  
SCOPE OF THE CONVENTION**

(CPNM/86)

24 October 1979

The Indian delegation is in favour of a Convention on the Physical Protection of Nuclear Material under International Transport without any distinction regarding the purpose for which the material is meant or used for the following reasons:

- i. hazards that may result from the theft of nuclear material will be the same whether the nuclear material is meant for peaceful purposes or non-peaceful purposes;
- ii. the quantity of nuclear material used for peaceful purposes at the present time forms a small fraction of the total quantities.

Article 2 in its present form is not acceptable to the Indian Delegation as its paragraph 1 limits the scope to nuclear material used for peaceful purposes and paragraph 2 extends the scope beyond international nuclear transport.

The Indian Delegation reiterates its position on the scope of the Convention as contained in document CPNM/Legal Issues/35, dated 6 February 1979, as follows:

“This Convention shall apply to nuclear material under international transport.”

## **PROPOSAL BY EGYPT FOR A NEW ARTICLE**

(CPNM/WP/28)

15 February 1979

### **Article 5.4**

A special fund is to be established by the depositary to be financed by voluntary contributions, with the major portion thereof being pledged by the most affluent countries, in order to help the States Parties from the developing countries to meet the enormous and expected ever increasing costs of physical protection in accordance with the present Convention.

## STATEMENT BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

(CPNM/6)

31 October 1977

The Government of the Federal Republic of Germany attaches great importance to the question of the physical protection of nuclear material. It therefore welcomes the fact that the Director General has brought it within the purview of IAEA. For this reason, the Federal Government has supported a resolution to this effect sponsored by the United States and adopted by the General Conference in September. Similarly, experts of the Federal Republic of Germany helped to draw up recommendations for IAEA which were discussed at the Consultants Advisory Meeting this spring.

The Government of the Federal Republic of Germany devotes considerable attention to the protection of nuclear material against unauthorized diversion, illegal seizing, misuse or any other criminal acts because it feels that protection against subnational attacks is logical and necessary besides measures to control the flow of fissionable material.

Effective measures to protect nuclear material also serve to protect man and his environment from the unauthorized release of radioactive substances as a result of sabotage or other criminal acts. The protection of nuclear facilities, especially nuclear power stations, serves the same purpose.

Furthermore, the effective physical protection of nuclear materials and nuclear facilities will also help to protect society and the State against blackmail.

The exceptional importance of these objectives has induced the responsible authorities in the Federal Republic of Germany to develop and apply an effective physical protection concept based on constructional building, technical, personnel and organizational requirements and security measures. The recommendations of the IAEA contained in INFCIRC 225, as well as the deliberations leading to the projection of that document, have given us valuable help in this respect.

The Federal Government realizes that a high level of physical protection worldwide will contribute to the security of the family of nations. However, effective and comprehensive physical protection of nuclear materials and facilities calls for efforts extending beyond the national framework. Measures to prevent terrorist and other criminal acts and to recover stolen materials or to bring the offenders to justice in particular call for effective international co-operation. The Federal Government therefore welcomes all efforts to establish internationally mandatory levels of physical protection and effective co-operation of the national authorities.

The Federal Government holds the view that in order to achieve these aims the draft Physical Protection Convention to be worked out at this conference

should be formulated in such a way that it will be acceptable to as many countries as possible. In this connection it should also be remembered that protective systems in individual countries are oriented to national circumstances and requirements and therefore, of necessity, differ.

The Federal Government considers that, in harmony with the recommendations of the Consultants Advisory Meeting held in the spring of this year, uniform procedural principles are necessary for the international transport of nuclear material.

Considering all these points, we think that there is no difference in the danger originating from subnational misuse of nuclear materials and nuclear facilities coming from military or civilian activities so that there is no reason for different treatment.

The position of the Federal Republic of Germany can be summarized as follows:

The Federal Government sees in a worldwide high level of protection of nuclear materials and nuclear facilities an essential pre-requisite for the peaceful use of nuclear energy. It therefore advocates:

- The elaboration of principles for the protection of nuclear materials and nuclear facilities and their worldwide application;
- The establishment of compulsory co-operation between the responsible authorities in individual countries;
- Mutual assistance following attacks on nuclear materials or nuclear facilities and the extradition of offenders;
- And consideration of the possibilities of adapting pertinent criminal legislation.



## STATEMENT BY THE REPRESENTATIVE OF AUSTRIA

(CPNM/7)

31 October 1977

In view of the great destructive power inherent in fissionable material, its protection against theft or intentional misuse is an absolute necessity.

The growing threat to society posed by international terrorism and similar phenomena gives safety measures for nuclear facilities and nuclear material added importance.

The establishment and application of physical protection systems lies within the responsibilities of the individual states but it would be desirable to create these systems on the basis of a catalogue of criteria established on harmonizing the information, experience and views of a comprehensive number of concerned countries and international organizations.

When the IAEA initiated such a catalogue of criteria several years ago, Austria — a country with relatively small nuclear activities — showed great interest in this undertaking; it co-operated in drawing up the first draft, and subsequently participated in the meetings of the advisory group for reviewing the catalogue. Austria welcomes the activities of the IAEA in this field and recalls the fact that the General Conference in its 19th regular session endorsed the intention of the Director General "to review and bring up to date those recommendations regularly to reflect advances made in the state of the art or the introduction of new types of facilities."

To complement the establishment of physical protection systems in the individual states it is of equal importance to create an international regime for the prevention of theft and sabotage.

The transport of nuclear material is considered to be one of the most sensitive links in any protection system, so provisions for specific international aspects of these problems, as contained in the draft convention before us, acquire a special significance.

Austria, therefore, welcomes the initiative to establish this international convention and would like to thank the US Delegation for preparing the draft, that will be the basis for our deliberations.

We have already expressed our views to some provisions in the draft and I may refer you to Document CPNM/2, page 2. We will supplement these opinions shortly with another note.

Finally, I would like to make some remarks regarding the framework and the contents of the convention:

In our view, the provisions of Articles 3 and 4 are fairly vague. This applies especially to Article 3(2) which amounts to a factual statement rather than a legal norm.

Austria accepts the general approach of the draft Articles 6 to 11 containing provisions in the field of criminal law, mutual assistance in criminal matters and extradition. The definitions of the punishable offenses (Art. 6) will require careful consideration and drafting, in order to adjust them to the variety of structures of national penal law, and in order to limit their range to dangerous acts. In our view, the additional question of including an article referring to the extension of criminal jurisdiction of States Parties to certain offences committed abroad will have to be examined.

## STATEMENT BY THE REPRESENTATIVE OF FRANCE

(CPNM/8)

31 October 1977

The French Government attaches very great importance to the problems of physical protection and has demonstrated this repeatedly in the course of the negotiations which it has conducted. It therefore greatly appreciates the initiative taken by the Director General of the Agency in promoting the joint study of a draft convention concerning these problems.

At present we are engaged in a meeting of experts and not in an international diplomatic conference; our task is to give a first reading to a draft which — we hope — will reveal the course to be followed by us later. Clearly there is no question of definitively concluding an agreement even an *ad referendum* one; the French delegation does not have instructions which would allow it to enter into undertakings, even on a provisional basis.

The report which is to be prepared should set forth all the opinions expressed, including the dissenting opinions, and then be submitted to all Governments for consideration.

On the whole, my Government would prefer a convention limited to the physical protection of international shipments.

Collaboration in the field of physical protection must develop on a voluntary basis among States and organizations directly concerned, and it must develop within a framework of discretion so that confidential information is not divulged.

I think it would be premature to embark at this juncture on detailed consideration of the text which we shall be examining; I reserve the right to make at the appropriate time any comments which may prove necessary.

## STATEMENT BY THE REPRESENTATIVE OF BRAZIL

(CPNM/9)

31 October 1977

The Brazilian Government attaches great importance to the matter which has brought us together here and considers that it is necessary to establish legal norms in the field of the physical protection of nuclear materials.

However, and here I am in full agreement with the view expressed by the representative of France, the Brazilian Government would have preferred that the convention — or draft convention — be limited to the physical protection of nuclear material during international transit, the protection of facilities and the conditions under which internal transfers are carried out being matters for regulation by the State within whose territory the facilities are located and the transfers take place.

There is much to be said about the classification of offences and extradition procedures. However, I do not wish to go into details at this point; there will undoubtedly be an opportunity to discuss all questions during this series of meetings, which my Government regards as technical consultative meetings at which it will in no way be called upon to assume a binding undertaking with regard to any of the matters discussed.

## STATEMENT BY THE REPRESENTATIVE OF ITALY

(CPNM/10)

2 November 1977

The Italian delegation confined its intervention yesterday to some aspects of a procedural nature concerning the necessity of having the convention appropriately examined and approved by a diplomatic conference in order to achieve the broadest participation of the international community.

We regret to note that the Agency's press release mentions an international conference with the task of preparing "a final and internationally accepted text of an agreement" and states "it is hoped that this work can be completed by September of next year and that the agreement can then be opened for signature by Governments." We reiterate that, in the opinion of the Italian delegation, such an agreement can be reached only through the deliberations of a diplomatic conference.

My Government considers it of paramount importance that an international agreement for co-operation in the field of physical protection of nuclear material be reached.

In expressing our gratitude to the United States delegation for having prepared a draft convention, which has enabled interested countries to meet and start discussions we wish to make the following general comments:

1. An effort should be made to reach an understanding to which the largest possible number of countries can adhere; such an understanding is indispensable if the validity of the initiative which has been taken is not to be jeopardized.
2. As far as the field of application of the convention is concerned, the Italian delegation deems it advisable not to limit the convention to the international transportation of nuclear material, but to extend it to nuclear material being processed, used and stored. In our opinion, the main objective of the convention should be not to establish adequate standards for physical protection during transportation, but to achieve the widest international collaboration in securing the prompt recovery of nuclear material and, in the case of theft, sabotage or other crimes, to identify the offenders promptly for the purpose of prosecution or extradition. In drawing attention to the fact that limiting the convention to international transportation would jeopardize the validity of the initiative which has been taken, the Italian delegation suggests that the title of the draft be the following: "Draft Convention on the Physical Protection of Nuclear Material being Processed, Used, Stored and in Transit".
3. In order to finalize the draft convention, it is advisable to identify in advance the specific crimes to be taken into consideration, since in our opinion nuclear

material has to be better categorized in the annex to the convention. In fact, a classification by levels of physical protection should be done taking into account whether the material is in transit or being processed, used and stored.

4. In addition, we are of the opinion that all materials not of relevance from the point of view of physical protection — such as source materials and uranium enriched in  $^{235}\text{U}$  to less than 20% — should be excluded from the field of application of the convention.

Finally, we wish to express a reservation regarding the exclusion from the scope of the convention of nuclear material used for military purposes in view both of the greater risks which it presents and of the action to be undertaken for its recovery.

## STATEMENT BY THE REPRESENTATIVE OF ARGENTINA

(CPNM/11)

1 November 1977

The Government of the Argentine Republic is greatly interested in the matter before us. The events of recent years have shown that international co-operation in the field of physical protection of nuclear material is becoming increasingly necessary. That is why, at the very outset, it warmly welcomed the idea of taking steps to achieve international solidarity in the face of the danger of nuclear material being stolen or nuclear facilities sabotaged for purposes of extortion or terrorism.

Section 4.2.2. of Agency document INFCIRC/225/Rev. 1 indicates adequately the attractiveness of nuclear material and facilities to saboteurs and terrorists. The development of international co-operative measures to help make the physical protection of nuclear material effective is simply an imperative of the times in which we live. However, the manner of initiating this process presents certain difficulties which we must consider.

It could be maintained that the physical protection of nuclear material and facilities does not fall within the competence of the International Atomic Energy Agency as it is not referred to in the Agency's Statute.

This has given rise to an initial difficulty connected with the manner in which the subject has been considered so far within the Agency. The Director General has, on various occasions, convened meetings of advisory groups to discuss this subject. These groups have produced reports which were not distributed to all Member States of the Agency. On the basis of these reports, a number of publications — including documents INFCIRC/225 and INFCIRC/225/Rev. 1 — have been issued by the Agency. They were never submitted to the Board of Governors or to the General Conference, although the latter body has given the two Agency documents a kind of blessing *ex post facto*. The countries of Latin America did not participate in the work of the advisory groups, which is why, in co-sponsoring the draft resolution adopted by the General Conference at its last regular session, we urged that the Director General bear in mind the need for broad consultations with all Member States.

Another difficulty facing us is that the circumstances under which this meeting has been convened are not very clear. In his letter, the Director General simply informed us that the Agency's Secretariat would be making facilities and services available, but we have already seen that the services do not even include the provision of summary records; the task of our Rapporteur, Mr. Herron, in making up for this deficiency will be an arduous one.

On 16 June, the Secretariat transmitted the text of a draft convention without indicating officially who the author was; only today have we been told that the draft was sponsored by the United States of America.

Even for us, who share the basic concern of the United States, this draft presents serious difficulties. In their written comments, a number of countries have objected to the definitions, which are essential for our knowing at least what we are talking about. Moreover, too many things are referred to in the text, in the drafting of which it appears to have been forgotten that the physical protection of nuclear material and facilities is basically a sovereign function of Governments.

As already indicated, it would seem that the international transport of nuclear material is an area in which there are clearly possibilities for international co-operation; here, we could perhaps establish certain guidelines. Both in the recommendations of the group of experts which met in Vienna from 28 February to 4 March and in the two resolutions adopted by the General Conference, there is specific reference to international transport, although other ideas had been expressed previously.

The draft text of the United States is confined to nuclear material being used for peaceful purposes, but it is fairly obvious that saboteurs and terrorists will be attracted most by material which has been prepared specially for military uses. As a result of military alliances, there are non-nuclear-weapon States with nuclear weapons within their territories; this is a fact which cannot be disregarded.

According to the proposal of the United States, the theft of nuclear material from a nuclear power plant would trigger an entire system of co-operation for the recovery of the material. However, we have the absurd situation that, according to the same proposal, the convention would not apply in the case of theft at a military installation.

The political will to co-operate at the international level will manifest itself in judicial co-operation between States in preventing offences and recovering stolen material. Accordingly, the corresponding part of the convention will have to be worded carefully, so that it is really acceptable to all States.

The representative of the United States has said that the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents has served as a model in the preparation of the draft text. I feel that the model was not adhered to scrupulously in every respect and that it would be useful for us to know what has been the effective extent of acceptance of the Convention as reflected not only in the recommendation of the UN General Assembly but also in signatures, ratifications and entry into force.

In this connection, despite its limited resources, the Secretariat could perhaps give us detailed and up-to-date information on the signature and ratification status of this convention and also of the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft and the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft. These instruments contain clauses which will have to be borne in mind during our deliberations.



We still have many doubts, and the road ahead is a difficult one. It would therefore be wise to try to agree on certain basic points — in particular, on the area which our deliberations are to cover. This is still not clear — for example, the representative of Australia has referred to the physical protection of source material.

If this meeting could lay down certain minimum criteria capable of gaining general approval, it would have done a very useful job. At a later stage we could then begin speaking about texts which reflect those criteria.

## STATEMENT BY THE REPRESENTATIVE OF JAPAN

(CPNM/12)

31 October 1977

With the rapid expansion of utilization of nuclear energy for peaceful purposes, physical protection against theft or unauthorized diversion of nuclear materials and against sabotage of nuclear facilities by individuals or groups is acquiring growing importance.

While the responsibility of establishing and operating a comprehensive physical protection system for nuclear materials and facilities within a State rests with the government of that State, it is not a matter of indifference to other States whether and to what extent that responsibility is being fulfilled. Physical protection has therefore become a matter of international concern and the need for international co-operation in this field is now being felt by many countries. Particularly, international co-operation is considered to be indispensable where nuclear materials are transported across national boundaries.

From this point of view, and recognizing fully the necessity of drafting some international convention on physical protection of nuclear materials, facilities and transports, my delegation is ready to contribute to the success of this conference.

We wish to express our sincere appreciation to the Government of the United States for its initiative and efforts to provide a draft convention as a basis of our discussion. No doubt it will be a useful document for our deliberation. However, as this session is the first in a series of conferences, we feel that we should focus our attention on some basic issues underlining the problem of physical protection as a whole. For, this is indeed a very complex problem.

First of all, this is a separate issue from that of non-proliferation of nuclear weapons capability at a national level and of safeguarding such risk of diversion. There is no denying the extreme importance of the nuclear non-proliferation problem and its close interrelation with the problem of physical protection. Nevertheless, we should not confuse the two separate issues of non-proliferation and of physical protection of nuclear materials.

Secondly, there seems to be a need to have different approaches when dealing with the problem of physical protection of nuclear materials existing within national boundaries and proper physical protection while nuclear materials are being transferred internationally. There may be other basic problems such as definitions of nuclear materials to be covered by this convention, international transport and other questions of a legal nature which would have important bearing on the scope of this convention.

I would therefore hope that our primary efforts would be concentrated on these basic issues before entering into actual drafting. We believe that this process is essential in avoiding confusion and misunderstanding at a later stage.

In conclusion, if we are to draft an international convention relating to the problem of physical protection of nuclear materials, we think that we should aim to draft a convention which will be widely acceptable to the world community and will be able to secure universal adherence. Hence, our task is important and may require time and patience.

## STATEMENT BY THE REPRESENTATIVE OF FINLAND

(CPNM/14)

2 November 1977

In recent years nuclear energy has in numerous countries, both industrializing and industrialized, become an important factor in the energy economy. This development has at the same time multiplied the dangers and risks inherent in the use of nuclear energy. It is, for example, no secret that, if nuclear material falls into wrong hands, even a nuclear explosive device can be produced, the necessary technological knowledge being fairly easily accessible. For its part, the Finnish Government is prepared to assume all necessary precautions to prevent such criminal acts.

Having said this I should like to express our gratitude to the United States authorities for having produced a draft convention which provides a good basis for our work.

The objectives of a convention can be effectively achieved only if it is widely adhered to. For this reason, my Government considers it proper that the convention be open for signature or accession by all Member States of the United Nations or of any of the specialized agencies.

My Government also considers that one should not discourage a potential contracting party by limiting more than is strictly necessary its right to make reservations regarding one or more of the articles of the convention. As an example of the difficulties which could arise in this connection, I should like to refer to Article 6 of the draft, which contains a list of punishable offenses. As nations with different traditions have adopted different concepts of criminal legislation, this provision must be flexible enough to allow for these differences or we must accept reservations regarding some parts of it. For instance, in the legislation of my country the concept of "a conspiracy to commit a crime" is unknown and only some offences falling under it are criminalized. I believe my country is not the only one where this is the case.

We are to consider the drafting of a convention which would apply to all nuclear activities of each contracting party except activities for military purposes. However, today and probably for some time to come most of the nuclear material which, as such, would be suitable for explosives has been produced for military purposes. It is said that this nuclear material is safeguarded more effectively than will ever be possible in civilian nuclear energy activities. My Government would nevertheless like to see a provision in the convention whereby the contracting parties concerned undertake to apply to their military activities physical protection measures at least as stringent as those defined in the convention, even if these activities would not otherwise be subject to the convention.

My Government would like the convention to be as much as possible in conformity with the well-established patterns of widely accepted agreements in related fields. The draft convention before us introduces a number of definitions different from those generally in use. I think we should as far as possible keep to the terms already established.

The philosophy and techniques in this field are only slowly being established. The final word has not yet been said. In our opinion, the conclusion to be drawn from this is that the convention should be sufficiently flexible to allow for adaptation to changing techniques using a procedure simpler than that usually required for making modifications to international conventions.

## STATEMENT BY THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA

(CPNM/15)

31 October 1977

In this statement I would like to discuss briefly the reasons for our support for a convention on the physical protection of nuclear material, facilities and transports, as well as what we believe the key objectives of such a convention should be. We wish to thank the Director General for circulating the draft convention and for making available Agency facilities for this meeting.

The Acting Director General has ably introduced the subject matter and reviewed its background. As stated in the Director General's letter of June 16, 1977, there is a growing recognition of the need for a convention on physical protection. This was reflected in the Declaration of the NPT Review Conference, which urged work on such an agreement and arrangements for physical protection of nuclear materials in use, storage and transit. This was also reflected in General Conference Resolution 328 calling for ways and means to protect nuclear facilities and materials.

The United States Government has been very concerned about this problem. Since 1974 we have urged in statements in the United Nations General Assembly and in other fora the drafting of an international convention. In light of current events, it is more urgent and important now than ever before that the world community take steps to deal with the risks.

The United States Government understands that this is a common concern. The concern is evidenced by the fact that so many countries are represented at this meeting. We all recognize it is in our interests to establish standards and measures to enhance the physical protection of nuclear materials, facilities and transports.

We have already received assistance in this work within the framework of the Agency. Both the publication of an updated INFCIRC/225 and the work of the Advisory Group on Physical Protection have clarified the problems, while specifically pointing to the need for a convention.

The United States believes that there are several major objectives of a convention.

At a general level, our objectives should be to obtain a commitment by states to implement adequate physical protection domestically. The risk of theft is an international problem as well as a domestic problem and it is in our common interest to enhance physical protection within states.

In addition, we believe an objective of a convention should be to provide for physical protection during international transit.

A third objective is to set up mechanisms for prompt detection of, rapid reaction to, and rapid recovery of lost or stolen nuclear material. In this regard we think it important to establish a framework for international co-operation.

Finally, in order to deter theft and threats relating to nuclear material, facilities and transports, we think a convention should establish a framework for a prompt punishment of perpetrators. Thus, at the domestic level, a convention should provide for appropriate prohibitions. At the international level, in addition, states should commit themselves to prosecute or extradite those accused of serious offenses of an international character. Such a mechanism is the same as utilized in the Montreal, Hague, and Protection of Diplomats conventions.

It has been suggested that a convention should be limited in scope to international transit. While this is a key element of the problem, we do not believe it is the whole problem. We agree that physical protection within the jurisdiction of a state is basically a domestic problem, but, as I have indicated, thefts of nuclear material are threats to the world community and not just individual states. Our common interest dictates we all agree to apply adequate physical protection domestically. Moreover, we should co-operate and assist each other to enhance our ability to deal with the problem of physical protection, and the convention can provide a framework for this co-operation.

To meet these serious concerns, the United States drafted a convention. We provided this draft to the IAEA Secretariat and were gratified that they agreed to circulate it and request comments. We are pleased and encouraged that so many states have supported this effort and have made worthwhile suggestions for improving the draft. The draft certainly needs further work and, for its part, the United States Delegation is ready to work hard during the next two weeks to improve the draft and to accommodate the legitimate concerns that have been expressed.

We urge as a common objective of this meeting the completion of our review of the draft and the adoption of a revised draft convention for transmission to governments and to the General Conference for consideration.

## STATEMENT BY THE AUSTRALIAN DELEGATION

(CPNM/16)  
2 November 1977

In the view of my Government, the achievement of an international regime for the protection of potentially hazardous nuclear material is essential for the responsible development of the nuclear industry.

A widely supported convention would both reduce the risk of nuclear materials being misused and build public confidence in the acceptability of the nuclear industry.

The Australian delegation believes that the draft convention circulated by the Director General provides a useful starting-point for the deliberations of the meeting and it is in broad agreement with the aims and general direction of the draft. Nevertheless, it recognizes that the meeting will want to examine in depth the range of matters with which the draft convention should be concerned. For its part, the Australian delegation will be urging that the meeting explore the possibility of including specific provisions for the protection of source materials. It is aware that the primary concern in the draft before us is with materials which terrorists could rapidly convert into nuclear explosives and that, from this point of view, the risk associated with source materials is low. However, such a judgement does not take account of the possibility of source materials stolen during transport being misused by governments. An alleged incident of this type has recently aroused international concern and speculation.



## STATEMENT BY THE DELEGATION OF SWEDEN

(CPNM/17)

2 November 1977

The Swedish Government has for a long time been concerned about the proper management and secure handling of nuclear materials, and in this respect the physical protection of nuclear materials has assumed considerable importance for it.

The 1975 NPT Review Conference in its final declaration, stressed the need for a convention on the physical protection of nuclear materials in use, storage and transit. Furthermore, the advisory group on the physical protection of nuclear material which the Director General appointed and which met early this year, suggested that the Agency consider initiating work on an international convention on the physical protection of nuclear materials during international transportation.

My delegation is pleased that the Agency has invited Member States to discuss physical protection matters in more concrete terms and appreciates the work of the representatives of the United States in preparing a draft convention. It should be noted, however, that this draft goes beyond the recommendation of the advisory group, which mentioned only physical protection during international transportation. The Swedish Government considers that a convention relating to this subject should enter into force with the widest possible acceptance as soon as possible.

While wishing to give highest priority to this subject, we are also prepared to discuss an extension of the convention to include nuclear material during use and storage.

**STATEMENT BY THE REPRESENTATIVE  
OF THE UNION OF SOVIET SOCIALIST REPUBLICS**

(CPNM/18)

2 November 1977

The Soviet Union has consistently supported the idea of an international convention on the physical protection of nuclear material, facilities and transports. We believe that such a convention would be an effective instrument directed against the unlawful use of nuclear material and acts of terrorism aimed at nuclear facilities and transports, and hence an important element in the system for strengthening the nuclear non-proliferation regime.

Such a convention should cover all operations involving nuclear material, including its use, storage and transportation, and also the protection of nuclear facilities. Also, it should cover all nuclear materials whose utilization for criminal purposes might constitute a threat to peace and international security.

It is obvious, moreover, that the convention should be adhered to by as many States as possible.

A draft convention should contain provisions which would help States in setting up national systems of physical protection designed to suppress such offences and would constitute a basis for an international legal regime to ensure the recovery of stolen material and the extradition and punishment of offenders.

We are pleased to note that, in the discussions which have begun today, most countries have spoken in favour of the rapid preparation of a draft of such a convention.

We should like to stress the important role which the International Atomic Energy Agency has to play in devising measures to strengthen the physical protection of nuclear material. Mention has already been made here of the recommendations which the Agency has formulated and which have helped States in the establishment of their national systems for the physical protection of nuclear material and facilities. In these recommendations, and also in resolutions adopted by the Agency's General Conference and by the 1975 NPT Review Conference, emphasis was placed on the need to devise international measures for the physical protection of nuclear material and facilities, and States were called upon to co-operate in preparing an international convention on these questions.

The Soviet delegation is ready to take an active part in the preparation of an international convention on the basis of the draft distributed by the Agency.

## STATEMENT OF THE REPRESENTATIVE OF INDIA

(CPNM/19)

2 November 1977

On behalf of the Indian delegation I should like to thank the Director General of the International Atomic Energy Agency for having convened this meeting of governmental representatives to consider the drafting of a convention on the physical protection of nuclear material. I should also like to commend the efforts of the United States Government in preparing a draft convention. The Government of India fully shares the Agency's concern about the possible loss or theft of nuclear material and its consequences. The present meeting is a step in the right direction.

In this context, it is not irrelevant to refer to the resolution in which the General Conference, at its 19<sup>th</sup> regular session, inter alia, called upon Member States and the Director General to consider ways and means of facilitating international co-operation in dealing further with problems in the physical protection area which are common to Member States, such as those relating to the international transfer of nuclear materials. The Director General initiated steps in this direction and convened a meeting of an advisory group on the physical protection of nuclear material. This group, which met in February/March 1977, identified the immediate problems and made certain recommendations, including one concerning an international convention on the physical protection of nuclear materials during international transport. It would also be pertinent to keep in mind the resolution adopted at the 21<sup>st</sup> regular session in which the General Conference noted the publication of a revision of the document entitled "Physical Protection of Nuclear Material" and the circulation by the Director General of the draft Convention which is now before us for consideration.

The initial comments of our Government have been circulated by the Director General in documents CPNM/2 and CPNM/2/Add.1. I should like to clarify the reason for our Government's desire to support the drafting of a convention at present to the extent that it relates to the physical protection of nuclear material during international transport. Physical protection is a very complex issue, with many legal and security aspects which vary widely from one State to another and are superimposed on the technical aspects. One should not lose sight of the practical problems of implementation, as undoubtedly the primary interest of all States — is and should be — effective implementation of the convention in whatever form it is agreed upon. We would, therefore, emphasize that a step-by-step approach is preferable, so that in the light of experience gained, the question of extension may be considered at an appropriate time.

## STATEMENT BY THE REPRESENTATIVE OF PANAMA

(CPNM/20)

2 November 1977

The Government of Panama is very interested in the convention which is the subject of our deliberations as one of the world's most important seaways passes through our country and nuclear shipments — **both civilian and military** — require physical protection before they reach Panama; this applies also to shipments by air, for with its new international airport Panama has become important in the field of air transportation.

We share the views expressed here to the effect that this meeting should be devoted **principally** to the physical protection of nuclear transports, but this should not preclude **recommendations** to Member States regarding the physical protection of nuclear facilities and material in the framework of their own laws and of their absolute sovereignty within their own territories.

I believe we should also devise a formula for avoiding and combating nuclear terrorism while maintaining the sovereignty of Member States and I hope that the many eminent legal experts present here will reach a universally acceptable solution to this important problem.

## STATEMENT BY THE REPRESENTATIVE OF THE NETHERLANDS

(CPNM/21)

2 November 1977

The Netherlands delegation agrees wholeheartedly with the principle that an international minimum level of physical protection should be established. It is clear that international transport is an important part of the fuel cycle to be protected, but world security can only be served adequately if all nuclear material in use, storage or transit is covered by an effective system of physical protection measures.

In the written comments which we submitted earlier, we considered the technical side of the problem in view of the need to establish an internationally accepted minimum level of physical security, for which document INFCIRC/225/Rev. I provides a technical basis. In the course of this meeting's deliberations we shall comment on the details of the convention and on the legal aspects.

We should like to thank the United States of America for the submission of a draft, which is a starting-point for detailed discussions. We wish to collaborate in this meeting and contribute to a result which is acceptable for all countries, because broad adherence to the convention is an essential prerequisite for its success.

## GENERAL STATEMENT BY THE REPRESENTATIVE OF BELGIUM

(CPNM/22)

3 November 1977

The Belgium Government attaches great importance to the problem of the physical protection of nuclear material. The significance of the problem is widely recognized by world public opinion, which is becoming increasingly sensitive with regard to questions concerning safety and the environment.

As the representative of France has already stated, we are at present engaged in a meeting of experts convened to give a first reading to a draft convention. So far, no-one can say with certainty what the final version of the convention will look like.

The draft before us is rather ambitious, touching on a number of very different areas – hence, there are certain ambiguities:

Are we dealing with the physical protection only of nuclear material or – as Articles 2 and 6(d) of the draft would seem to suggest – also of the facilities where they are being stored or processed?

Are we dealing with nuclear material during transportation or also with material which is being handled or stored?

A choice ought to be made between these options at the outset. However, as we are engaged at present only in a preliminary examination of the problem, my delegation will, pending fuller information, consider all possibilities.

Obviously the ideal would be to prepare a draft convention which provides for a wide spectrum of protection while securing the maximum number of accessions. However, a global solution is not necessarily the best way of achieving this end.

Some, like the representatives of France and Brazil, might prefer a convention confined to the physical protection of international **transports**. Certainly transportation is the area where the necessity of co-operation between States is most evident and the need for an international convention is making itself felt more and more, it being understood that the storage and handling of nuclear material can be covered in other ways – for example, by national legislation.

One can conceive of **several** draft conventions, some containing mandatory provisions connected both with transportation and with the prevention of international offences and others of a purely normative nature such as the enumeration of criteria to serve as a basis for national legislation.

Alternatively, one could adopt a step-by-step procedure, first dealing with those questions which are of greatest urgency and in respect of which there is considerable support and then passing to those questions which look as if they will be settled only after long discussions.

Lastly, there remains the global solution, which has the merit of being a coherent whole without loopholes, but entailing the risk of encroachment on what would appear to be areas of exclusively national concern.

Should a broad approach be adopted, the Belgian Government would like the meeting to employ – subject of course to the contents of the final text – the title “Draft convention on the physical protection of nuclear material during transportation, or in storage or in use”, the aim being to make it clear that the meeting is concerned with the physical protection of nuclear material and not of facilities as such.

In conclusion, my delegation considers that, if the meeting is to accomplish useful work within a reasonable time, there will have to be a broad consensus at the outset on its objectives, be they global or specific.

## STATEMENT BY THE REPRESENTATIVE OF ROMANIA

(CPNM/23)

2 November 1977

I thank the Director General for convening this meeting, the Government of the United States for the initiative which it has taken and the Director of the Legal Division for the expert assistance provided during the preparation of this meeting.

At this early stage in our deliberations I should like to outline Romania's position with regard to the subject before us; I propose to elaborate on my country's position later, as our deliberations progress.

Romania attaches considerable importance to the physical protection of nuclear materials, facilities and transports, and the competent authorities in my country have already formulated – on the basis of Agency document INFCIRC/225 – a set of standards relating to the physical protection of nuclear materials.

In the same spirit, Romania is supporting efforts to promote international co-operation for the physical protection of nuclear materials – including the drafting and implementation of an international convention on this subject – and will be participating with great interest in the work of this meeting.

In our opinion, given the need to ensure that all nations enjoy free access to the benefits of the peaceful utilization of nuclear energy, such a convention should contribute to the promotion of international co-operation to this end.

The legal instrument which we envisage should encourage and facilitate – not hamper – the transfer of nuclear materials, facilities and technology without impairing the sovereign right of each State to decide on such matters as the paths which it will follow and the means which it will employ in developing the peaceful utilization of atomic energy, especially in the field of nuclear power generation. It should also be flexible enough to take into account the true needs of States with regard to the physical protection of nuclear materials and the different stages reached in the peaceful applications of nuclear energy. Consequently, while providing for effective physical protection measures, such a convention should not impose on States obligations which are excessive, expensive and unjustifiable under the conditions prevailing in those States. In our opinion, these requirements should be taken into account during the negotiation of the legal instrument and reflected at least in the preamble.

As to the contents of the convention, we feel that this meeting should concentrate primarily on the physical protection of nuclear materials during international transportation and on international co-operation to this end, for it is during transportation that the risk of loss, theft, misuse or deterioration of nuclear materials is greatest.



Like other delegations, we think it is essentially for the competent authorities in individual States to take the measures necessary for the physical protection of nuclear materials in use or in storage, acting in conformity with national physical protection standards which should reflect both local conditions and the guidelines laid down in technical documents of the Agency, which are an expression of the need for international co-operation in this field.

As regards the wording of the draft convention, given the particular conditions under which the transportation of nuclear materials by sea – and even more so by river – is effected and the especially serious consequences of loss, theft, misuse or deterioration of nuclear materials, we feel that the draft should contain more detailed and rigorous provisions to cover this mode of transport.

Like some other delegations, we feel that some definitions – for example, that of “nuclear facility” – should be revised in the light of the definitions already given in various Agency documents. Moreover, we should like to see the inclusion of definitions of “physical protection of nuclear material”, international transfer” and certain other concepts in Article 1.

In addition, we suggest the inclusion of a provision for the holding – after, say, five years from the entry into force of the convention – of a conference of States Parties to review the implementation of the convention and, if necessary, to decide on measures for ensuring that its provisions are complied with; such conferences could take place periodically.

The Romanian delegation is convinced that, through the joint efforts of all those present and consideration of all opinions in a process of real negotiation, we shall succeed in formulating a convention which, meeting the need for physical protection of nuclear materials, will serve the interests of States and will therefore be widely acceptable.

**STATEMENT BY THE REPRESENTATIVE OF THE  
GERMAN DEMOCRATIC REPUBLIC**

(CPNM/24)  
2 November 1977

In the light of the final act of the NPT Review Conference, which urges all States to enter into international agreements and arrangements for the establishment of the norms necessary for the effective protection of nuclear materials at all times, my delegation welcomes the initiative taken by the Director General in convening this meeting. It shares the view that firm commitments by States to protect nuclear materials, facilities and transports could substantially contribute to strengthening the regime of non-proliferation of nuclear weapons in the interest of all States.

At the same time, my Government regards such a convention – which should be open for adherence by all States, whether or not they are members of the Agency – as an important step against theft, misuse or damage of nuclear materials. We are therefore of the view that it should cover the protection of nuclear material of all kinds during its use, storage and transportation.

My delegation supports the view, already expressed by other delegations, that to ensure its effectiveness the convention should be acceptable to a large number of States.

Recognizing and welcoming the role which the Agency has played in the past in formulating recommendations in the physical protection field, we consider that the Agency should in future also play an active role in assisting with the process of drafting a convention and that this meeting should make use of the Agency's expertise.

My delegation is of the opinion that this meeting has been convened at the right time, for we consider such a convention to be an important prerequisite for a further extension of the peaceful utilization of nuclear energy.

## COMMENTS BY THE REPRESENTATIVE OF MEXICO

(CPNM/25)

4 November 1977

1. Article 1 of the draft convention changes the meaning of “nuclear material” as established by Article XX of the Agency’s Statute in conjunction with paragraph 77 in “The Agency’s Safeguards System (1965, as provisionally extended in 1966)” (document INFCIRC/66/Rev. 1); “nuclear material” as defined in Article 1 does not include source material, whereas in paragraph 77 of document INFCIRC/66/Rev. 1 it is stated that “nuclear material” means “any source or special fissionable material as defined in Article XX of the Statute”. In other words, contrary to the definition in Article 1, source material is in fact considered to be nuclear material.

In the notation to the draft convention it is stated that Article 1 expands the definition of “nuclear material” so that all plutonium is covered. Such expansion is of questionable value, for “nuclear material” then includes plutonium-238, which is not special fissionable material even if it can easily be converted to plutonium-239. As plutonium-238 is used in ways unconnected with the uses to which fissionable material can be put, the inclusion of plutonium-238 in the category of “nuclear material” gives rise to difficulties in respect of the production, handling and use of this isotope.

Furthermore, in a way Article 1 restricts rather than expands the definition of “nuclear material” so far accepted by the Agency, which — as we have seen — includes source material.

Accordingly, if there are no better reasons for this definition of “nuclear material”, it should be dropped.

2. The second paragraph of Article 3 has no mandatory force and hence no place in such a convention.

3. In sub-paragraph 3(c) of Article 4, the words “to persons whose trustworthiness has been determined” should be replaced by “to duly authorized persons”.

4. [The proposed change in the Spanish version does not affect the English version].

5. In sub-paragraph 2(b) of Article 5 we suggest that the phrase “with due regard to the international sovereignty of those States” be added after “international organizations”.

6. With regard to the reference to “international transfer” in Article 6.2, we feel that the moment during international transfer when the international offence is committed should be defined.
7. Apparently Article 9.4 could give rise to confusion regarding whose legislation is applicable in a particular case.
8. [The proposed change in the Spanish version does not affect the English version].

## STATEMENT OF THE REPRESENTATIVE OF THE CZECHOSLOVAK SOCIALIST REPUBLIC

(CPNM/26)

4 November 1977

The Government of the Czechoslovak Socialist Republic attaches particular importance to the formulation of a convention on the physical protection of nuclear material which will be effective and acceptable to all. The convention should cover the use, storage and transportation of nuclear material and also provide for the protection of nuclear facilities. It would be useful if agreement could be reached on a draft convention within a short time, as that would carry considerable weight in the present world situation.

The Czechoslovak Socialist Republic regards physical protection as one of the principal elements in strengthening the nuclear non-proliferation regime.

The convention should lead to the formulation of effective national measures for physical protection which are compatible as between one country and another. All governments and international organizations should devote their fullest attention to the formulation of such measures, due account being taken of existing agreements.

The convention should cover technical, legal and organizational questions and should allow for technical advances in the future.

One of the aims of the convention should be the facilitation of agreement on co-operation between countries in the fight against nuclear terrorism and on the extradition of offenders.

The Government of the Czechoslovak Socialist Republic is sure that, through joint efforts, it will prove possible to arrive at a convention which is an effective instrument for increasing international security.

## STATEMENT BY THE REPRESENTATIVE OF PERU

(CPNM/32)  
10 April 1978

The Government of Peru wishes to make the following observations:

1. In Article 1, containing the definitions, we consider that, in paragraph (c) (in the Spanish version) the word "exhaustiva" should be replaced by "limitativa", as the latter is semantically more appropriate.

Also, to the end of paragraph (d) of Article 1 should be added the words "or source material", meaning material as defined in paragraph (b) of the same Article.

For the purpose of keeping all the definitions together it is desirable to include paragraph 2 of Article 6 in Article 1 as paragraph (f), because the former also contains a definition, namely that of an "international offence". At the same time the words "and/or source material" should be included in that definition.

2. The words "and/or source material" should, moreover be added in all cases after "nuclear material" in Articles 2, 3, (paragraphs 1 and 2), 4 (paragraphs 1, 2, 3, 4 and 5), 5 (paragraphs 1, 2 and 3) and 6 (paragraph 1).

3. We feel that the exception ("other than . . .") made in Article 2 in respect of facilities, materials or transports used for military purposes should be deleted, or at any rate that a formal undertaking should exist that, as a minimum, the same requirements and considerations should apply in this case as are applied in the case of materials and facilities being used for peaceful purposes.

4. We propose that paragraph 1 of Article 11 be worded as follows:

"The States Parties shall afford one another the greatest measure of assistance in connection with the investigation of international offences within their sphere of competence, including the supply of evidence to the State under whose jurisdiction criminal proceedings are being conducted to punish the offender(s)."

5. In paragraph 2 of Article 13 (Spanish version) we should prefer the word "adhesión" instead of "accesión", and similarly in Articles 16, 17 (paragraphs 1 and 2) and 18 (paragraph "a").

6. In Article 17 (paragraph 2) of the Spanish version the phrase "o que accedan" should correspondingly be replaced by "o que se adhieran".

## STATEMENT BY THE DELEGATION OF FRANCE

(CPNM/33)

10 April 1978

As I stated at our first meeting in October/November 1977, France is in favour of a convention limited to the protection of nuclear material in the course of transport from one State to another.

Such a goal would, we feel, be easier to attain than the elaboration of a comprehensive convention which is likely to get bogged down with the difficulty of defining the facilities to be protected.

In our view, States should undertake, within the framework of their national sovereignty, to comply with standards of physical protection that have already been defined and accepted.

Moreover, the present Draft Convention contains provisions which go into too much detail as regards the undertakings required of States, particularly as regards co-operation to recover nuclear material in the event of loss or theft. I believe that the effectiveness of physical protection measures depends in large measure on their confidentiality.

In summary, I feel that it is important to aim at simple measures which can be applied in a spirit of mutual confidence.

## STATEMENT BY THE REPRESENTATIVE OF THE GOVERNMENT OF INDIA

(CPNM/34)

10 April 1978

My delegation had the opportunity of participating in the first "Meeting of Governmental Representatives to consider the drafting of a Convention on the Physical Protection of Nuclear Material" held during October 30 – November 11, 1977, along with delegates from 35 other States. At the outset, I wish to state that the Government of India attaches considerable importance to the proposed Convention and the presence of our delegation at both the meetings to consider its drafting is an indication of India's interest in finalizing a draft Convention which would be acceptable to the large majority of countries.

To briefly recapitulate, the discussions during the first meeting on the draft prepared by the United States as well as the reports prepared by the Working Groups on Technical Issues and Legal Issues, had brought to surface differing interpretations and points of view of the delegations present, starting from the very basic issue of definition of nuclear material and the scope of the proposed Convention, to complex legal issues which have differing implications in different States. It is, however, gratifying to note that all participants put in a lot of effort during the numerous discussions at the last meeting and provided an opportunity to the delegations to understand the various points of view. In spite of the best endeavour of the delegations some important items could not be covered at the last meeting. While we realise that it is an extremely difficult task in view of the complex nature of the subject, we sincerely hope that the discussions at the present meeting will lead to a final draft.

It is heartening to my delegation to note that the stand we had taken and the view that we had expressed on the draft Convention have been shared by a large number of delegations at the last meeting. It is our understanding that at the last meeting, there was unanimous agreement on the necessity for physical protection of nuclear material under international transport while opinions were divided on the inclusion of physical protection of nuclear material and facilities wherever located. Since Article 2, covering the scope of the Convention, was not discussed during the last meeting, the finalization of even one Article was not possible. The definition of nuclear material could not be finalized since, to some extent, this is tied up with the scope of the Convention. We would suggest that we tackle this most important issue of the scope of Convention in the first stage. This would involve a decision on

- (a) whether the Convention should cover all nuclear materials and facilities or only nuclear material under international transport;



- (b) whether the Convention should cover the entire range of nuclear materials starting from thorium and depleted uranium to high enriched uranium and plutonium; and
- (c) whether nuclear materials for military purpose should be included or excluded from the scope of the Convention.

India supports the Convention on physical protection of nuclear material under international transport. It is not that we are against physical protection measures for nuclear facilities and nuclear material under national control and jurisdiction, but we envisage serious difficulties in the implementation of the physical protection measures incorporated in the Convention if it has to cover national nuclear facilities and nuclear material. This is because physical protection involves legal, security and technical matters which vary widely from one State to another and for this reason physical protection of nuclear facilities and nuclear material in any State is entirely a national responsibility. If the Convention covers the national situation it is likely that the security system of a State will become transparent in case any verification steps by an external agency are envisaged. On the other hand, if such verification steps are not envisaged, then in all probability the inclusion of this item in the Convention would be of little value.

To achieve its main purpose, we believe that the Convention on physical protection of nuclear material should have world-wide acceptance as there will be many transitting States between the shipper and the receiver States. If the scope of the Convention includes nuclear facilities and nuclear material within the national boundaries as well as nuclear material under international transport, the number of signatories to such a Convention may be small, due to the legal, security and other problems involved and the main purpose of such a Convention will be defeated.

In order not to diminish the importance that should be attached to the physical protection of nuclear facilities and nuclear material under national jurisdiction and control, we would suggest that a general reference may be made in the Convention emphasising the need for adequate physical protection of nuclear facilities and nuclear material within the national boundaries.

As far as mechanisms for assistance and recovery of nuclear material stolen from a State and transferred across the State boundaries and used against another State are concerned, a suitable provision can be made in the Convention on the same lines as for nuclear material stolen while under international transport. The offences such as theft of nuclear material from one State by person(s) of another State can be made liable to prosecution, extradition, etc.

It is essential that the Convention should cover all nuclear material under international transport without making any distinction between civilian and military, particularly since the nuclear material for civilian use forms only a tiny fraction of that for military purpose and the danger would be the same whether the end use of the material is civilian or military. We would prefer excluding

thorium from the scope of this Convention, in view of its wide distribution in the gas mantle industry. Similarly, we would like to exclude depleted uranium as this is also distributed very widely.

Before concluding, I would like to take this opportunity to convey my delegation's appreciation for all the excellent work done by our able Chairman along with three Vice Chairmen and the Rapporteur and to the Agency for providing all the facilities and cooperation; particularly, I would like to express our thanks to the Scientific Secretary. My delegation looks forward to a very fruitful discussion with the hope that before the end of this meeting we would be able to finalize a draft which would be acceptable to a large majority of States, including those which are not represented at this meeting.

**STATEMENT BY THE REPRESENTATIVE OF THE  
GERMAN DEMOCRATIC REPUBLIC**

(CPNM/35)  
10 April 1978

May I first of all underline that my delegation considers the reports of the Technical and Legal Working Groups elaborated at the last meeting as a good basis for further discussions.

As expressed already at the first meeting, we support as extensive as possible protection of nuclear material, facilities and transports. This involves not only the protection of nuclear material in the facilities but also the protection of the nuclear facilities themselves from damage, destruction, unlawful use and other serious attacks which cause or can cause damages to life and health of people and environment.

The same attitude is assumed by my delegation towards the issue of protection of nuclear transports. Here it is also not only a question of applying the provisions of this convention to nuclear material itself but to the entire transport, i.e. including transport means, escort and vehicles, intermediate depositories, etc., holding it to be not justified to distinguish between national and international transports but to include herein all transports of nuclear material.

The legal provisions of this convention which should cover not only nuclear material and transports but also nuclear facilities have to guarantee and facilitate an effective and extensive international prosecution. In our opinion it would be consistent with this basic attitude if the convention would not provide for any restrictions in performing criminal jurisdiction and their own prosecution by States Parties with respect to the offenses mentioned in Article 6.

## STATEMENT BY THE REPRESENTATIVE OF THE PHILIPPINES

(CPNM/36)  
10 April 1978

In the time that has elapsed between now and November 1977, when delegates to this conference met for the first time to consider a draft convention on the physical protection of nuclear material, a lot of things have happened. A Nuclear Non-Proliferation Act has been passed by a member state and a number of other countries have come up with guidelines for the export of nuclear material, equipment or technology which have been made available to member states of the Agency in the documents INFCIRC 254 and 254 add.1.

In essence, these new guidelines indicate a unilateral setting down of conditions on export of nuclear materials, equipment and technology in addition to NPT undertakings and assurances already assumed by recipient countries.

The questions that now present themselves to my delegation are: How will these countries satisfy themselves that minimum physical protection measures exist in importing countries? Will they take a unilateral statement by an importing country that such minimum physical protection measures exist? Do they contemplate sending their own inspectors to undertake such ascertainment or will this be done under the auspices of the IAEA?

We have heard that it is not the intention of supplier countries mentioned in INFCIRC 254 and INFCIRC 254 Add.1 to send their representatives to verify in importing countries if minimum physical protection measures have been met. We would appreciate clarifications on this important question.

The Philippines is now negotiating with a supplier country for nuclear material for its first reactor. In this connection, the questions that I earlier voiced assume extreme significance because according to one provision in the agreement, both parties agree to take such measures as are necessary to ensure adequate physical protection which would satisfy the requirements of the recommendations of the International Atomic Energy Agency. However, in yet another article, it is stated that in the event of material non-compliance by the recipient party with the provisions on physical protection, the supplier party shall have the right to suspend or cancel further transfers of nuclear material and to require the recipient party to take corrective steps, and, if such corrective steps are not taken within a reasonable time, the supplier party shall then have the right to require the return of nuclear material subject to payment of current prices. The question that now arises is: how and in what manner will this non-compliance be determined? Of course, reference is made to observance of measures on physical protection as recommended by the IAEA but then, it would seem that these recommendations are now being made compulsory on a bilateral level. Who should determine this compliance?

The Philippines is a strong supporter of NPT. Our support is on record, yet we now find ourselves unable to procure even the most basic nuclear material for peaceful uses, namely uranium, without acceding in a separate bilateral agreement to certain additional non-proliferation measures not provided for in NPT.

Perhaps we are not the only ones in this particularly difficult situation. Hopefully, our present predicament is due mainly to the confusion that presently exists in policies related to commerce and the peaceful uses of nuclear energy. We are hoping that given more time and as a result of INFCE, supplier countries together with consumer countries shall succeed in evolving non-proliferation policies that would lead to long-term assurances of supply under stable and clear conditions. In the meantime, the importing countries, in particular the developing countries, have to bear in addition to their other onerous problems, the economic costs of the delays and uncertainties in their nuclear power programs.

My country understands that the elaboration of an international convention on the physical protection of nuclear material will be long and arduous. The question is whether, after the completion of a universally accepted convention on physical protection measures, supplier states will still continue to have bilateral agreements related to physical protection before agreeing to supply consumer countries. If the answer to this is in the affirmative, I think that there is not much reason to persist in our present task. But if the supplier states, particularly those listed in INFCIRC 254 and INFCIRC 254 add.1 can assure us that an international agreement will be given more importance than bilateral ones, then certainly, it is suggested that we continue with our present efforts.

## STATEMENT BY THE REPRESENTATIVE OF JAPAN

(CPNM/37)

10 April 1978

We now have before us a draft Convention which has evolved from the extensive discussions held at the first session. Though considerable progress was made at that meeting there are still a number of points in need of further discussion. We have studied these points carefully and are ready to make a positive contribution to the deliberations. At the outset of the second session I should like to state my Government's views on key issues. Our comments on each article will be made later.

First, as regards nuclear materials to be covered by the Convention, we are of the opinion that plutonium of low fissile content, low-enriched uranium and source material which cannot be used for manufacturing nuclear explosive devices without isotope concentration or nuclear transformation, do not need to be covered by the Convention. Our object is to prevent nuclear material from being used for the manufacture of nuclear explosive devices by sub-national groups, such as terrorists groups. It is highly unlikely that the latter would have any sort of facility for enriching uranium or transforming non-fissile uranium into fissile plutonium, and thorium into  $^{233}\text{U}$ . It might be argued that plutonium and uranium could be used by terrorists as a means of threat. However, we feel that conventional poisonous materials, such as cyanide, which would be less dangerous to terrorists themselves and could be handled in much larger quantities, would be much more convenient for terrorists to use. With these considerations in mind, we are in favour of the proposed definition of "Strategic Special Nuclear Material (SSNM)", i.e. plutonium, uranium-233, and uranium enriched to 20% or more.

Second, concerning the scope of the Convention, we agree in principle with the formulation of Article 2 but would like to see the last part of the sentence which follows the words "nuclear transports" replaced by a new phrase, namely, "used in all peaceful nuclear activities". Also in the context of the scope of the Convention, we should like to emphasize again that the responsibility for establishing and operating a physical protection system for nuclear materials within a State rests primarily with that State. However, it is also a matter of concern to other States whether and to what extent that responsibility is fulfilled. Therefore, it would be appropriate to define the responsibility of a State for the physical protection system within that State in such a way as to allow for the different conditions prevailing in different States. In this connection, the State should be allowed to take appropriate measures at its discretion for the transport of nuclear materials by vehicles which do not enter the territory of other States.

On the other hand, unified measures, such as those set out in Article 4, would be needed for the physical protection of nuclear material during international transport.

With regard to the question of prosecution and extradition of criminals, we are of the view that not only offences committed during international transport of nuclear materials but also offences committed during their use, storage, or transport in a State should be covered by the Convention.

Finally, if we are to draft a convention which will be widely acceptable to the world community and will secure universal adherence, we must pay due respect to the different situations obtaining in different States, in other words, the Convention should provide for such obligations as are really necessary and feasible.

**STATEMENT BY THE REPRESENTATIVE OF THE  
GOVERNMENT OF ARGENTINA**

(CPNM/40)

12 April 1978

I think that this is an appropriate moment, before considering specific aspects of the matter in hand, to engage in some general reflections with a view to establishing the general direction our work should follow.

The first thing that needs to be clarified is the scope of the Convention. The basic positions of delegations on this question were set forth at our first meeting and I believe that the specific work done on various aspects of the proposed texts has gone some way towards clarifying the positions initially adopted in regard to the scope of the document which we are considering.

In my first intervention at the meeting held in October and November 1977, which was published as document CPNM/11, I said that the international transport of nuclear material was an area in which there were clearly possibilities for international co-operation. This still holds true today, and consequently it is necessary that we should reach agreement on this question. It will help us to reach understandings on Article III.

It is also necessary to determine whether the Convention is to apply to nuclear material for military purposes. On the same occasion I expressed the view that it would be illogical to exclude from international co-operation to prevent crimes and recover stolen nuclear material that material which in virtue of having been prepared for military purposes would hold the greatest attraction for terrorists.

A new development that has taken place since the end of our last meeting will also have a bearing on our deliberations. I refer to the policy agreed on by a group of countries supplying nuclear material, equipment and technology which has been published as document INFCIRC/254 and Add.1.

In this document criteria are laid down for the physical protection of material and equipment, satisfaction of which will be a condition of supply. Although those States which are party to the agreement concluded between the suppliers were possibly aware of this development when we held our first meeting, others did not know anything at all about it until January this year.

The question we are asking now is whether the future Convention will satisfy the requirements of the suppliers or whether, on the contrary, despite our having reached agreement on the Convention, adopted it, put it into force and bound ourselves to its provisions, it will be necessary to negotiate bilaterally on physical protection every time nuclear material is exported.

If the latter is the case, if on every single occasion it is going to be necessary to negotiate bilateral agreements, then it seems quite clear that this exercise which we are resuming today will be largely a waste of time. And, in all sincerity, with



all the intensive international activity going on in the field of nuclear energy, we cannot afford to waste time.

Likewise, the agreement reached by the suppliers of nuclear material, equipment and technology provides for consultations between suppliers which could result in the exercise of joint sanctions. If such a mechanism were to exist independently of the undertakings entered into under the future Convention, the Convention would again lack any meaning and it would be pointless to do any further work on it at the moment.

Only certain delegations present here who are also representatives of the Governments belonging to the exporter monopoly could answer these questions, and the sooner these questions are answered, the more quickly we can proceed with our task.

If these points could be cleared up, my delegation believes that the rest of our work would be relatively simple. Once we know exactly what the situation is and what we want to do, the choice of formulas and definitions will be essentially an exercise in rationality for which we are all ready and willing.

## STATEMENT BY THE DELEGATION OF AUSTRALIA

(CPNM/41)  
11 April 1978

The Australian delegation remains committed to the preparation of a comprehensive Draft Convention. It believes that any convention on the physical protection of nuclear materials must be comprehensive if it is to make a significant contribution to reducing the risk of nuclear material being seized and illegally used. It notes, moreover, that a comprehensive convention would best serve the purpose of facilitating both multilateral and bilateral relationships whilst recognizing the difficulties which some participating States would face in joining in a convention which concerned itself with materials and facilities at the national level, the Australian delegation hopes that in view of the importance of achieving an effective physical protection regime those States will join in a search for ways around their problems.

As to the scope of the materials to be covered by the Convention, the Australian delegation believes that the Convention should say what measures are needed in respect of all nuclear materials. On this basis it has pressed for the inclusion of source materials within the ambit of the Convention. The delegation hopes that it is clearly understood that it is **not** suggesting that source materials should attract the same physical security measures, or necessarily trigger the same provisions, as special strategic nuclear material. On the contrary the delegation is seeking no more than mention of source material within the body of the Convention, particularly in relation to Articles 3 and 4, and reference to the need for "prudent management practices". The delegation believes it will be able to suggest a method which will achieve this without raising the concerns of other delegations and will do so when the matter is discussed in the Technical Committee.

**STATEMENT BY THE REPRESENTATIVE OF THE  
FEDERATIVE REPUBLIC OF BRAZIL**

(CPNM/42)

12 April 1978

The Brazilian delegation would like to make some brief general comments on the proposed text of the Convention. The most important problem which we are confronted with is undoubtedly that of defining the precise scope of the future Convention. It is desirable that the text of the Convention be such as to be acceptable to a large number of countries. In that sense, there already seems to be a consensus on one aspect, namely that the Convention should include the physical protection of the international transport of nuclear materials and equipment.

Regarding the physical protection of nuclear materials in general, and of nuclear facilities within each country, the Brazilian delegation is of the view that this problem falls within the national jurisdiction of the country concerned. We think it is up to each State to adopt and enforce law which deals with essentially internal matters. Certainly we would appreciate international co-operation in this area, but the results of that co-operation should not infringe on the national sovereignty of each State. As far as Brazil is concerned, the Brazilian Government would certainly have serious legal, and perhaps constitutional difficulties with the internal implementation of a Convention, the provisions of which have already been covered by national legislation. As already stated, the Brazilian Government appreciates international co-operation in this area and, consistent with that position, our specific law regulating the physical protection of nuclear materials and facilities already contains – and indeed goes a little beyond – the general guidelines of INFCIRC/225/Rev.1. We do believe that this is the right path to be followed by all of us who are concerned with this problem.

Therefore, the Brazilian delegation is of the view that our work here should be an attempt to negotiate a draft Convention, the provisions of which will be acceptable to the largest possible number of countries. Only if the Convention is widely acceptable, will it be possible to apply it with any degree of efficiency.

## STATEMENT BY THE REPRESENTATIVE OF BELGIUM

(CPNM/43)

12 April 1978

The Belgian delegation accepts the idea of an international convention on the physical protection of nuclear material. However, the present draft, which attempts to cover essentially different areas, seems to contain a number of ambiguities.

We should prefer a text providing for minimum standards of protection that could be accepted by all the signatory countries, each country being thereafter free to apply different practical measures as long as they come up at least to the minimum standards, while possibly considerably exceeding them.

In the second place, Belgium would also consider it appropriate for the time being to limit the scope of the Convention to international transports which are becoming a question of ever increasing importance due to the increase in international exchanges. The Convention should therefore be limited to the physical protection of nuclear material in international transit, as it seems to us that the physical protection of nuclear facilities falls essentially within the sovereignty of the signatory countries.

## STATEMENT BY THE NETHERLANDS DELEGATION

(CPNM/44)

17 April 1978

My delegation welcomes the opportunity to make a few observations of a general nature at the outset of the second session.

With regard to the scope of the draft Convention the Netherlands delegation is still convinced that the Convention should cover not only nuclear transport (both international and national) but also nuclear facilities. Only on this basis will the Convention contribute significantly to the protection of nuclear materials.

We should welcome any assistance the Agency could give in the implementation of the Convention, in particular the Articles contained in the first part. We should like to hear the Agency's views on this.

This Convention deals with two entirely different subject matters, which could very well have been treated in two separate instruments, each with its own scope. The instrument containing the so-called criminal provisions could have a wider scope than the instrument containing the physical protection measures and could, in our view, even cover such situations as theft of materials used for military purposes.

The Netherlands delegation welcomes the suggestion made by the Chairman that the Working Group on Legal Issues should also examine the first five Articles of the Convention as they emerge from the Working Group on Technical Issues.

## STATEMENT BY THE AUSTRALIAN DELEGATION

(CPNM/45)

19 April 1978

The delegation of Australia wishes to stress its concern that the objective of this meeting should be to produce a comprehensive draft convention on physical protection which specifically covers nuclear materials in national situations.

Next week representatives from most of the States assembled here will be gathered around this table discussing assurance of supply of nuclear materials, facilities and services. It is a fundamental position of my Government that nuclear trade can proceed only on the basis of assured stable and secure access to supplies within a framework which provides reassurance on both non-proliferation of nuclear weapons and physical security. Reassurance on physical security requires the commitment of States to observe appropriate physical protection standards in both international carriage and national situations. A willingness within this meeting to work towards a wide-scope convention will be regarded by the Australian delegation as further evidence of the good faith of States in seeking to develop the peaceful uses of nuclear energy in a manner which minimizes the attendant risks to world security.

Despite the difficulties to which some delegations have referred, the Australian delegation believes it is much too early to give up our attempts to arrive at a wide-scope convention. The Australian delegation believes that if the delegations which find difficulties with the concept of a wide-scope convention will explain precisely what they are, it will still be possible to find compromises which will dispel their concerns.

## STATEMENT BY THE DELEGATION OF AUSTRALIA

(CPNM/48)  
20 April 1978

In his statement at the commencement of our discussions last year the Representative of the United States of America rightly said —

“thefts of nuclear material are threats to the world community and not just to individual States. Our common interest dictates we all agree to apply adequate physical protection domestically.”

Mr. Chairman, to what situation could this statement apply with more force than one where a sub-national group was seeking control of nuclear material by threat. Should it be possible to acquire nuclear material by such means, the security of all nations would be placed under threat. A firm resolve on the part of all States not to pass over nuclear material under threat is the best way to reduce the risk of such situations developing.

My delegation recognizes that Article 5.0 touches on matters of considerable sensitivity. It understands the reluctance of delegations to discuss the underlying issues. Our purpose in asking that the matter be discussed in the plenary was to highlight the importance which we attach to the principle enunciated in the provision and to ask that the text be maintained in square brackets so that Governments may have further time to consider the issues involved.

## DECLARATION BY THE REPRESENTATIVE OF BELGIUM

(CPNM/54)

5 February 1979

In the course of the meetings which took place in November 1977 and April 1978 the Belgian Delegation expressed itself in favour of an International Convention on the physical protection of international transports of nuclear material.

Belgium is acutely conscious of the need to establish internationally accepted minimum levels of physical protection.

However, previous discussions have shown clearly that it is not possible for the time being to reach an international consensus on a draft convention covering, under the same heading, nuclear material and nuclear facilities and both the national and international transports of nuclear material.

Once again, therefore, Belgium urges that the application of the Convention under negotiation be limited exclusively to the international transport of nuclear material, for which tighter regulations are fully justified, in view of the increase in international exchanges.

Moreover, it is reasonable to suppose that a Convention restricted to the physical protection of international transports of nuclear material would stand a better chance of acceptance by a large number of States.

The Belgian Delegation wishes to reaffirm its position that any reference to the physical protection of nuclear facilities should be excluded from the Convention as this was a matter involving national sovereignty.

Bearing this in mind, the Belgian Delegation has put forward several amendments which it would like to expand on during the discussion of the different articles of the Draft Convention.

All the same, it considers it desirable to indicate here and now the main guidelines that have been followed in drawing up these amendments which have just been issued as CPNM/52.

1. The object and the scope of this Convention are two closely linked concepts. As a consequence, if the object of the Convention is in fact the regulation of international transports of nuclear material used for peaceful purposes, its scope must be restricted to the laying down of measures required for resolving any of the problems which might arise in connection with such transports.

It appears therefore logical to leave out from the present document all provisions relating either to national transports of nuclear material or to the utilization and storage of such material, in the context of peaceful activities carried out on national territory.

2. The practical measures of physical protection must remain within the national sovereignty of each signatory State.



3. The present Convention should not be considered as a first step towards a broader Convention encompassing the physical protection of national facilities.

It is from this standpoint that the Belgian delegation intends to approach the present series of meetings aimed at drafting a Convention on the physical protection of international transports of nuclear material.

## INITIAL STATEMENT BY THE NETHERLANDS DELEGATION

(CPNM/55)  
5 February 1979

At the two earlier series of meetings the Netherlands delegation made it clear that it would have preferred a broad-scope Convention, i.e. covering nuclear facilities and international as well as national nuclear transports.

However, since the informal meeting which was held from 4 to 7 September 1978 it has become evident that such a scope would not be acceptable for most of the States represented here. Realizing that an international convention on physical protection will make sense only if a certain minimum number of states become party to it and realizing that the most urgent matter at the moment is that of physical protection of nuclear material in international transport, the Netherlands delegation is also prepared to accept that at this stage the Convention shall be confined to the international transport of nuclear material. Nevertheless, the importance of the physical protection of nuclear material in domestic use, storage and transport, should not be neglected. For this reason, the Netherlands delegation is of the opinion that a reference to these aspects should be made in one of the paragraphs of the preamble to the Convention.

In conformity with the general opinion expressed at the informal meeting in September, the Netherlands delegation sees no reason to limit the scope of the Convention, in respect of the specific penal provisions. For that reason these provisions and the provision on extradition should also apply to nuclear material in domestic use, storage and transport.

We consider it very important that the Convention should include a clause to the effect that a review conference should be held for the purpose of evaluating the implementation of the Convention and considering the extent of its scope. In our opinion, such a conference should be held within five years of entry into force of the Convention.

Finally, the Netherlands delegation hopes that this will be a fruitful meeting and that it will be possible for the delegations represented here to sign the Final Act at the conclusion of the session.

**STATEMENT SUBMITTED BY THE  
INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)**

(CPNM/56)  
6 February 1979

Unfortunately other commitments preclude IATA from sending an observer to the third session of the Meeting of Governmental Representatives to Consider the Drafting of a Convention on the Physical Protection of Nuclear Material. However IATA would like to submit the following statement to the meeting.

Firstly, IATA fully supports the meeting's aim of establishing effective measures for the physical protection of nuclear material. The Draft Convention in its present form (including the bracketed material) is generally acceptable to IATA. However, IATA is concerned that the implementation of the levels of protection set out in Annex II to the Draft Convention could in certain circumstances result in an added financial burden for the airlines – especially in connection with storage – which may be so heavy as to preclude the transportation of the corresponding materials by air. If this is not the intention of the Governmental Representatives then it should be clearly set out in the Convention that the necessary measures are a Government responsibility in all respects (including financial).

Secondly, it is noted that Article 6 of the Draft Convention, in describing certain punishable offences, refers to the “intentional” commission of certain reprehensible acts. IATA wishes to stress the importance of retaining this language, as it can be envisaged that carriers might otherwise unwittingly find themselves liable under the Convention, for example through the action of a shipper.

## STATEMENT BY THE INDIAN DELEGATION

(CPNM/58)

6 February 1979

My Government attaches great importance to a Convention on the Physical Protection of Nuclear Material and we have participated in the previous meetings. My Government has carefully examined the proceedings of these meetings and is convinced that the stand taken by the Indian delegation, as expressed in its statement at the second meeting held in April 1978, was correct. I would like to reiterate briefly the position of my delegation.

The Convention should cover nuclear material under international transport and this concept seems to be acceptable to a large number of countries. Regarding the exclusion of military nuclear material from the scope of the Convention, this is not acceptable to my Government for the simple reason that the hazards resulting from any theft of nuclear material are the same whether its source is civilian or military and since the amount of nuclear material in civilian use forms only a tiny fraction of that in military use.

The physical protection of nuclear material in domestic use is entirely the responsibility of the States concerned and in this context we support the position expressed by the Belgian Delegation a little while ago that it is outside the scope of the Convention.

It is not clear how, as suggested in the September memorandum, the penal provisions contained in Articles 5 to 12 can be applied with respect to nuclear material in domestic use, storage and transport, if the scope of the Convention is restricted to nuclear material under international transport. I would like to call attention to the Annex containing the minority opinions expressed at the September 1978 meeting. It is important to know how these views would be reflected in our discussions and the Convention.

## STATEMENT BY THE YUGOSLAV DELEGATION

(CPNM/59)  
6 February 1979

We are deeply convinced that the physical protection of nuclear material, and in particular the physical protection of nuclear material in international transport, requires urgent legal regulation. We are of the opinion that, in preparing and adopting international rules and recommendations in this field, we should, in particular, bear in mind the following.

First, the rules that we adopt should be such as to support the co-operation among States which exists in this field and constitute a basis for its further promotion. We consider that a large portion of the provisions of the Draft Convention do in fact correspond to this purpose by providing for a higher level of security of nuclear materials, in order to prevent the theft or misuse of such materials, and also for joint efforts against terrorism and other criminal acts, the consequences of which could go beyond the borders of individual countries.

Second, we think that the creation of international rules in this field should prevent monopolistic behaviour and the imposition of one-sided conditions. This means that we should strive towards multilateral solutions through the consensus of all participants and reject all attempts to impose additional bilateral conditions and requirements.

Directly related to this is the need to ensure that the conditions are created for the free and undisturbed development of the national nuclear programmes of developing countries, bearing in mind the provisions of the NPT. Any obstruction or difficulties in the transfer of nuclear technology, facilities or materials will represent an obstacle to the economic development of developing countries and as such would be unacceptable.

Third, in the construction of its first nuclear power plant, Yugoslavia has been applying the technical recommendations of the International Atomic Energy Agency (INFCIRC/225.Rev.1) and considers that such technical regulations on physical protection could constitute a useful basis for the elaboration of national regulations in this field. We therefore consider that the Agency represents the proper forum for experts from a large number of countries to seek the best solutions, the acceptability of which could then be verified within the Agency itself by its Member States. However, we would not be prepared to accept, through any instrument even in the form of guidelines for the elaboration of national regulations, recommendations formulated by other expert groups and would not therefore agree to the provisions of a Draft Convention incorporating the recommendations of such expert groups operating outside the International Atomic Energy Agency.

Fourth, we think that the Convention we should define and adopt at this Conference should be universal, i.e. that it should be open for accession by all countries of the world. Only in that way will our Conference fulfill its aim.

My delegation is in agreement with the majority of other delegations that our primary task is to establish legal rules on the physical safety of nuclear materials in international transport for civil purposes. However, if such an interest exists, we would be prepared to consider a broader approach to physical protection of nuclear materials, including those used for military purposes, provided that, during such consideration, all the conditions and reservations already stated are taken into account.

I should like to point out that, despite Yugoslavia's modest progress in the development of nuclear energy, its legislature has already passed several regulations concerning the physical protection of nuclear material, and in particular the transport thereof. Following a Decision of the Secretariat for Internal Affairs of the Socialist Republic of Slovenia, Document INFCIRC/255.Rev.1 is to be adopted as a basis for the application of physical protection measures at the first nuclear power plant at Krško.

Furthermore, the law on the transport of dangerous materials provides a basis for the application of measures relating to the physical protection of nuclear material in transport.

All these regulations and the experience acquired in their enforcement could provide useful background for the implementation of international rules to be defined by this Convention.

The issues under discussion are not only technical and legal in character, but also of a political nature. Bearing this in mind, it is imperative that delegations should show a maximum spirit of consensus.

My Delegation is convinced that the results of our Conference will make a further contribution to the solution of the complex problems existing in the field of nuclear energy which are to be considered by the Conference on the Peaceful Uses of Nuclear Energy, initially proposed by the Yugoslav Government and unanimously accepted by the General Assembly of the United Nations.

## STATEMENT BY THE AUSTRIAN DELEGATION

(CPNM/60)

6 February 1979

At the opening session of the Conference in November 1977 the Austrian delegation expressed itself in favour of a Convention with comprehensive scope. However, as it has become clear from the informal meeting in September 1978 that a broad consensus is only likely to be achieved at present for a limited-scope Convention, the Austrian delegation is prepared to agree to this on the clear understanding that the idea of a comprehensive scope shall not be shelved completely. Therefore it is happy to note that the possibility of a wider scope in future will at least be referred to in the preamble.

The Austrian delegation hesitates to agree to a change in the title of the Convention, as proposed by the Belgian delegation in document CPNM/52. However, this will no doubt be discussed in one of the Working Groups and the Austrian delegation will take the opportunity to raise that point again at the appropriate time.

## OPENING STATEMENT BY THE SWISS DELEGATION

(CPNM/61 Rev.1)

7 February 1979

My delegation regards the draft of a Convention on the Physical Protection of Nuclear Material that we now have before us as a useful basis for such a Convention, and we also wish to endorse the consensus reached in September 1978 and contained in the Memorandum to the present meeting.

However, especially in the light of comments made by some delegations during this meeting, I should like to make the following general remarks:

1. My delegation agrees with the statement made in the Memorandum adopted at the informal meeting in September that "the scope of the Convention should be formulated in such a way as to be acceptable to as many States as possible". The notion of wide acceptability is indeed important for the success of any kind of multilateral agreement. But it is only one aspect and it should never be pursued to the extent that a legal instrument loses its meaning because of its wide acceptability. On the one hand, we agree that, as stated in the Memorandum, "the most urgent matter is that of physical protection of nuclear material in international transport and, for this reason, the convention at this stage should concern the international transport of nuclear material". But, on the other hand, one should not forget "the importance of the physical protection of nuclear material in domestic use, storage and transport". In view of the fact that a chain is only as strong as its weakest link, the convention before us would, in our opinion, be considerably reduced in its importance if it did not contain the declared intention of its States Parties or at least agreement on the need for States to respect the same levels or standards nationally as they agree upon internationally. My delegation will keep this in mind and try, together with other delegations, to incorporate this absolutely necessary idea in the Convention one way or another, as also mentioned in the Memorandum.

2. As far as the substance of the Draft Convention is concerned, I can limit myself to referring to the interventions of my delegation in previous meetings and especially to our written comments and proposals for amendments, contained in document CPNM/51 of 11 December 1978. My delegation reserves the right to make further comments and proposals when the draft before us is examined in detail during the present session.

Finally, my delegation had the intention of making some procedural comments and reservations concerning the nature of this meeting and of a possible paper to be signed at the end of our deliberations. However, in the interests of speedy progress



of the meeting we shall refrain from doing so at this stage, but my delegation reserves the right to make such comments and reservations at an appropriate moment, possibly in the Legal Working Group.

In any case, considerations of this kind, important as they may be, should not prevent this meeting from producing useful and satisfactory results.

## STATEMENT BY THE FINNISH DELEGATION

(CPNM/64)

8 February 1979

My delegation participated with 39 other delegations in the consultations held in September 1978 and accepted the memorandum produced on that occasion. The consensus reached did not quite meet our expectations but it was obvious that for the time being a convention with a limited scope was the best that could be achieved. We thus agreed that the preamble should contain a reference to the nuclear material used for military purposes and a decision to discuss the widening of the scope at a review conference. We are ready to work on these premises towards the completion of the Convention, preferably during this meeting. We hope that the principles laid down in the memorandum can be generally accepted as our starting point, as otherwise it is difficult to see how the drafting of this Convention can be continued.

I should like to summarize the situation with regard to the finalizing of the Draft Convention in the light of the work done so far.

The preamble of the Convention is to contain references both to the domestic use and transport and to the military use of nuclear material.

It seems to us, on the basis of the consensus, that agreement on the content of Articles 1–3 should be relatively easy to achieve. The draft text of Articles 4 and 5 was already almost unanimously accepted at the April 1978 meeting. We appeal to all to exercise restraint in the debates aimed at finalizing these Articles. Let us not tear apart what has been put together with great effort.

The content of a great many articles has also been agreed upon in the course of the work of the group of legal experts. The final clauses of the Draft Convention must be expanded to include an article providing for a review mechanism as well as an article specifying the languages in which the Convention is to appear, but otherwise the situation in the legal group seems to be satisfactory.

Annex I and Annex II, both of which are referred to in Article 4, ought naturally to be retained. Their content is already practically fixed, but we think that they are in need of some further elaboration. Annex I is derived almost directly from the Agency document INFCIRC/225/Rev.1 and Annex II is composed of phrases selected from that same document. INFCIRC/225, however, is not a binding norm. It is intended only as a set of recommendations. Consequently, quite a number of questions of interpretation have been left to the discretion of the national authorities. Thus, for the purposes of a Convention, some redrafting seems to be necessary.

The Draft Convention sets forth certain obligations for an international organization, which would probably be either the IAEA or the United Nations.

In our opinion, the nature of the Convention is such that its implementation should clearly be a concern of the IAEA. This would not, and should not, prevent the Convention from being open for signature by all States, nor should there be any obstacle to prevent States which were not members of the IAEA from using its services under the Convention.

## STATEMENT BY THE REPRESENTATIVE OF JAPAN

(CPNM/65)

8 February 1979

It is indeed gratifying to note that thanks to the positive contributions of all participating countries our deliberations on the drafting of a convention on the physical protection of nuclear material have now reached their final stage after many twists and turns since the first session in November 1977.

My delegation sincerely hopes that this meeting will be able, in a spirit of mutual co-operation and understanding, to adopt the Final Act with an agreed text of the Convention attached.

As a result of the informal meeting held in September last year, a general consensus was reached along the lines that such outstanding questions as that of including regulations for physical protection measures in domestic facilities within the scope of this Convention should be deferred for future consideration and that in this connection a review conference should be convened within five years of entry into force of the Convention. The Japanese delegation supports this policy with a view to obtaining the widest participation of States in this Convention and thus ensuring its effectiveness.

The provisions of the Convention which we are now continuing to discuss are therefore concentrated upon regulations for international transport. In our view the most important provision about international transport should be Article 4 of the Draft Convention, which imposes upon an exporting country the primary responsibility of having assured itself that adequate measures for the physical protection of nuclear material will be taken by countries concerned during the international transport, but which at the same time imposes upon other countries concerned the responsibility of co-operating with the exporting country and of applying their own physical protection measures respectively. As a matter of principle our delegation supports this basic structure of regulations stipulated in Article 4 of the Draft Convention. In the last session, however, our delegation had to express reservations on some points concerning the provisions of Article 4 and some others. These points have been examined intensively in Tokyo since the last session. As a result of this examination, the Japanese delegation is now prepared to take a more flexible position in an effort to contribute to the early conclusion of this Convention if the majority of participating countries support the present version of the relevant articles.

Our delegation is of the opinion that, taking into account the unique and complex character of this Convention, the results of the discussions in the Technical Working Group should be examined carefully by the Legal Working Group from the legal viewpoint and, conversely, the results of the discussions in the Legal Working Group should also be examined carefully by the Technical Working Group from the technical viewpoint.

## CANADIAN STATEMENT REGARDING ARTICLE 8

(CPNM/66)

8 February 1979

During the debates on Article 8 it became apparent that this text, as it appears in the Hague, Montreal and International Protected Persons Conventions, has been given different interpretations. In connection with Article 8, Canada believes that consistency with previous conventions is imperative and that any change would cast doubt on these earlier precedents. It is the Canadian position that the present text and its implications are fully consistent with the other precedents and that the situation is accordingly quite satisfactory.

**STATEMENT BY THE REPRESENTATIVE OF THE  
GERMAN DEMOCRATIC REPUBLIC**

(CPNM/67)  
9 February 1979

As regards the further drafting of the Convention, my delegation supports the results achieved at the meeting of last September. We regard the principles formulated at that meeting concerning the scope and objectives of the Convention as a solid basis for further drafting and hope that the elaboration of the Convention will be successfully concluded in the course of this meeting.

We shall submit our proposals regarding individual Articles of the Convention in the Working Groups.

**INITIAL STATEMENT BY THE ITALIAN DELEGATION  
AT THE PLENARY MEETING ON 5th FEBRUARY 1979**

(CPNM/71 Corr.1)

14 February 1979

The Italian Delegation fully confirms the position taken at the previous meeting of governmental representatives in September 1978, considering it necessary in particular to attain in full the objectives set out in point 3 of the September memorandum.

Although international transport is the most urgent matter to be dealt with, international co-operation and assistance on the physical protection and recovery of nuclear material as well as criminal rules and extradition should also extend to domestic use, storage and transport.

The Italian authorities have shown up to now great flexibility on their initial positions for the sake of reaching an approach as consensual as possible. However they consider the September memorandum as a *minimum* which cannot be given up.

The Rome Government, having initially been in favour of a much broader and stronger Convention than the one currently under consideration, is prepared to accept a new text only on the understanding that the Review Conference which is to be held five years hence could bring the wished extension of the Convention's aims.

## INITIAL STATEMENT BY THE AUSTRALIAN DELEGATION

(CPNM/72)

14 February 1979

My delegation endorses the basis established at the September 1978 meeting, in which Australia participated, for conclusion of a convention. I should recall, however, that Australia originally desired a comprehensive convention which would have prescribed standards and measures of physical protection to be applied by each State Party to civil nuclear material within its territory.

The Australian delegation hopes for completion of a text at this meeting.

Australia would be willing to follow the procedure for settling a text outlined in alternative 2 of the possible procedures contained in the paper appended to document CPNM/51, namely, if a satisfactory text is negotiated to completion, to incorporate it in a Final Act of the Conference for signature by delegations as the definitive record of the results of the conference.

With reference to coverage of natural uranium by the Convention, Australia has communicated its own ideas on the concept of "prudent management practice", required by footnote (c) to Annex 1, to a number of governments since the previous meeting. Australia does not propose that the concept be developed in detail by this meeting and does not seek to include further provisions in the Convention but the delegation is ready to discuss its understanding of the concept informally with any interested delegation.



## **EXPLANATORY STATEMENT BY THE COMMISSION OF THE EUROPEAN COMMUNITY**

(CPNM/75)

14 February 1979

By virtue of the Treaty establishing the European Atomic Energy Community (EAEC) its nine Member States have entrusted this Community with certain powers in particular with regard to the export and import of nuclear material and its safeguarding.

In the legal system of the Community, the Member States cannot themselves impose restrictions on movements of nuclear material, but the Community itself can. Article 4 of the Convention, which requires parties not to permit the import and export of nuclear material unless certain conditions of physical protection are satisfied, cannot therefore be given effect to by the Member States of the Community unless the Community as such, in so far as its own powers and jurisdiction are concerned, is a party to the Convention on the same lines as the Member States.

The fulfilment of the obligations entered into under the Convention will be ensured, on the Community's part, in the context of the institutional system established by the EAEC Treaty in accordance with the distribution of powers between the Community and its Member States.

This solution has been applied in other international conventions to which the Community and its Member States are parties and has always been accepted by the other parties to those conventions.

**STATEMENT BY ARGENTINA  
ON THE QUESTION OF THE PARTICIPATION  
OF THE EUROPEAN ATOMIC ENERGY COMMUNITY**

(CPNM/76)  
16 February 1979

The question posed at this morning's meeting (15 February 1979) by the Commission of the European Communities is one of singular importance and complexity. It is regrettable that the Commission should have chosen to make its submission at this juncture when our work was progressing so well. The situation is complicated even more by the fact that we have the impression that we have still not been given all the information necessary to form an opinion at delegation level, let alone for requesting instructions from our authorities. We understand that basically the aim of the Commission of the European Communities is to obtain the recognition "erga omnes" of a conventional juridical system agreed on by nine Sovereign States. This in itself creates difficulties. Conventions between States are only binding for the parties, in the same way as contracts between private individuals are only binding for the contracting parties. Both in private law and in international public law it is possible for contracts and conventions to establish rights and obligations for third parties, but in the case of International Law the question needs to be considered in the context of Articles 35 and 36 of the Vienna Convention on Treaty Law.

However, the proposal that we now have before us here seems, as I have just said, to be aimed more at imposing "erga omnes" conventional rules. International Law accepts this on the very limited assumptions of "objective regimes", the best illustration of which are cases of border settlements. Here a frontier agreement between two States cannot be contested by third States.

In the case we have before us here it is maintained that States which formerly possessed certain powers — in particular the power to prohibit imports or exports — no longer have this power, having ceded it to a new entity. The question therefore is how to come to terms with this situation. Are we perhaps to consider that a special form of succession of States has been created? And in this case, does the transport of nuclear material between these States still constitute "international transport"?

These are serious legal questions which need to be studied by our authorities and on which we need instructions from our Governments, which will also have to take into account the possible implications for other spheres of international life.

Doubts also arise from another point of view. In February 1978 the IAEA Secretariat circulated document INFCIRC/254 containing the guidelines agreed to by a number of States with regard to the export of, among other things, nuclear material.

These policies adopted by various Member States of the European Community, involve the same matters as we are debating here, and the respective Governments have undertaken to implement these policies "in the light of their commitments under the Treaty of Rome. . ."

Although these commitments have not been spelt out in the letters contained in INFCIRC/254 or in the proposal submitted this morning, it seems reasonable to suppose that a suitable amendment of Article 4 such as to make the obligations laid down therein subject to International Law might solve the problem and avoid any need for the Community to become a Party to the Convention.

Finally, I wish to say that the proposals contained in CPNM/WP 27 are not acceptable, and that, before we can decide on what formula should finally be adopted, we need to know exactly what powers have been transferred to the Community by its Member States.

## FINAL STATEMENT BY THE FRENCH DELEGATION

(CPNM/78)  
16 February 1979

Before the work of the present session is concluded, the French delegation wishes to make the following comments on the subject of the draft Convention.

1. The French delegation is gratified that it has been possible to reach agreement on part of the Convention; this agreement is reflected in the present Article 9.

It wishes to stress that it would have considered unacceptable any extension of the Convention to nuclear material for military purposes.

2. The French delegation considers that the agreement reached on Article 12 bis concerning the convening of a Conference to review the implementation of the Convention and its adequacy as a whole is a good agreement.

It wishes to reiterate what it has already stated in plenary sessions that, from its point of view, the aim of such a conference should be that which is stipulated in this article.

3. As regards the possibility of making amendments to this Convention, the French delegation wishes to stress that, while it considers it normal that the Convention should be modified by way of amendments, it considers it desirable that the procedure laid down therefor should be consistent with the applicable rules of Treaty law.

The French Government will not fail to study with all due attention these draft articles in preparation for the next session.

## MEXICAN STATEMENT ON THE PROCEDURE FOR ADOPTION OF THE CONVENTION

(CPNM/79)  
13 February 1979

Since this meeting started, the Mexican delegation has shown a keen interest in the approach taken by the Secretariat with regard to the possible procedures for adoption of the Convention. Because it considers this approach to be definitely in favour of the signature of the Final Act, and more especially because a decision in favour of any of the alternatives might change the trend in the discussions and affect the text of the Articles, my delegation has urged that this matter be discussed forthwith. It is only today, four days from the end of the meeting, that the discussion has begun. And it is only today that the Secretariat has informed us of a third possibility — that of convening a new meeting of governmental representatives with a view to signature of the Final Act.

We have just heard that some delegations are in favour of the Final Act and are anxious that the signing should take place next Friday, when this series of meetings ends. In view of this situation I will merely state that the Government of Mexico would prefer the option of a diplomatic conference. I think, however, that a more detailed explanation why my delegation objects in principle to the procedure being followed is called for, and I would therefore like to enlarge upon what we believe the proper procedure should be.

The advantages of a diplomatic conference are so obvious that they hardly require comment — the text is agreed on by governmental representatives with full powers to do so, and its binding nature for the signatory States is unquestioned. Let it be recalled that Article 7 of the Vienna Convention on the Law of Treaties stipulates full powers on the part of representatives, so that States are committed by their signature. It would be relevant here to ask the following question, namely, how many of those present have come here with full powers and have the authority to adopt the text of a convention and to render their signature thereof binding?

On the other hand, signature of the Final Act does not have any legal force and merely indicates that the text of the Convention has been agreed by the delegates and that it is intended to open it for signature. Hence nothing much would appear to be gained by signing the Final Act; rather, its immediate effect would be to put an end to negotiation of the Convention. In view of that possibility the following circumstances should be pointed out: our Governments have not had an opportunity of expressing an opinion on the draft Convention, since no final text has yet been made available, not to mention the essential versions in the various languages in which it would be signed. Both this meeting and the previous ones have been of a preparatory nature, since the relevant documentation only makes mention of discussing and working out the draft of the Convention,

and not of approving it or signing any document. Nor can one speak of an approved text, or even a partially approved one, since the documentation for these meetings makes it clear that the intention is to hold a final meeting at which the text would be discussed and agreed on.

All that I have said above shows that signing the Final Act would mean prematurely ending the negotiations. We would be opening for signature a text that had been discussed at length but not agreed in advance, for, inasmuch as they had not been summoned for that purpose, the governmental representatives would not be authorized to agree on the text of the Convention, much less to sign it. Not to recognize this fact would inevitably mean facing our Governments with the dilemma of either accepting or rejecting the draft proposed, without the possibility of negotiation. The Convention would then run the risk of not being accepted for lack of signatures or of not having the desired universality. Is that what we want? Consequently, the only solution with chances of success would seem to be to hold a diplomatic conference of plenipotentiaries.

Lastly, I would like to state that my delegation has serious reservations on the advisability of discussing and, possibly, deciding on, at this meeting, the procedure to be followed for concluding the Convention. We feel this goes beyond the terms of reference for this and the previous meetings, which are to consider the drafting of the Convention. We are convinced that, in accordance with those terms of reference, our task ends with the submission of the final document, i.e. the text of the Convention, to the IAEA General Conference, it then being for the Agency, or else the United Nations – since the initiative came from there – to decide on the best way to convene a diplomatic conference of plenipotentiaries.

That, Mr. Chairman and representatives, is my delegation's point of view, and it is up to you to decide the course of this meeting and its outcome. Should your decision not accord with what I have just stated I shall decline to sign any document and wish forthwith to record my Government's reservations with regard to the procedure followed.

**STATEMENT BY THE REPRESENTATIVE OF THE  
COMMISSION OF THE EUROPEAN COMMUNITIES  
AT THE INFORMAL MEETING ON THE CONVENTION  
ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL  
HELD IN VIENNA ON 24/25 SEPTEMBER 1979**

(CPNM/82)  
15 October 1979

The European Atomic Energy Community was established by a Treaty, signed in Rome on 25th March 1957, between Belgium, France, Italy, Germany, Luxembourg and the Netherlands. Denmark, Ireland and the United Kingdom acceded to the Community on 1st January 1973.

The Community is an entity endowed with real powers and responsibilities in the fields of supply, management and control of security of nuclear materials. It has its own legislative and executive organs responsible for exercising those powers.

The internal powers of the Community have an external counterpart: the Community is empowered to enter into international agreements within the limits of its powers and jurisdiction.

The effect of this is therefore that, where the Treaty has conferred powers and responsibilities on the Community, not only are they to be exercised by the Community within the area where the Treaty is applied, but the Community can give any undertaking necessary to states which are not members of the Community that those powers and responsibilities will be exercised in pursuance of an international agreement. Clearly, such an undertaking can be given only in an agreement to which the Community is a party.

The Community's institutional system excludes the possibility that the Member States, even acting together, can commit the Community or replace it. For this reason, whenever Community responsibilities are involved in an international convention, the Community itself has to join the convention. This has already happened in many cases, and a document giving concrete examples was circulated at the February session (CPNM/WP/31).

However, the Community's responsibilities do not cover the whole field of nuclear activities. Many of those activities remain the responsibility of the Member States of the Community.

The draft Convention on the physical protection of nuclear material concerns questions of Community competence as well as of Member States' competence. Therefore, both the Community and its Member States have to adhere to the Convention in order to guarantee that all obligations following from the Convention will be respected as far as the nine Member States of the European Community are concerned.

Some of these duties and obligations are the exclusive responsibility of the individual Member States. This is true for articles 6–11 which govern penal and extradition matters. Others fall under the joint jurisdiction of the Community and its Member States. The role which the Community and Member States have to play in these cases is closely interrelated, and it is extremely difficult to determine in abstract terms their respective parts. These have to be defined in practice according to the internal institutional procedures of the Community.

The Commission fully understands that this interrelationship of Community and Member States' competences may puzzle third countries, but Community participation in international agreements does not add any problems for other signatories. The system has already proved itself, and has worked well in a number of agreements in a variety of fields, as already mentioned.

What is essential is, that the whole range of duties and responsibilities under the Convention is fully covered. And this is only guaranteed, in the case of the Community, if the Community participates in the Convention alongside its Member States.

In addition, the Community participation does not affect the nature of the legal engagements provided for in the Convention. In particular the notion of "international transport" will not be altered in its content because of Community participation. This means that the Convention would also be applicable to shipments of nuclear material between two or more Member States inside the Community.

In cases in which the most rapid decisions will have to be taken – penal and extradition matters (art. 6–11) – only the individual Member States are competent and the Community as such would not be involved.

In all other cases the Community would have to subscribe to the undertaking but their practical implementation measures would again to a large extent be a matter for its Member States (within a pre-established Community framework). But this is a matter of practical application and not one of the substance of the Convention. The Commission is convinced that some formula can be found which expresses this practical situation in such a way that no real problem will appear for other signatories in the implementation of the Convention. It has already suggested one (that any State Party to the Convention should address itself to the Community and to its Member State concerned, and the Community or the Member State – or both – would react individually or jointly as the case may be). No doubt there are others. But this practical problem of implementation should in any case not delay the conclusion of the Convention itself.



**STATEMENT MADE BY THE JAPANESE DELEGATION  
CONCERNING ANNEX I 2(b)**

(CPNM/88)  
25 October 1979

It is the understanding of the Japanese Delegation that “appropriate response forces” in Annex I 2(b) while means of transportation are on the high seas and in the airspace above the high seas should be arranged case by case among an exporting State, an importing State and a flag State and further that in certain cases other States Parties concerned will also provide co-operation in accordance with Article 5.

**FRENCH STATEMENT REGARDING ARTICLE 6 BIS  
(DOCUMENT CPNM/87)**

(CPNM/90)  
25 October 1979

The French delegation is not currently in a position to give final approval to the additional fourth paragraph.

This provision introduces new elements to the field of criminal jurisdiction, necessitating a thorough examination of their legal implications.

The French delegation requests that this statement be included in the official record.

**STATEMENT BY THE REPRESENTATIVE OF ROMANIA  
REGARDING ARTICLE 14, PARAGRAPH 4**

(CPNM/91)  
26 October 1979

In the opinion and interpretation of the Romanian delegation of article 14 relating to the participation of international organizations in the Convention this refers only to such an organization to which the Member States have transferred their competence to negotiate, conclude and apply on their own behalf international agreements and to exercise the rights and obligations which derive therefrom including the exercise of the right of voting.

## ITALIAN STATEMENT ON ARTICLE 8

(CPNM/92)

26 October 1979

In the view of the Italian authorities, the words “through proceedings in accordance with the laws of that State” in the last line of article 8 are to be considered as referring to the whole article.

FINAL ACT  
AND  
FINAL TEXT



**EXPLANATORY NOTE BY THE  
DIRECTOR OF THE LEGAL DIVISION OF THE IAEA  
(CPNM/93)**

**SIGNING OF FINAL ACT**

Signature by representatives of a Final Act or a document tantamount to a Final Act would mean that the delegation signing affirmed that the paper signed contained a proper record of the proceedings and results of the Meeting.

Signature of a Final Act should be distinguished from signature of the Convention: the latter was a formal treaty action done on behalf of the relevant authority as a step in giving consent to be bound by the Convention.

Signature of a Final Act on the other hand, would not signify a governmental commitment to be bound by the Convention. Signature of such a paper as the draft before the meeting, whether or not it specifically stated that the text of the Convention was adopted *ad referendum*, would only have the effect that delegations should submit that text to their authorities.

Those authorities would be able to consider the Convention and to decide whether or not to give consent to be bound by it. If they should decide to give consent to be bound this would be done according to the terms of the Convention itself and subject to customary international law in respect of reservations.

No special credentials would be required for delegations to sign the Final Act. Members of delegations had authority, in international law, to sign as part of their functions as representatives. Their status as representatives was established by the response given to the invitation by the Director General to attend the meeting.

## FINAL ACT

### MEETING OF GOVERNMENTAL REPRESENTATIVES TO CONSIDER THE DRAFTING OF A CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

1. The Meeting of Governmental Representatives to Consider the Drafting of a Convention on the Physical Protection of Nuclear Material met in Vienna at the Headquarters of the International Atomic Energy Agency from 31 October to 10 November 1977, from 10 to 20 April 1978, from 5 to 16 February and from 15 to 26 October 1979. Informal consultations between Governmental Representatives took place from 4 to 7 September 1978 and from 24 to 25 September 1979.
2. Representatives of 58 States and one organization participated, namely, representatives of:

Algeria	Indonesia
Argentina	Ireland
Australia	Israel
Austria	Italy
Belgium	Japan
Brazil	Korea, Republic of
Bulgaria	Libyan Arab Jamahiriya
Canada	Luxembourg
Chile	Mexico
Colombia	Netherlands
Costa Rica	Niger
Cuba	Norway
Czechoslovakia	Pakistan
Denmark	Panama
Ecuador	Paraguay
Egypt	Peru
Finland	Philippines
France	Poland
German Democratic Republic	Qatar
Germany, Federal Republic of	Romania
Greece	South Africa
Guatemala	Spain
Holy See	Sweden
Hungary	Switzerland
India	Tunisia



Turkey	United States of America
Union of Soviet Socialist Republics	Venezuela
United Arab Emirates	Yugoslavia
United Kingdom of Great Britain and Northern Ireland	Zaire
	European Atomic Energy Community

3. The following States and international organizations participated as observers:

Iran  
Lebanon  
Malaysia  
Thailand  
Nuclear Energy Agency of the Organisation for Economic Co-operation and Development

4. The Meeting elected Ambassador D.L. Siazon Jr. (Philippines) as Chairman. For the meetings in April 1978 and February 1979 Mr. R.A. Estrada-Oyuela (Argentina) was elected Chairman.

5. The Meeting elected as Vice-Chairmen:

Mr. K. Willuhn of the German Democratic Republic, who at the meeting in February 1979 was succeeded by Mr. H. Rabold of the German Democratic Republic;

Mr. R.J.S. Harry, Netherlands, who at the meeting of October 1979 was succeeded by Mr. G. Dahlhoff of the Federal Republic of Germany;

Mr. R.A. Estrada-Oyuela, Argentina, who at the meeting of October 1979 was succeeded by Mr. L.A. Olivieri of Argentina.

6. Mr. L.W. Herron (Australia) was elected Rapporteur. For the meeting in October 1979 Mr. N.R. Smith (Australia) was elected Rapporteur.

7. Secretariat services were provided by the International Atomic Energy Agency. The Director General of the Agency was represented by the Director of the Legal Division of the Agency, Mr. D.M. Edwards and, in succession to him, Mr. L.W. Herron.

8. The Meeting set up the following groups:

- (a) Working Group on Technical Issues

Chairman: Mr. R.J.S. Harry, Netherlands

- (b) Working Group on Legal Issues

Chairman: Mr. R.A. Estrada-Oyuela, Argentina

(c) **Working Group on Scope of Convention**

Chairman: Mr. K. Willuhn, German Democratic Republic

(d) **Drafting Committee**

Chairman: Mr. De Castro Neves, Brazil

Members: Representatives of Australia, Brazil, Canada, Chile, Czechoslovakia, Egypt, France, Federal Republic of Germany, Italy, Japan, Mexico, Qatar, Tunisia, Union of Soviet Socialist Republics, United States of America.

9. The Meeting had before it the following documents:

- (a) Draft Convention on the Physical Protection of Nuclear Materials, Facilities and Transports, as contained in document CPNM/1;
- (b) IAEA document INFCIRC/225/Rev.1: The Physical Protection of Nuclear Material;
- (c) IAEA document INFCIRC/254: Communications Received from Certain Member States regarding Guidelines for the Export of Nuclear Material, Equipment or Technology.

10. The Meeting completed consideration of a Convention, the text of which is attached as Annex I.<sup>76</sup> Certain delegations expressed reservations with regard to particular provisions in the text. These are recorded in the documents and in the Daily Reports of the Meeting. It was agreed that the text will be referred by delegations to their authorities for consideration.

11. The Meeting recommended that the text of the Convention be transmitted for information to the twenty-third General Conference of the International Atomic Energy Agency.<sup>77</sup>

12. The Convention will, in accordance with its terms, be opened for signature from 3 March 1980 at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York.

Vienna, 26 October 1979

(signed) D.L. Siazon Jr.

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<sup>76</sup> Since the Convention has been opened for signature it is not attached here as Annex I; it is reproduced below.

<sup>77</sup> The text of the Convention was transmitted to the twenty-third (1979) regular session of the General Conference of the International Atomic Energy Agency, pursuant to paragraph 11 of the Final Act, as document INFCIRC/274.

## FINAL ACT

### Signed by the delegations of:

Argentina	Korea, Republic of
Australia	Luxembourg
Austria	Mexico
Belgium	Netherlands
Brazil	Niger
Bulgaria	Norway
Canada	Panama
Chile	Paraguay
Colombia	Peru
Costa Rica	Philippines
Czechoslovakia	Poland
Denmark	Romania
Ecuador	South Africa
Egypt	Spain
Finland	Sweden
France	Switzerland
German Democratic Republic	Tunisia
Germany, Federal Republic of	Turkey
Greece	Union of Soviet Socialist Republics
Guatemala	United Arab Emirates
Holy See	United Kingdom of Great Britain and Northern Ireland
Hungary	United States of America
Indonesia	Venezuela
Ireland	Yugoslavia
Israel	Zaire
Italy	European Atomic Energy Community
Japan	

## CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

THE STATES PARTIES TO THIS CONVENTION,

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,

CONVINCED of the need for facilitating international co-operation in the peaceful application of nuclear energy,

DESIRING to avert the potential dangers posed by the unlawful taking and use of nuclear material,

CONVINCED that offences relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offences,

AWARE OF THE NEED FOR 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,

CONVINCED that this Convention should facilitate the safe transfer of nuclear material,

STRESSING also the importance of the physical protection of nuclear material in domestic use, storage and transport,

RECOGNIZING the importance of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection,

HAVE AGREED as follows:

### Article 1

For the purposes of this Convention:

- (a) "nuclear material" means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;

- (b) “uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
- (c) “international nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.

## Article 2

1. This Convention shall apply to nuclear material used for peaceful purposes while in international nuclear transport.
2. With the exception of articles 3 and 4 and paragraph 3 of article 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport.
3. Apart from the commitments expressly undertaken by States Parties in the articles covered by paragraph 2 with respect to nuclear material used for peaceful purposes while in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.

## Article 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.

## Article 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.
2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has

received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.

3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.

4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.

5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.

6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.

7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

## Article 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material or in the event of credible threat thereof.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

- (a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft,

robbery or other unlawful taking of nuclear material or credible threat thereof and to inform, where appropriate, international organizations;

- (b) as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:
  - (i) co-ordinate their efforts through diplomatic and other agreed channels;
  - (ii) render assistance, if requested;
  - (iii) ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. States Parties shall co-operate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

#### Article 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

#### Article 7

1. The intentional commission of:

- (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

- (b) a theft or robbery of nuclear material;
- (c) an embezzlement or fraudulent obtaining of nuclear material;
- (d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
- (e) a threat:
  - (i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or
  - (ii) to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
- (f) an attempt to commit any offence described in paragraphs (a), (b) or (c); and
- (g) an act which constitutes participation in any offence described in paragraphs (a) to (f)

shall be made a punishable offence by each State Party under its national law.

2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

### Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 7 in the following cases:

- (a) when the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) when the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

4. In addition to the States Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.



## **Article 9**

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

## **Article 10**

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

## **Article 11**

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph 1 of article 8.

## **Article 12**

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

### **Article 13**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

### **Article 14**

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.
2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.
3. Where an offence involves nuclear material used for peaceful purposes in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

### **Article 15**

The Annexes constitute an integral part of this Convention.

### **Article 16**

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.
2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

## Article 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.
2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.
3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.
4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

## Article 18

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. After its entry into force, this Convention will be open for accession by all States.
4. (a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion

and application of international agreements in matters covered by this Convention.

- (b) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this Convention attributes to States Parties.
- (c) When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.
- (d) Such an organization shall not hold any vote additional to those of its Member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

#### **Article 19**

- 1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-first instrument of ratification, acceptance or approval with the depositary.
- 2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty-first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### **Article 20**

- 1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.
- 2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have

deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

#### **Article 21**

1. Any State Party may denounce this Convention by written notification to the depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

#### **Article 22**

The depositary shall promptly notify all States of:

- (a) each signature of this Convention;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession;
- (c) any reservation or withdrawal in accordance with article 17;
- (d) any communication made by an organization in accordance with paragraph 4(c) of article 18;
- (e) the entry into force of this Convention;
- (f) the entry into force of any amendment to this Convention; and
- (g) any denunciation made under article 21.

#### **Article 23**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention, opened for signature at Vienna and at New York on 3 March 1980.

## ANNEX I

### LEVELS OF PHYSICAL PROTECTION TO BE APPLIED IN INTERNATIONAL TRANSPORT OF NUCLEAR MATERIAL AS CATEGORIZED IN ANNEX II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:
  - (a) For Category III materials, storage within an area to which access is controlled;
  - (b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
  - (c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.
2. Levels of physical protection for nuclear material during international transport include:
  - (a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;
  - (b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;
  - (c) For natural uranium other than in the form of ore or ore-residue, transportation protection for quantities exceeding 500 kilograms uranium shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

## ANNEX II

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category		
		I	II	III <sup>c</sup>
1. Plutonium <sup>a</sup>	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated <sup>b</sup>			
	— uranium enriched to 20% <sup>235</sup> U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less but more than 15 g
	— uranium enriched to 10% <sup>235</sup> U but less than 20%		10 kg or more	Less than 10 kg but more than 1 kg
	— uranium enriched above natural, but less than 10% <sup>235</sup> U			10 kg or more
3. Uranium-233	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g
4. Irradiated fuel			Depleted or natural uranium, thorium or low- enriched fuel (less than 10% fissile content) <sup>d,e</sup>	

<sup>a</sup> All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

<sup>b</sup> Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.

<sup>c</sup> Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.

<sup>d</sup> Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

<sup>e</sup> Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.

# **CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL**

## **List of Signatories As of 1 June 1982**

<b>State/Organization</b>	<b>Date of signature</b>	<b>Ratifications deposited on</b>
United States of America	3 March 1980	
Austria	3 March 1980	
Greece	3 March 1980	
Dominican Republic	3 March 1980	
Guatemala	12 March 1980	
Panama	18 March 1980	
Haiti	10 April 1980	
Philippines	19 May 1980	22 September 1981
German Democratic Republic*	21 May 1980	5 February 1981
Paraguay	21 May 1980	
Union of Soviet Socialist Republics*	22 May 1980	
Belgium	13 June 1980	
Denmark	13 June 1980	
France*	13 June 1980	
Germany, Federal Republic of	13 June 1980	
Ireland	13 June 1980	
Italy* **	13 June 1980	
Luxembourg	13 June 1980	
Netherlands	13 June 1980	
United Kingdom of Great Britain and Northern Ireland	13 June 1980	
European Atomic Energy Community**	13 June 1980	
Hungary*	17 June 1980	
Sweden	2 July 1980	1 August 1980
Yugoslavia	15 July 1980	
Morocco	25 July 1980	
Poland*	6 August 1980	



Canada	23 September 1980	
Romania* **	15 January 1981	
Brazil	15 May 1981	(ad referendum National Congress)
South Africa*	18 May 1981	
Bulgaria*	23 June 1981	
Finland	25 June 1981	
Czechoslovakia	14 September 1981	23 April 1982
Republic of Korea*	29 December 1981	7 April 1982

\* With Reservation.

\*\* With Declaration.

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