

**AMENDMENTS TO THE CONVENTION ON THE PHYSICAL
PROTECTION OF NUCLEAR MATERIAL,
DONE AT VIENNA ON 8 JULY 2005**

[2006] ATNIA 14

Documents tabled on 20 June 2006

National Interest Analysis [2006] ATNIA 23

with attachment on consultation

Text of the proposed treaty action

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SUMMARY PAGE

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Nature and Timing of Proposed Treaty Action

1. On 8 July 2005 a Conference of States Parties to the 1980 Convention on the Physical Protection of Nuclear Material, ([1987] ATS 16) (the "Physical Protection Convention") reached consensus on a Final Act ("the Amendments") to amend the Convention. Pursuant to Article 20 of the Convention, the Amendments come into force for those States Parties that have ratified the Amendments 30 days after two thirds of all States Parties have deposited their instruments of ratification, acceptance or approval of the Amendments. Thereafter the Amendments 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 Amendments.
2. It is proposed that Australia will deposit its instrument of ratification for the Amendments following the passage of implementing legislation.

Overview and national interest summary

3. The Physical Protection Convention requires parties to make specific arrangements and meet defined standards for the physical protection of nuclear material in international transport, and promotes international cooperation in relation to this objective. It does not address the protection of nuclear facilities and deals only in a limited way with the domestic use, storage or transportation of nuclear material.
4. The Amendments strengthen requirements in the Physical Protection Convention for protection of nuclear material, and to extend protection to nuclear facilities and nuclear material in domestic use, storage and transport. The Amendments seek to ensure that all States Parties will apply thorough and systematic measures to protect their domestic nuclear activities against criminal or terrorist attack.
5. The Australian Government is committed to addressing international concerns about nuclear terrorism, smuggling and sabotage, and to protecting people and the environment from any impacts associated with such activities. The amended Physical Protection Convention aims to address these issues more comprehensively than the existing convention. Australia has played a leading role in developing these changes, and to encourage universal adherence should be among the first to ratify and implement them.

Reasons for Australia to take the proposed treaty action

6. A key factor in the successful development of nuclear technology for peaceful purposes is commitment and adherence to internationally accepted standards of nuclear safety and security. The Physical Protection Convention is an essential element of international arrangements in this respect, and is adhered to by most countries with nuclear technology.
7. Effective physical protection is a strong counter-terrorism measure, and Australia played an active role in negotiating measures, set out in the Amendments, to strengthen the Physical Protection Convention. Australia chaired the main committee at the July 2005 diplomatic conference which agreed the Amendments.
8. In addition to specifying a control and protection regime for nuclear material in international transport, the amended Physical Protection Convention applies also to domestic use, storage and transport, and criminalises *inter alia* sabotage of nuclear facilities and trafficking, thereby significantly strengthening global nuclear security.
9. The Amendments also provide for expanded cooperation between and among States regarding measures to rapidly locate and recover stolen or smuggled nuclear material, mitigate any radiological consequences of sabotage, and prevent and combat related offences. It also provides for greater cooperation amongst states in relation to extradition for relevant offences.
10. Some key aspects of the Amendments are consistent with measures that Australia already takes to protect nuclear material and facilities. In particular, Australia has an established regime for physical protection of nuclear material and facilities - applied through permits under the *Nuclear Non-Proliferation (Safeguards) Act 1987*. In addition, that Act already includes elements of some of the new offences required by the Amendments.

Obligations

11. The Amendments build upon Australia's existing obligations under the Physical Protection Convention. In particular, the Amendments:
 - (a) add a new Article 2A that requires States Parties to establish and maintain a physical protection regime to protect nuclear material against theft, to rapidly recover any missing or stolen nuclear material, to protect nuclear material and nuclear facilities against sabotage, and to mitigate or minimise the radiological consequences of any such sabotage. Article 2A establishes a series of fundamental principles to be applied as part of such a regime;
 - (b) amend Article 5 of the Convention to strengthen cooperation amongst States Parties in case of actual or threatened theft of nuclear material or sabotage of nuclear material or a nuclear facility. Article 5 requires States Parties to inform any other State if: it has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in that other State; or there has been an act of sabotage of nuclear material or a nuclear facility in the State Party

which is likely to radiologically affect that other State ;

- (c) extend Article 7 of the Convention in relation to activities that States Parties must make punishable offences under national law. In particular, new offences are added for: the trafficking of nuclear material; the sabotage of nuclear facilities with intent to cause death, injury or damage by exposure to radiation or radioactive substances; acts organising or directing others to commit an offence specified by Article 7; and acts contributing to the commission of other offences specified by Article 7;
- (d) add new Articles 11A and 11B to the Convention dealing with extradition and mutual legal assistance in relation to the offences set forth in Article 7.
 - i. Article 11A requires that none of the offences in Article 7 shall be regarded as political offences for the purposes of extradition or mutual legal assistance. The purpose of Article 11A is to prevent a refusal of extradition or mutual legal assistance with respect to an offence under Article 7 on the sole ground that it is characterised as a political offence under the law of the requested State Party.
 - ii. Article 11B ensures that there is no obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition, or for mutual legal assistance, for offences set forth in Article 7 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.

Implementation

12. Draft legislation to implement changes to the Physical Protection Convention made by the Amendments will be included in the Non-Proliferation Legislation Amendment Bill 2006. The *Nuclear Non-Proliferation (Safeguards) Act 1987* will be amended to extend the system of permits for nuclear material and facilities. This will enable permit conditions to be developed to reflect the new physical protection framework set out in the Amendments, and to bring the scope of offences under that Act into line with the new requirements. Development of policy to implement these arrangements, in particular new permit conditions, will be developed by the Australian Safeguards and Non-Proliferation Office.

13. Regulations will be made under the *Nuclear Non-Proliferation (Safeguards) Act 1987* to incorporate amendments to the text of the Physical Protection Convention which is included in Schedule 4 of that Act.

14. Regulations will be made under the *Extradition Act 1988* and the *Mutual Assistance in Criminal Matters Act 1987* to incorporate the provisions of the Amendments dealing with extradition, in particular the new political offence exception introduced by Article 11A and the expanded mutual assistance provisions.

Costs

15. The proposed treaty action is not expected to impose any direct financial costs on Australia in complying with its obligations. The Amendments will be applied by the Australian Safeguards and Non-Proliferation Office as an extension of its existing regulation of physical protection arrangements for nuclear material and nuclear facilities. This should be manageable within existing resources.

16. The Commonwealth operates Australia's chief nuclear facility at Lucas Heights in NSW. Further strengthening of physical protection arrangements at that facility could have some cost, although arrangements developed for the new OPAL reactor already take into account key elements of the Amendments.

Regulation Impact Statement

17. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

18. Under Article 16 of the Amendments, a conference of States Parties to the Physical Protection Convention will be convened five years after entry into force of the Amendments to review the implementation of the Convention and its adequacy in light of the then prevailing situation. Any future amendment to the Physical Protection Convention will be done subject to the provisions of Article 20 of the Convention.

19. Any future treaty action would be subject to Australia's domestic treaty-making process, including tabling and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

20. Any State Party may denounce the Physical Protection Convention by written notice to the depositary. Denunciation would take effect 180 days following the date on which the notification is received by the depositary.

21. Any withdrawal by Australia from this treaty would be subject to Australia's domestic treaty-making process.

Contact Details

Australian Safeguards and Non-Proliferation Office
Department of Foreign Affairs and Trade

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CONSULTATION

1. The proposed amendments to the Convention on the Physical Protection of Nuclear Material are unlikely to have any general impact on businesses or Government agencies in Australia. The changes may affect Permits (issued under the *Nuclear Non-Proliferation (Safeguards) Act 1987*) to possess or transport nuclear materials. Permit holders are already required to apply physical protection measures to nuclear materials and nuclear facilities that cover most of the new requirements.
2. States and Territories have been consulted through the Standing Committee on Treaties at its meeting on 17 May 2006. The proposed amendments were first listed on the SCOT Schedule in April 2002. Since then, States and Territories have been informed of progress and negotiating outcomes bi-annually through Schedule updates.
3. Relevant Commonwealth agencies have been briefed through the Nuclear Agencies Consultative Committee on 4 May 2006.
4. Key Commonwealth nuclear agencies, including those most likely to be affected by the proposed amendments to the Physical Protection Convention have been active contributors during their negotiation.

Background : Current status list

The following 115 States and EURATOM are Parties to the Convention on the Physical Protection of Nuclear Material. States that have deposited an instrument of ratification (R), acceptance (Ac) or approval (Ap) of the Amendment to the Convention are indicated.

Afghanistan	Greece	Norway
Albania	Grenada	Oman
Algeria	Guatemala	Pakistan
Antigua and Barbuda	Guinea	Panama
Argentina	Honduras	Paraguay
Armenia	Hungary	Peru
Australia	Iceland	Philippines
Austria	India	Poland
Azerbaijan	Indonesia	Portugal
Bangladesh	Ireland	Qatar
Belarus	Israel	Republic of Moldova
Belgium	Italy	Romania
Bolivia	Jamaica	Russian Federation
Bosnia and Herzegovina	Japan	Senegal
Botswana	Kazakhstan	Serbia and Montenegro
Brazil	Kenya	Seychelles (Ac) 09/01/2006
Bulgaria (R) 17/03/2006	Korea, Republic of	Slovakia
Burkina Faso	Kuwait	Slovenia
Cameroon	Latvia	Spain
Canada	Lebanon	Sudan
Chile	Libyan Arab Jamahiriya	Swaziland
China	Liechtenstein	Sweden
Colombia	Lithuania	Switzerland
Costa Rica	Luxembourg	Tajikistan
Croatia	Madagascar	The Frmr. Yug.Rep. of Macedonia
Cuba	Mali	Tonga
Cyprus	Malta	Trinidad and Tobago
Czech Republic	Marshall Islands	Tunisia
Democratic Rep. of the Congo	Mexico	Turkey
Denmark	Monaco	Turkmenistan (Ac) 22/09/2005
Djibouti	Mongolia	Uganda
Dominica	Morocco	Ukraine
Ecuador	Mozambique	United Arab Emirates
Equatorial Guinea	Namibia	United Kingdom
Estonia	Nauru	United States of America
Finland	Netherlands	Uruguay
France	New Zealand	Uzbekistan
Germany	Nicaragua	EURATOM ¹
Ghana	Niger	

¹ EURATOM is the European Atomic Energy Community. Several states listed individually are also EURATOM members.