

**DISCUSSION PAPER: KEY ISSUES FOR THE CONFERENCE TO REVIEW THE AMENDMENT
TO THE CPPNM**

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I. INTRODUCTION

In 2021, a conference to review (RevCon) the Amendment to the Convention on the Physical Protection of Nuclear Material (CPPNM/A) will be held. Preparations have already begun with the convening of the first Legal and Technical Experts (TLE) meeting in July 2019, which will be followed by a second TLE meeting in November 2019 and a Preparatory Committee meeting (PrepCom) in July 2020.

This paper provides the basis for discussion at the November 5-6, 2019, Global Dialogue meeting of key substantive issues for the CPPNM/A RevCon.

II. DESIGNING A MEANINGFUL AND SUBSTANTIVE REVIEW

Article 16.1 of the CPPNM/A states:

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.

The convention gives no further guidance on how to conduct the review. Therefore, parties have the opportunity to design a process most likely to result in a meaningful review, essentially working from a blank slate. Parties should take an ambitious approach to this review and not simply check a box.

Implementation

A review of implementation provides an opportunity for parties to share experiences and lessons learned from how they are interpreting the convention's obligations and putting the convention into practice. Reviewing implementation should not be interpreted as an assessment of each other's implementation or a formal reporting exercise. A more meaningful approach, which would reflect a vision of the review conference as a vehicle for dialogue and for promoting progress, would be to interpret "review of implementation" as a chance to

develop and share national self-reflections in a way that is constructive and instructive for all parties. This more expansive approach could lead to a more beneficial substantive dialogue that promotes strengthened implementation and future progress on nuclear security by sharing best practices, lessons learned, implementation challenges, progress made, and planned future activities to strengthen implementation of the convention. This approach could also be informative for countries that have not yet ratified the Amendment.

Adequacy

A review of the convention's adequacy can also be done in a meaningful way. Unlike the review conference for the original CPPNM held in 1992, which resulted in a perfunctory statement that the convention was adequate, a more rigorous and substantive discussion is possible. Taking a more substantive approach would also help delink the discussion of adequacy from any assumption that this might lead to a decision on the need for an amendment.

It is difficult to imagine a circumstance in which parties would decide the convention is inadequate and requires amendment. The 2005 Amendment gave the convention a comprehensive scope, and within that scope, the convention provides significant flexibility for how parties implement the convention. The convention is written broadly and at a high level, providing objectives for physical protection instead of taking a prescriptive approach. The convention's evergreen character allows interpretation and implementation of the convention to evolve as the global environment evolves. Even if parties were to conclude that the prevailing situation had changed, perhaps even substantially, the convention itself would likely remain adequate in its current form.

A more rigorous and substantive approach to discussing adequacy would be for parties to share how their interpretation and implementation of the convention has evolved within the confines of the text and how they envision future evolutions. For instance, how has the meaning of "physical protection" evolved? How will it need to evolve in the future? How does the meaning of "physical protection" capture changes in priorities and practices for preventing nuclear theft or sabotage? Does it include protection against cyberattacks?¹

The Prevailing Situation

A discussion of the prevailing situation, as it applies to both implementation and adequacy, provides an important opportunity for parties to assess the risk environment, at national,

¹ On this latter question, a broad interpretation suggests that it does. Cyber weapons can be used to defeat physical protection measures and have physical effects. Moreover, the convention text does not define the types of weapons against which parties must protect. Cyber weapons are just one of many types of weapons or tools, such as guns, bombs, or other traditional weapons, that could be deployed to defeat physical security measures.

regional, and global levels. Review conferences do not occur in a vacuum, just as implementation of the convention does not occur in a vacuum. The prevailing situation today is different than the prevailing situation in 2005, and will be different from the prevailing situation in five years. Threats change, actors change, technology changes, security tools and practices change, assistance resources and services change, and the global architecture will change.

A discussion of the prevailing situation can be an opportunity for states to share their perspectives on emerging challenges to the security of nuclear materials and facilities, how they are addressing those challenges, and how they plan to address future challenges. For instance, a state might share how it is building national capacity or updating laws and regulations to address cyber threats or other emerging technology.

Taking a national and/or regional approach to this discussion would be more productive than attempting to reach a common assessment of the prevailing situation, and would be more reflective of the reality that parties have different perspectives on the threats and challenges they face. This approach would also be more inclusive, providing valuable information to parties, as well as to countries that have not yet ratified the Amendment.

III. AN INCLUSIVE REVIEW CONFERENCE

In preparation for the RevCon, parties should consider ways to be inclusive of countries that are not party to the Amendment, of international organizations, and of non-government organizations (NGOs).

Reaching universalization of the Amendment continues to be a key objective and the RevCon can provide an opportunity to promote further ratifications. Including non-parties at the RevCon—taking into account any procedural considerations—will have a net benefit to the CPPNM/A regime as a whole.

NGOs, including industry, and international organizations can provide useful contributions to the RevCon and preparatory process. Nuclear operators have a direct stake in these discussions because they are responsible for implementing nuclear security at the facility level. International organizations are also important elements of the global nuclear security architecture, helping countries to implement nuclear security and their treaty obligations, and therefore can benefit from and provide useful input into the RevCon discussions.

Importantly, experts from around the world—from NGOs, industry, and international organizations—can provide knowledge and expertise to help inform official discussions. For example, expert views on how the prevailing situation has changed since 2005, particularly in

the area of emerging technology, could be a useful contribution that could serve as a resource to parties in advance of the PrepCom.

There is precedent for including international organizations and NGOs in other treaty review conference contexts, including allowing their representatives to attend as observers and offer comments during dedicated sessions and the ability for NGOs to hold side events.

IV. CONCLUSION

In the time remaining before the 2021 CPPNM/A RevCon, parties have the opportunity to plan a review conference that not only allows for a meaningful and substantive review of the convention, but that achieves the objective of building a strong, effective, and sustainable CPPNM regime and creates a forum for parties to engage in regular dialogue on how the convention is being translated into on-the-ground nuclear security progress, monitor and identify gaps in implementation, review progress, promote continuous improvement, and discuss emerging threats.