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(GOV/2005/57)

# Nuclear Security - Measures to Protect Against Nuclear Terrorism

## Amendment to the Convention on the Physical Protection of Nuclear Material

*Report by the Director General*

### Background

1. The question relating to a possible amendment to the Convention on the Physical Protection of Nuclear Material (the Convention) was first raised in 1999, when a number of States indicated, that in their view, the Convention “was incomplete” and “should be reviewed”.
2. In November 1999, the Director General, in the light of comments made during the Board of Governors, and taking into account recommendations by the Senior Expert Group for the Review of the IAEA’s Programme of Activities to the effect that “consideration should be given to the possible revision of the Convention on the Physical Protection of Nuclear Material to address the issues of prevention of unauthorized possession of nuclear material and access to nuclear facilities”, convened an Informal Open-ended Expert Meeting to Discuss Whether there is a Need to Revise the Convention (the Expert Meeting).
3. In May 2001, the Expert Meeting adopted its final report in which it concluded that there was “a clear need to strengthen the international physical protection regime” and that a spectrum of measures should be employed – including the drafting of a well defined amendment to strengthen the Convention.
4. On 9 September 2001, the Director General – in response to the recommendations by the Expert Meeting – convened an “Open-ended Group of Legal and Technical Experts to prepare a draft amendment to the Convention on the Physical Protection of Nuclear Material” (“the Group”).
5. The Group met six times in Vienna at the Agency’s Headquarters during the period from December 2001 to March 2003, under the chairmanship of Mr. Denis Flory of France. On 14 March 2003, the Group adopted by consensus its final report and agreed to submit it to the Director General. The report included possible amendments to the Convention but also contained a number of provisions on which the Group was not able to reach consensus. On 16 June 2003, the Director General circulated the Group’s report to all States Parties to the Convention for their consideration.

6. On 5 July 2004, at the request of Austria and 24 co-sponsoring States, the Director General circulated to all States Parties proposed amendments to the Convention. At the same time, in accordance with Article 20 of the Convention, he requested confirmation from States Parties as to whether he should, as depositary, call for a Conference to consider these amendments.

7. By 19 January 2005, the Director General had received requests to convene such a Conference from the majority of the States Parties.

8. Accordingly, on 3 February 2005, the Director General, pursuant to Article 20 of the Convention, invited all States Parties to participate in a Conference to consider proposed amendments to the Convention.

### **The Amendment Conference**

9. The Conference met in Vienna at the Headquarters of the Agency from 4 to 8 July 2005. Mr. D. B. Waller, Acting Director General of the Agency, opened the Conference. The Conference elected Mr. A. J. Baer (Switzerland) as President, and Mr. R. J. K. Stratford (United States of America), Ms. P. Espinosa-Cantellano (Mexico), Mr. P. Nieuwenhuys (Belgium), Mr. A. A. Matveev (Russian Federation), Ms. T. Feroukhi (Algeria), Mr. S. K. Sharma (India), Mr. T. A. Samodra Sriwidjaja (Indonesia) and Mr. Wu Hailong (China) as Vice-Presidents. It also elected Mr. S. McIntosh (Australia) as Chairman of the Committee of the Whole, Mr. E. Gil (Spain) as Vice-Chairman of the Committee of the Whole and Mr. K. Amégan (Canada) as Chairman of the Drafting Committee. Mr. N. Singh (India) was elected as Vice-Chairman by the Drafting Committee.

10. Eighty-eight States Parties and the European Atomic Energy Community (Euratom) participated in the Conference. Eighteen States not party and three intergovernmental organizations, namely the IAEA, the United Nations, and the League of Arab States participated as observers.

11. On the basis of its deliberations, the Conference adopted by consensus, on 8 July 2005, the Amendment to the Convention. Representatives of 81 States Parties signed the Final Act of the Conference. The Final Act including the Amendment to the Convention and the Report by the Committee of the Whole is attached to the present document for the information of Member States. The summary records of the Amendment Conference will be available on the GovAtom website in all the official languages as they become available.

12. On 25 July 2005, the Director General of the Agency, as depositary, circulated a certified copy of the Amendment to the Convention to all States Parties and Euratom. The Amendment requires no signature but is subject only to ratification, acceptance, or approval. It will enter into force in accordance with paragraph 2 of Article 20 of the Convention, which reads:

“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.”

13. At the same time, Governments were invited to deposit with the Director General of the Agency, at their earliest convenience, their instruments of ratification, acceptance or approval of the Amendment to the Convention.

## FINAL ACT

1. At the request of Austria and 24 co-sponsoring States, the Director General of the International Atomic Energy Agency (IAEA) circulated to all States Parties on 5 July 2004 proposed amendments to the Convention on the Physical Protection of Nuclear Material (“the Convention”). At the same time, the Director General requested confirmation as to whether he should, as depositary, call for a diplomatic conference to consider the proposed amendments. By 19 January 2005 the Director General had received requests to convene a conference to consider the proposed amendments from 55 States Parties, which represented the majority of States Parties to the Convention. Accordingly, pursuant to paragraph 1 of Article 20 of the Convention, on 3 February 2005 the Director General invited all States Parties to attend such a conference.
2. The Conference met in Vienna at the Headquarters of the IAEA from 4 to 8 July 2005.
3. Representatives of the following 88 States Parties and of one organization party to the Convention participated in the Conference: Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kenya, Korea Republic of, Kuwait, Latvia, Lebanon, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mexico, Monaco, Mongolia, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Senegal, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sudan, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and the European Atomic Energy Community (EURATOM).
4. Representatives of the following States and intergovernmental organizations participated in the Conference as observers: Cambodia, Egypt, Ethiopia, Haiti, Iran, Iraq, Jordan, Kazakhstan, Malaysia, Myanmar, Nigeria, Saudi Arabia, South Africa, Syrian Arab Republic, Venezuela, Yemen, Zambia, Zimbabwe, the United Nations, the IAEA and the League of Arab States.
5. The Conference was formally opened by Mr. David Waller, Acting Director General of the IAEA, who served as the Secretary-General of the Conference. Mr. Waller also addressed the Conference.

6. The Conference elected Mr. A. J. Baer (Switzerland) as President, and Mr. R. J. K. Stratford (United States of America), Ms. P. Espinosa-Cantellano (Mexico), Mr. P. Nieuwenhuys (Belgium), Mr. A. A. Matveev (Russian Federation), Ms. T. Feroukhi (Algeria), Mr. S. K. Sharma (India), Mr. T. A. Samodra Sriwidjaja (Indonesia) and Mr. Wu Hailong (China) as Vice-Presidents.
7. The Conference established a Committee of the Whole consisting of all States Parties, and one organization party to the Convention, that participated in the Conference. The Conference elected Mr. S. McIntosh (Australia) as Chairman of the Committee of the Whole, and Mr. E. Gil (Spain) as Vice-Chairman.
8. The Conference established a Drafting Committee composed of representatives of the following States Parties: Algeria, Argentina, Australia, Belarus, Brazil, Canada, China, France, India, Israel, Japan, Mexico, Netherlands, Russian Federation, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland and United States of America. The Conference elected Mr. K. Amégan (Canada) as Chairman of the Drafting Committee. Mr. N. Singh (India) was elected as Vice-Chairman by the Drafting Committee.
9. The Conference had before it as the basis for its discussions the following documents: the Basic Proposal (Document CPPNM/AC/L.1/1) and the proposal contained in Document CPPNM/AC/L.1/2. At its first meeting, the Conference decided to incorporate the latter proposal into the Basic Proposal to form a revised Basic Proposal (CPPNM/AC/L.1/1/Rev.1).
10. On the basis of its deliberations, the Conference adopted on 8 July 2005 the Amendment to the Convention, which is attached to this Final Act. The Amendment was adopted at the Conference by consensus and will be circulated by the depositary to all States Parties and EURATOM. The Amendment is subject to ratification, acceptance, or approval, and will enter into force, in accordance with paragraph 2 of Article 20 of the Convention.
11. The Conference decided to attach the Report of the Committee of the Whole without its attachments to this Final Act.
12. The Conference adopted this Final Act. The original of this Final Act, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, is deposited with the Director General of the IAEA.

IN WITNESS WHEREOF the undersigned have affixed their signatures to this Final Act.

DONE at Vienna this 8 July 2005.

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

1. The Title of the Convention on the Physical Protection of Nuclear Material adopted on 26 October 1979 (hereinafter referred to as “the Convention”) is replaced by the following title:

### CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL AND NUCLEAR FACILITIES

2. The Preamble of the Convention is replaced by the following text:

#### 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 to facilitate international co-operation and the transfer of nuclear technology for the peaceful application of nuclear energy,

BEARING IN MIND that physical protection is of vital importance for the protection of public health, safety, the environment and national and international security,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and co-operation among States,

CONSIDERING that under the terms of paragraph 4 of Article 2 of the Charter of the United Nations, “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,”

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

DESIRING to avert the potential dangers posed by illicit trafficking, the unlawful taking and use of nuclear material and the sabotage of nuclear material and nuclear facilities, and noting that physical protection against such acts has become a matter of increased national and international concern,

DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and by the threats posed by international terrorism and organized crime,

BELIEVING that physical protection plays an important role in supporting nuclear non-proliferation and counter-terrorism objectives,

DESIRING through this Convention to contribute to strengthening worldwide the physical protection of nuclear material and nuclear facilities used for peaceful purposes,

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

DESIRING to strengthen further international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material and nuclear facilities,

CONVINCED that this Convention should complement the safe use, storage and transport of nuclear material and the safe operation of nuclear facilities,

RECOGNIZING that there are internationally formulated physical protection recommendations that are updated from time to time which can provide guidance on contemporary means of achieving effective levels of physical protection,

RECOGNIZING also that effective physical protection of nuclear material and nuclear facilities used for military purposes is a responsibility of the State possessing such nuclear material and nuclear facilities, and understanding that such material and facilities are and will continue to be accorded stringent physical protection,

HAVE AGREED as follows:

3. In Article 1 of the Convention, after paragraph (c), two new paragraphs are added as follows:
  - (d) “nuclear facility” means a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material;
  - (e) “sabotage” means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of personnel, the public or the environment by exposure to radiation or release of radioactive substances.
4. After Article 1 of the Convention, a new Article 1A is added as follows:

#### Article 1A

The purposes of this Convention are to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; as well as to facilitate co-operation among States Parties to those ends.

5. Article 2 of the Convention is replaced by the following text:
  1. This Convention shall apply to nuclear material used for peaceful purposes in use, storage and transport and to nuclear facilities used for peaceful purposes, provided, however, that articles 3 and 4 and paragraph 4 of article 5 of this Convention shall only apply to such nuclear material while in international nuclear transport.

2. The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State Party rests entirely with that State.
3. Apart from the commitments expressly undertaken by States Parties under this Convention, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State.
4. (a) Nothing in this Convention shall affect other rights, obligations and responsibilities of States Parties under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.  
  
(b) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.  
  
(c) Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.  
  
(d) Nothing in this Convention condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.
5. This Convention shall not apply to nuclear material used or retained for military purposes or to a nuclear facility containing such material.
6. After Article 2 of the Convention, a new Article 2A is added as follows:

#### Article 2A

1. Each State Party shall establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and nuclear facilities under its jurisdiction, with the aim of:
  - (a) protecting against theft and other unlawful taking of nuclear material in use, storage and transport;
  - (b) ensuring the implementation of rapid and comprehensive measures to locate and, where appropriate, recover missing or stolen nuclear material; when the material is located outside its territory, that State Party shall act in accordance with article 5;
  - (c) protecting nuclear material and nuclear facilities against sabotage; and
  - (d) mitigating or minimizing the radiological consequences of sabotage.
2. In implementing paragraph 1, each State Party shall:
  - (a) establish and maintain a legislative and regulatory framework to govern physical protection;

- (b) establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework; and
- (c) take other appropriate measures necessary for the physical protection of nuclear material and nuclear facilities.

3. In implementing the obligations under paragraphs 1 and 2, each State Party shall, without prejudice to any other provisions of this Convention, apply insofar as is reasonable and practicable the following Fundamental Principles of Physical Protection of Nuclear Material and Nuclear Facilities.

**FUNDAMENTAL PRINCIPLE A: *Responsibility of the State***

The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rests entirely with that State.

**FUNDAMENTAL PRINCIPLE B: *Responsibilities During International Transport***

The responsibility of a State for ensuring that nuclear material is adequately protected extends to the international transport thereof, until that responsibility is properly transferred to another State, as appropriate.

**FUNDAMENTAL PRINCIPLE C: *Legislative and Regulatory Framework***

The State is responsible for establishing and maintaining a legislative and regulatory framework to govern physical protection. This framework should provide for the establishment of applicable physical protection requirements and include a system of evaluation and licensing or other procedures to grant authorization. This framework should include a system of inspection of nuclear facilities and transport to verify compliance with applicable requirements and conditions of the license or other authorizing document, and to establish a means to enforce applicable requirements and conditions, including effective sanctions.

**FUNDAMENTAL PRINCIPLE D: *Competent Authority***

The State should establish or designate a competent authority which is responsible for the implementation of the legislative and regulatory framework, and is provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities. The State should take steps to ensure an effective independence between the functions of the State's competent authority and those of any other body in charge of the promotion or utilization of nuclear energy.

**FUNDAMENTAL PRINCIPLE E: *Responsibility of the License Holders***

The responsibilities for implementing the various elements of physical protection within a State should be clearly identified. The State should ensure that the prime responsibility for the implementation of physical protection of nuclear material or of nuclear facilities rests with the holders of the relevant licenses or of other authorizing documents (e.g., operators or shippers).

**FUNDAMENTAL PRINCIPLE F: *Security Culture***

All organizations involved in implementing physical protection should give due priority to the security culture, to its development and maintenance necessary to ensure its effective implementation in the entire organization.

**FUNDAMENTAL PRINCIPLE G: *Threat***

The State's physical protection should be based on the State's current evaluation of the threat.



**FUNDAMENTAL PRINCIPLE H: *Graded Approach***

Physical protection requirements should be based on a graded approach, taking into account the current evaluation of the threat, the relative attractiveness, the nature of the material and potential consequences associated with the unauthorized removal of nuclear material and with the sabotage against nuclear material or nuclear facilities.

**FUNDAMENTAL PRINCIPLE I: *Defence in Depth***

The State's requirements for physical protection should reflect a concept of several layers and methods of protection (structural or other technical, personnel and organizational) that have to be overcome or circumvented by an adversary in order to achieve his objectives.

**FUNDAMENTAL PRINCIPLE J: *Quality Assurance***

A quality assurance policy and quality assurance programmes should be established and implemented with a view to providing confidence that specified requirements for all activities important to physical protection are satisfied.

**FUNDAMENTAL PRINCIPLE K: *Contingency Plans***

Contingency (emergency) plans to respond to unauthorized removal of nuclear material or sabotage of nuclear facilities or nuclear material, or attempts thereof, should be prepared and appropriately exercised by all license holders and authorities concerned.

**FUNDAMENTAL PRINCIPLE L: *Confidentiality***

The State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear material and nuclear facilities.

4. (a) The provisions of this article shall not apply to any nuclear material which the State Party reasonably decides does not need to be subject to the physical protection regime established pursuant to paragraph 1, taking into account the nature of the material, its quantity and relative attractiveness and the potential radiological and other consequences associated with any unauthorized act directed against it and the current evaluation of the threat against it.

(b) Nuclear material which is not subject to the provisions of this article pursuant to sub-paragraph (a) should be protected in accordance with prudent management practice.

7. Article 5 of the Convention is replaced by the following text:

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their point of contact in relation to matters within the scope of this Convention.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or 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, the International Atomic Energy Agency and other relevant international organizations;

- (b) in doing so, as appropriate, the States Parties concerned shall exchange information with each other, the International Atomic Energy Agency and other relevant 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 recovered 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. In the case of a credible threat of sabotage of nuclear material or a nuclear facility or in the case of sabotage thereof, States Parties shall, to the maximum feasible extent, in accordance with their national law and consistent with their relevant obligations under international law, co-operate as follows:

- (a) if a State Party has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in another State, the former shall decide on appropriate steps to be taken in order to inform that State as soon as possible and, where appropriate, the International Atomic Energy Agency and other relevant international organizations of that threat, with a view to preventing the sabotage;
- (b) in the case of sabotage of nuclear material or a nuclear facility in a State Party and if in its view other States are likely to be radiologically affected, the former, without prejudice to its other obligations under international law, shall take appropriate steps to inform as soon as possible the State or the States which are likely to be radiologically affected and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations, with a view to minimizing or mitigating the radiological consequences thereof;
- (c) if in the context of sub-paragraphs (a) and (b), a State Party requests assistance, each State Party to which a request for assistance is directed shall promptly decide and notify the requesting State Party, directly or through the International Atomic Energy Agency, whether it is in a position to render the assistance requested and the scope and terms of the assistance that may be rendered;
- (d) co-ordination of the co-operation under sub-paragraphs (a) to (c) shall be through diplomatic or other agreed channels. The means of implementation of this co-operation shall be determined bilaterally or multilaterally by the States Parties concerned.

4. States Parties shall co-operate and consult, as appropriate, with each other directly or through the International Atomic Energy Agency and other relevant 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.

5. A State Party may consult and co-operate, as appropriate, with other States Parties directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining their guidance on the design, maintenance and improvement of its national system of physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities.
8. Article 6 of the Convention is replaced by the following text:
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 or to States that are not parties to this Convention in confidence, steps shall be taken to ensure that the confidentiality of such information is protected. A State Party that has received information in confidence from another State Party may provide this information to third parties only with the consent of that other State Party.
  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 or nuclear facilities.
9. Paragraph 1 of Article 7 of the Convention is replaced by the following text:
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 or to the environment;
    - (b) a theft or robbery of nuclear material;
    - (c) an embezzlement or fraudulent obtaining of nuclear material;
    - (d) an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority;
    - (e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substances, unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated;
    - (f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
    - (g) a threat:
      - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to property or to the environment or to commit the offence described in sub-paragraph (e), or

- (ii) to commit an offence described in sub-paragraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
- (h) an attempt to commit any offence described in sub-paragraphs (a) to (e);
- (i) an act which constitutes participation in any offence described in sub-paragraphs (a) to (h);
- (j) an act of any person who organizes or directs others to commit an offence described in sub-paragraphs (a) to (h); and
- (k) an act which contributes to the commission of any offence described in sub-paragraphs (a) to (h) by a group of persons acting with a common purpose; such act shall be intentional and shall either:
  - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence described in sub-paragraphs (a) to (g), or
  - (ii) be made in the knowledge of the intention of the group to commit an offence described in sub-paragraphs (a) to (g)

shall be made a punishable offence by each State Party under its national law.

10. After Article 11 of the Convention, two new articles, Article 11A and Article 11B, are added as follows:

#### Article 11A

None of the offences set forth in article 7 shall be regarded for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

#### Article 11B

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 7 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

11. After Article 13 of the Convention, a new Article 13A is added as follows:

### Article 13A

Nothing in this Convention shall affect the transfer of nuclear technology for peaceful purposes that is undertaken to strengthen the physical protection of nuclear material and nuclear facilities.

12. Paragraph 3 of Article 14 of the Convention is replaced by the following text:

3. Where an offence involves nuclear material 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, or where an offence involves a nuclear facility and the alleged offender remains 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.

13. Article 16 of the Convention is replaced by the following text:

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of the Amendment adopted on 8 July 2005 to review the implementation of this 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.

14. Footnote <sup>b/</sup> of Annex II of the Convention is replaced by the following text:

<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 1 gray/hour (100 rads/hour) at one metre unshielded.

15. Footnote <sup>e/</sup> of Annex II of the Convention is replaced by the following text:

<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 1 gray/hour (100 rads/hour) at one metre unshielded.

## Report by the Committee of the Whole

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

that the phrase “inasmuch” has at least two meanings in English, one of them is “to the extent that” and a second meaning is “because”. The delegation of Mexico accepted the wording of subparagraph 4(b) of Article 2 on the understanding that the text it considers acceptable is the text in Spanish.

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

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

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

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