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# Security Council

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**Security Council Committee established pursuant to resolution 1540 (2004)**

## Letter dated 19 January 2006 from the Permanent Representative of Canada to the United Nations addressed to the Committee

I have the honour to respond to your letter of 15 November 2005, requesting further information from the Government of Canada, pursuant to our first report to the Security Council Committee established pursuant to resolution 1540 (2004), submitted in December 2004. Enclosed you will find a supplementary report with the additional information requested (see annex).

(*Signed*) Allan **Rock**

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**Annex to the letter dated 19 January 2006 from the Permanent Representative of Canada to the United Nations addressed to the Chairman of the Committee**

## Further information on Canada's implementation of Security Council Resolution 1540 (2004)

Canada thanks the 1540 Committee for their letter dated 15 November 2005 and accompanying matrix.

In response, Canada is pleased to present further information on its implementation of Security Council Resolution 1540. This report is intended to provide the Committee with additional clarification regarding Canada's national legal framework and enforcement provisions, building on the information provided in its first report.

Canada remains a strong advocate of UNSCR 1540, and is committed to its full and effective implementation. This resolution represents an essential element of the global regime against the proliferation of nuclear, chemical and biological weapons, their delivery systems, and related material.

Canada also remains committed to assisting other States in implementing their obligations under the Resolution.

## General

Canada has no objection to the additional information identified by the Committee, marked in blue italics in the matrix attached to the Committee's letter of 15 November, being included in the Committee's examination of Canada's report under UNSCR1540.

All legislation referred to below can be found on the Department of Justice web-site, at http://laws.justice.gc.ca/en/index.html.

Canada would be happy to provide further information or clarification of any issues raised in this report.

## Specific issues raised by the Committee

The Committee has requested further information in the following areas.

**National legislation or other legal measures Canada has implemented or intends to implement to prohibit any non-State actors to manufacture, acquire, possess, develop, transport, transfer, or use nuclear, biological weapons and their means of delivery, as well as attempts to engage in any of the foregoing activities, participate in them as accomplice, assist or finance them**

General: relating to weapons

The *Criminal Code* provides the broad framework for Canada's measures in this regard.

Part XI of the *Criminal Code (Wilful and Forbidden Acts in Respect Certain Property)*, Section 431.2(1), defines "explosive or other lethal device" as:

> (a) an explosive or incendiary weapon or device that is designed to cause, or is capable of causing, death, serious bodily injury or substantial material damage; or
>
> (b) a weapon or device that is designed to cause, or is capable of causing, death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances, or radiation or radioactive material.

And Section 431.2(1) (2) establishes:

> Every one who delivers, places, discharges or detonates an explosive or other lethal device to, into, in or against a place of public use, a government or public facility, a public transportation system or an infrastructure facility, either with intent to cause death or serious bodily injury or with intent to cause extensive destruction of such a place, system or facility that results in or is likely to result in major economic loss, is guilty of an indictable offence and liable to imprisonment for life.

The *Criminal Code* (subsection 7(3.72)) establishes that, in certain circumstances, the offences set out in section 431.2 will be applied extra-territorially (see Annex 1).

There are a number of other *Criminal Code* offences pertaining to weapons or prohibited weapons that could potentially apply in the case of nuclear, chemical, or biological weapons, and their means of delivery.

("Weapon" is defined in section 2 of the *Criminal Code* as "any thing used, designed to be used or intended for use (a) in causing death or injury to any person, or (b) for the purpose of threatening or intimidating any person". "Prohibited weapon" is defined in subsection 84(1) of the *Criminal Code* as "any weapon, other than a firearm, that is prescribed to be a

prohibited weapon", including, by virtue of Part 3 of the Schedule to the *Regulations Prescribing Certain Firearms and other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*, "Any device designed to be used for the purpose of injuring, immobilizing or otherwise incapacitating any person by the discharge therefrom of …(b) any liquid, spray, powder or other substance that is capable of injuring, immobilizing or otherwise incapacitating any person.")

Subsection 88(1) of the *Criminal Code* creates an offence for possessing a weapon for a purpose dangerous to the public peace or to commit an offence:

> Every person commits an offence who carries or possesses a weapon, an imitation of a weapon, a prohibited device or any ammunition or prohibited ammunition for a purpose dangerous to the public peace or for the purpose of committing an offence.

Section 267 of the *Criminal Code* makes it an offence to carry, use or threaten to use a weapon in committing an assault:

> Every one who, in committing an assault,
>
> (a) carries, uses or threatens to use a weapon or an imitation thereof, or
>
> (b) causes bodily harm to the complainant,
>
> is guilty of an indictable offence.

There are *Criminal Code* offences that target possessing, using, carrying, handling, shipping, transporting, transferring, manufacturing, storing, importing and exporting a prohibited weapon.

Subsection 86(1) provides that "Every person commits an offence who, without lawful excuse, uses, carries, handles, ships, transports or stores a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any ammunition or prohibited ammunition in a careless manner or without reasonable precautions for the safety of other persons." Subsections 91(2) and 92(2) establish offences for possession of a prohibited weapon. They read, respectively, in material part: "…every person commits an offence who possesses a prohibited weapon, …unless the person is the holder of a licence under which the person may possess it" and "…every person commits an offence who possesses a prohibited weapon,… knowing that the person is not the holder of a licence under which the person may possess it."

Subsection 99(1) deals with manufacture and transfer of a prohibited weapon:

> Every person commits an offence who

> (a) manufactures or transfers, whether or not for consideration, or
>
> (b) offers to do anything referred to in paragraph (a) in respect of a firearm, a prohibited weapon, a restricted weapon, a prohibited device, any ammunition or any prohibited ammunition knowing that the person is not authorized to do so under the *Firearms Act* or any other Act of Parliament or any regulations made under any Act of Parliament.

Subsections 100(1) and 101(1) create offences for possession for the purpose of transferring and actually transferring a prohibited weapon:

> Every person commits an offence who possesses a firearm, a prohibited weapon, a restricted weapon, a prohibited device, any ammunition or any prohibited ammunition for the purpose of
>
> (a) transferring it, whether or not for consideration, or
>
> (b) offering to transfer it,
>
> knowing that the person is not authorized to transfer it under the *Firearms Act* or any other Act of Parliament or any regulations made under any Act of Parliament.
>
> Every person commits an offence who transfers a firearm, a prohibited weapon, a restricted weapon, a prohibited device, any ammunition or any prohibited ammunition to any person otherwise than under the authority of the *Firearms Act* or any other Act of Parliament or any regulations made under an Act of Parliament.

Sections 80 to 82 of the *Criminal Code* create offences for failing to take reasonable care to prevent harm from an explosive substance, uses an explosive with intent to cause serious harm, and possessing an explosive substance without lawful excuse. The Criminal Code also includes various terrorism offences in Part II that could be relevant to prohibiting certain non-state actors (viz terrorists) from engaging in prohibited conduct. These were set out in more detail in Canada's first report under UNSCR1540 (page 5 and 6).

Subsection 16(1) of the *Security of Information Act* provides an offence for communicating safeguarded information, including that which could be used to assist a non-State actor acquire a nuclear, chemical, or biological weapon, or their associated means of delivery.

> (1) Every person commits an offence who, without lawful authority, communicates to a foreign entity or to a terrorist group information that the Government of Canada or of a province is taking measures to safeguard if
>
> (a) the person believes, or is reckless as to whether, the information is information that the Government of Canada or of a province is taking measures to safeguard; and

(b) the person intends, by communicating the information, to increase the capacity of a foreign entity or a terrorist group to harm Canadian interests or is reckless as to whether the communication of the information is likely to increase the capacity of a foreign entity or a terrorist group to harm Canadian interests.

(2) Every person commits an offence who, intentionally and without lawful authority, communicates to a foreign entity or to a terrorist group information that the Government of Canada or of a province is taking measures to safeguard if

(a) the person believes, or is reckless as to whether, the information is information that the Government of Canada or of a province is taking measures to safeguard; and

(b) harm to Canadian interests results.

Subsection 3(2) of the *Security of Information Act* provides that, "…harm is caused to Canadian interests if a foreign entity or terrorist group does anything referred to in any of paragraphs (1)(a) to (n)". This includes acts that are contrary to a treaty to which Canada is a party, or developing or using anything that is "intended or has the capability to cause death or serious bodily injury to a significant number of people by means of (i) toxic or poisonous chemicals or their precursors, (ii) a microbial or other biological agent, or a toxin, including a disease organism, (iii) radiation or radioactivity, or (iv) an explosion".

Nuclear weapons

The centre-piece of Canadian legislation in the nuclear safety and security sphere is the *Nuclear Safety and Control Act (1997)* (NSCA) and its associated regulations, including:

- Class I Nuclear Facilities Regulations
- Class II Nuclear Facilities and Prescribed Equipment Regulations
- General Nuclear Safety and Control Regulations
- Nuclear Non-proliferation Import and Export Control Regulations
- Nuclear Security Regulations
- Nuclear Substances and Radiation Devices Regulations
- Packaging and Transport of Nuclear Substances Regulations
- Radiation Protection Regulations

- Uranium Mines and Mills Regulations

(Annex 2 includes a definition of Class I, II and III nuclear material)

Under the *Nuclear Safety and Control Act* (1997), as well as policies, directives and international commitments of the federal government, the Canadian Nuclear Safety Commission (CNSC) is the independent federal government agency that regulates the use of nuclear energy and nuclear materials in Canada. The CNSC:

- Regulates the development, production and use of nuclear energy in Canada;

- Regulates the production, possession, use and transport of nuclear substances, and the production, possession and use of prescribed equipment and prescribed information; and

- Implements measures respecting international control of the development, production, transport and use of nuclear energy and nuclear substances, including measures respecting the non-proliferation of nuclear weapons and nuclear explosive devices.

Section 2 of the NSCA defines nuclear substance as:

> (a) deuterium, thorium, uranium or an element with an atomic number greater than 92;
>
> (b) a derivative or compound of deuterium, thorium, uranium or of an element with an atomic number greater than 92;
>
> (c) a radioactive nuclide;
>
> (d) a substance that is prescribed as being capable of releasing nuclear energy or as being required for the production or use of nuclear energy;
>
> (e) a radioactive by-product of the development, production or use of nuclear energy; and
>
> (f) a radioactive substance or radioactive thing that was used for the development or production, or in connection with the use, of nuclear energy.

The *General Nuclear Safety and Control Regulations* (2000) define prescribed equipment as, *inter alia*:

> equipment that is capable of being used in the design, production, operation or maintenance of a nuclear weapon or nuclear explosive device.

And prescribed information as being information that concerns, *inter alia*, the following:

(a) a nuclear substance that is required for the design, production, operation or maintenance of a nuclear weapon or nuclear explosive device, including the properties of the nuclear substance;

(b) the design, production, use, operation or maintenance of a nuclear weapon or nuclear explosive device;

(c) the security arrangements, security equipment, security systems and security procedures established by a licensee in accordance with the Act, the regulations made under the Act or the licence, and any incident relating to security.

Section 26 of the NCSA prohibits, except in accordance with a licence, the following activities with respect to nuclear substances, prescribed equipment or prescribed information: possession, transfer, import, export, use or abandonment. Section 24 of the NSCA establishes a licensing requirement for those activities identified in Section 26. Licences will only be granted if applicants qualify to carry on the activity and will, *inter alia*, make adequate measures for the maintenance of national security and measures required to implement international obligations to which Canada has agreed. The activity permitted must be specified in the licence and is only authorized for the period specified in the licence.

Section 50 of the NSCA states:

> Every person commits an offence who, except as authorized by this Act, possesses a nuclear substance, prescribed equipment or prescribed information that is capable of being used to produce a nuclear weapon or a nuclear explosive device.

Offences under Section 50 of the NSCA are indictable offences, liable to imprisonment for up to 10 years.

Subsection 7(3.2) of the *Criminal Code* provides for extraterritoriality over possessing, using, transferring, sending or delivering to any person, transporting, altering, disposing of, dispersing or abandoning nuclear material where to do so causes or is likely to cause the death of, or serious bodily harm to, any person or causes or is likely to cause serious damage to, or destruction of, property and the act or omission would, if committed in Canada, constitute an offence under the *Criminal Code* provided that one of the conditions set out in subsection 7(3.5) is met (the act is committed on a Canadian ship or aircraft or the offender is a Canadian citizen or is present in Canada after committing the act).

Biological weapons, and their means of delivery

In 1972 Canada signed and ratified the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (generally known as the BTWC).

The purpose of the *Biological and Toxin Weapons Convention Implementation Act* (BTWCIA) is to fulfill Canada's obligations under the BTWC as amended from time to time pursuant to Article XI of the BTWC. The BTWCIA enables the establishment of a domestic compliance regime to coordinate, through a responsible authority, the submission of declarations, facility inspections and other activities.

Under Section 6 of the BTWCIA, no person shall develop, produce, retain, stockpile, otherwise acquire or possess, use or transfer:

- Any microbial or other biological agent or any toxin for any purpose other than prophylactic, protective or other peaceful purposes.

- Any weapon, equipment or means of delivery designed to use such an agent or toxin for hostile purposes or in armed conflict.

Contravention of this Section is an indictable offence and liable on conviction to a fine not exceeding $1,000,000 or to imprisonment for up to 10 years, or both.

The BTWCIA received Royal Assent in 2004. Canada is in the process of drawing up as a matter of urgency comprehensive regulations to bring the BTWCIA into force.

Acting as an accomplice, assisting or financing such activities

Section 21 of the *Criminal Code* sets out the liability of principals and parties to an "offence"[a]. It provides as follows:

> Every one is a party to an offence who
>
> (a) actually commits it;
>
> (b) does or omits to do anything for the purpose of aiding any person to commit it; or
>
> (c) abets any person in committing it.

It also provides, in subsection (2) for liability for common intent: "Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence."

[a] By virtue of the *Interpretation Act*, *Criminal Code* provisions relating to party liability and the liability of accessories to an offence also apply to offences created by other federal statutes (such as the *Chemical Weapons Convention Implementation Act* and the *Biological and Toxin Weapons Convention Implementation Act*).

Section 22 provides that persons who counsel an offence are also parties:

> (1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.
>
> (2) Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling.
>
> (3) For the purposes of this Act, "counsel" includes procure, solicit or incite.

Sections 23 and 24 deal with accessory liability (accessories after the fact and attempts, respectively). Subsection 23(1) defines as an accessory after the fact to an offence one who "knowing that a person has been a party to the offence, receives, comforts or assists that person for the purpose of enabling that person to escape" while subsection 24(1) provides that:

> Every one who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out the intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence.

Section 465 establishes liability in the case of conspiracy in subsection (1) while subsections (3) and (4) provide for extraterritoriality:

> (1) Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy:
>
> > (a) every one who conspires with any one to commit murder or to cause another person to be murdered, whether in Canada or not, is guilty of an indictable offence and liable to a maximum term of imprisonment for life;
> >
> > (b) every one who conspires with any one to prosecute a person for an alleged offence, knowing that he did not commit that offence, is guilty of an indictable offence and liable
> >
> > > (i) to imprisonment for a term not exceeding ten years, if the alleged offence is one for which, on conviction, that person would be liable to be sentenced to imprisonment for life or for a term not exceeding fourteen years, or

(ii) to imprisonment for a term not exceeding five years, if the alleged offence is one for which, on conviction, that person would be liable to imprisonment for less than fourteen years;

(c) every one who conspires with any one to commit an indictable offence not provided for in paragraph (a) or (b) is guilty of an indictable offence and liable to the same punishment as that to which an accused who is guilty of that offence would, on conviction, be liable; and

(d) every one who conspires with any one to commit an offence punishable on summary conviction is guilty of an offence punishable on summary conviction.

…

(3) Every one who, while in Canada, conspires with any one to do anything referred to in subsection (1) in a place outside Canada that is an offence under the laws of that place shall be deemed to have conspired to do that thing in Canada.

(4) Every one who, while in a place outside Canada, conspires with any one to do anything referred to in subsection (1) in Canada shall be deemed to have conspired in Canada to do that thing.

Section 23 of the *Security of Information Act* provide for accessory liability, while subsection 22(1) establishes liability for preparatory acts, as follows:

(1) Every person commits an offence who, for the purpose of committing an offence under subsection 16(1) or (2), 17(1), 19(1) or 20(1), does anything that is specifically directed towards or specifically done in preparation of the commission of the offence, including

(a) entering Canada at the direction of or for the benefit of a foreign entity, a terrorist group or a foreign economic entity;

(b) obtaining, retaining or gaining access to any information;

(c) knowingly communicating to a foreign entity, a terrorist group or a foreign economic entity the person's willingness to commit the offence;

(d) at the direction of, for the benefit of or in association with a foreign entity, a terrorist group or a foreign economic entity, asking a person to commit the offence; and

(e) possessing any device, apparatus or software useful for concealing the content of information or for surreptitiously communicating, obtaining or retaining information.

**Laws and regulations as well as law enforcement efforts your Government has taken or intends to take:**

- **further information on national measures to account for, secure and physically protect nuclear, chemical, biological weapons and their means of delivery, including related materials**

Canada does not possess nuclear, chemical or biological weapons, nor their associated means of delivery.

Related material: nuclear

Canada signed the *Convention on the Physical Protection of Nuclear Material* (CPPNM) in 1980 (INFCIRC/274/Rev1). The Convention entered into force in February 1987. It establishes measures related to the prevention, detection and punishment of offenses relating to nuclear material. A Diplomatic Conference in July 2005 agreed to amend the Convention and strengthen its provisions. The amended Convention makes it legally binding for States Parties to protect nuclear facilities and material in peaceful domestic use, storage as well as transport. It also provides for expanded co-operation between and among States regarding rapid measures to locate and recover stolen or smuggled nuclear material, mitigate any radiological consequences of sabotage, and prevent and combat related offences. Canada is supportive of the amendment and is already largely compliant with its terms. Ratification of the Amendment to the CPPNM would however, likely require some changes to Canadian law.

Measures to account for, secure and physically protect materials that could be related to nuclear weapons are currently included in the following regulations issued pursuant to the *Nuclear Safety and Control Act*:

- Class I Nuclear Facilities Regulations
- Class II Nuclear Facilities and Prescribed Equipment Regulations
- General Nuclear Safety and Control Regulations
- Nuclear Security Regulations
- Nuclear Non-proliferation Import and Export Regulations
- Nuclear Substances and Radiation Devices Regulations
- Packaging and Transport of Nuclear Substances Regulations

The Canadian Nuclear Safety Commission (CNSC) regulates the nuclear industry in Canada. It is also designated as the agency responsible for Canada's State System of

Accountancy for and Control of nuclear material. It is the competent technical authority for implementing the relevant provisions of Canada's safeguards agreement and Additional Protocol with the IAEA, and ensures that measures are in place to account for the production, use, and storage of all nuclear material in Canada. These measures include controls on international transfers (imports and exports) of nuclear material.

Nuclear facility operators and other users of nuclear materials are obliged to report on the production, transfer, and inventories of nuclear materials subject to safeguards. The CNSC conducts inspections to ensure licensee compliance with national regulations and Canada's compliance with international obligations. Reports are submitted to the IAEA and form the basis for IAEA safeguards inspections in Canada.

The *Nuclear Security Regulations* set out detailed requirements for physical protection of nuclear facilities and nuclear material. These include setting minimum requirements for the design and layout of physical protection measures for protected areas and inner areas (for example alarm systems, 24/7 visual surveillance, intruder detection systems, central security monitoring room). The Regulations also establish the requirement for physical proof of authorisation to access inner areas, as well as establishing the requirement to search persons entering or leaving a nuclear facility's protected and inner areas.

Following the events of 11 September 2001, the Canadian government issued an Order which required licensees to take immediate action on a number of measures to increase security at major nuclear facilities. The measures covered items such as:

- immediate, on-site armed response available twenty-four hours a day, seven days a week;
- enhanced security screening of employees and contractors involving background, police and security checks;
- protection against forced vehicle penetration of the Protected Area with the addition of vehicle barriers;
- improved physical identification checks of personnel utlizing card access and biometrics; and
- searching of personnel and vehicles utilizing explosives detectors, X-ray screening and metal detection equipment.

The *Nuclear Security Regulations* are being updated to incorporate all of the new requirements and are scheduled to come into force by mid 2006.

The requirement for adequate physical protection measures is also reflected in Canada's bilateral nuclear cooperation agreements. Although the exact wording may vary slightly from one agreement to another, the model provision is as follows:

1. Each Party shall take all measures necessary, commensurate with the assessed threat prevailing from time to time, to ensure the physical protection of nuclear material subject to this Agreement and shall, as a minimum, apply levels of physical protection as set out in Annex E to this Agreement.

2. The Parties shall consult at the request of either Party concerning matters related to the physical protection of nuclear material, material, equipment and technology subject to this Agreement including those concerning physical protection during international transportation.

(The wording of Annex E is included in Annex 3 of this report.)

Canada has bilateral nuclear co-operation agreements with the following: Argentina, Australia, Brazil, China, Colombia, Czech Republic, Egypt, EURATOM, Finland, Germany, Hungary, Indonesia, Japan, Republic of Korea, Mexico, Philippines, Romania, Russian Federation, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, Uruguay (awaiting ratification), USA. In addition, a Third Party Supply Agreement is in place with the USA concerning the supply of uranium to Taiwan. Administrative arrangements pursuant to these agreements assure the application of international export control regimes, international safeguards obligations, and Canadian nuclear non-proliferation and export control policies.

The *Packaging and Transport of Nuclear Substances Regulations* are based on IAEA Safety Standards Series TS-R-1 (ST-1, Revised), *Regulations for the Safe Transport of Radioactive Material, 1996 (Revised)*. The *Packaging and Transport of Nuclear Substances Regulations* include requirements for the design, production, use, inspection, maintenance and repair of packages, to be certified by the CNSC.

These Regulations also establish a licensing regime for Category I, II or III nuclear material, certified packages in transit and shipments made under Special Arrangement. The Regulations also establish procedures to be followed in the event of an incident or accident.

Under the *Nuclear Security Regulations*, an application to transport Category I, II or III nuclear material must contain a written transportation security plan. The transportation security plan must include a detailed threat assessment, a description of the conveyance, the proposed security measures, proposed route and alternate, communication arrangements, and arrangements made between the licensee and any response force along the way.

Related material: chemical, biological

The Chemical Weapons Convention (CWC) is fully implemented in Canada by the *Chemical Weapons Convention Implementation Act (1995)* and its associated *Schedule 1 Chemical Regulations (CWC) (2004).*

Section 6 of the *Chemical Weapons Convention Implementation Act (CWCIA)* stipulates that:

> No person shall
>
> (a) develop, produce, otherwise acquire, stockpile or retain a chemical weapon, or transfer, directly or indirectly, a chemical weapon to anyone;
>
> (b) use a chemical weapon;
>
> (c) engage in any military preparations to use a chemical weapon; or
>
> (d) assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Convention.

Sections 20 through 22 set out enforcement provisions, including the principle of extraterritoriality.

Under the *Schedule 1 Chemical Regulations (CWC) (2004),* a licence is required to produce, use, acquire or possess a Schedule 1 chemical (as defined in the Chemical Weapons Convention), subject to certain specified conditions being met. Section 8 establishes that, *inter alia*, a licensee:

> (a) shall meet the requirements of the Act and these Regulations and ensure that the activities authorized by the licence are carried out safely and in compliance with those requirements;
>
> (b) shall ensure that any individual referred to in paragraph 4(1)(c) who produces or uses a Schedule 1 chemical is adequately supervised in the course of that production or use;
>
> …
>
> (e) shall control access to the Schedule 1 chemicals set out in the licence;
>
> (f) shall inform the National Authority as soon as practicable of any loss or unintended release of a Schedule 1 chemical; and
>
> (g) shall immediately inform the National Authority of any theft of a Schedule 1 chemical or any attempt by an unauthorized individual to obtain a Schedule 1 chemical.

The National Authority for the CWC is located in the Department of Foreign and International Trade (DFAIT).

The Government's Biohazard Containment and Safety Unit helps establish the biocontainment levels, procedures and protocols that are needed to work safely with animal

and zoonotic pathogens, chemical hazards, and plant pests of quarantine significance. The Unit also co-ordinates laboratory safety programmes and provides guidance and support to the Government's medical surveillance programmes.

Facility inspections (level 2-4 labs) are carried out by relevant Canadian authorities, which issue safety and security certifications for labs. This certification covers how the lab is built, maintained and if personnel are taking necessary precautions. It does not cover what the lab is doing with the pathogens, what experiments they are running and how they are doing it. The Government has worked to raise the profile of these and similar measures, including through the publication of Laboratory Biosafety Guidelines. This is in the process of being updated.

The *Hazardous Products Act* establishes an inspection regime. In addition, the *Consumer Chemical and Containers Regulations (2001)* sets out requirements for the safe handling and storage of toxic chemicals.

The *Transportation of Dangerous Goods Act (1992),* and its associated regulations, sets out stringent requirements for the movement of, *inter alia*, flammable liquids, infectious substances, biological products.

Canada is currently working on strengthening control mechanisms for biological material in Canada, including through the creation of a tracking mechanism within Canada for pathogens on the Export Control List, as well as transfers within and outside Canadian territory.

**Laws and regulations as well as law enforcement efforts your Government has taken or intends to take:**

- **further information on border controls to detect, deter, prevent and combat the illicit trafficking and brokering of nuclear, chemical, biological weapons and their means of delivery, including related materials**

General

Subsections 103(1) and 104(1) of the *Criminal Code* broadly set out export and import-related offences:

> 103. (1) Every person commits an offence who imports or exports
>
> > (a) a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any prohibited ammunition, or
> >
> > (b) any component or part designed exclusively for use in the manufacture of or assembly into an automatic firearm,
>
> knowing that the person is not authorized to do so under the *Firearms Act* or any other Act of Parliament or any regulations made under an Act of Parliament.

Offences under subsection 103(1) are indictable offences, liable to imprisonment for up to ten years.

> 104(1) Every person commits an offence who imports or exports
>
> > (a) a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any prohibited ammunition, or
> >
> > (b) any component or part designed exclusively for use in the manufacture of or assembly into an automatic firearm,
>
> otherwise than under the authority of the *Firearms Act* or any other Act of Parliament or any regulations made under an Act of Parliament.

Offences under subsection 104(1) are liable to imprisonment for up to five years.

Export controls

Export Control policy is directed by the Department of Foreign Affairs and International Trade, in close co-operation with other federal departments (in particular the Canadian Nuclear Safety Commission, and the Department of National Defence). An interagency consultation process is in place during the review of permit applications. There is also

interagency cooperation and consultation related to the technical aspects of a permit application wherein technical experts review and determine whether a good or technology is controlled.

The centre-piece of Canadian import and export control legislation is the *Export and Import Permits Act* (EIPA) *(1985*). Under the EIPA, export control violators can be subject to imprisonment for up to 10 years, and/or a fine (the amount of which is at the discretion of the court).

The EIPA establishes, *inter alia*, an extensive Export Control List (ECL). The ECL is divided into eight different groups:

Group 1: Dual-use List
Group 2: Munitions List
Group 3: Nuclear Non-Proliferation List
Group 4: Nuclear-Related Dual-use List
Group 5: Miscellaneous Goods and Technology
Group 6: Missile Technology Control Regime List
Group 7: Chemical and Biological Weapons Non- Proliferation List
Group 8: Chemicals for the Production of Illicit Drugs.

The ECL reflects Canada's undertakings to the various international export control regimes. The Wassenaar Arrangement (WA) on Export Controls for Conventional Arms and Dual-use Goods and Technology is put into effect under Groups 1 (dual-purpose goods and technology that have both civilian and military application) and Group 2 (goods and technology that are specially designed or modified for military purposes). Commitments under the Nuclear Suppliers Group, of which Canada was a founding member, are put into effect under Group 3 (goods and technology that are nuclear-specific) and 4 (goods and technology that are nuclear related, dual-use, goods and technology; that is, items that can be used for nuclear as well as non-nuclear applications and that could be used in a nuclear explosive activity or a non-safeguarded nuclear fuel cycle activity). The catch-all controls are included under Group 5, as well as *inter alia* strategic goods and technology. Group 6 includes goods and technology agreed upon by the Missile Technology Control Regime (MTCR) that are used or could be used in the proliferation of systems capable of delivering chemical, biological or nuclear weapons. Chemical weapon precursors and biological agents and related dual-use equipment are identified in Group 7, based on commitments under the Australia Group. Also contained in ECL Group 7 (and to a lesser degree in Group 2) are chemicals and precursors controlled under the Chemical Weapons Convention (CWC).

The ECL is updated on a regular basis pursuant to amendments within the multilateral regimes to which Canada is a party.

New regulations require exporters to report their shipments to the appropriate authorities within certain time periods before loading to allow review of the export documentation and determination of any need for physical inspection of a particular shipment. If any shipment requires a permit because of the strategic nature and/or destination of the goods, this must be provided with the export report prior to loading. Canadian authorities have signed agreements with all major air and marine carriers that they will not load export shipments without submitting proof of reporting by the exporter.

Canada at this time has no explicit controls or regulations that address brokering activity holistically where the goods involved are never within Canada, except where sections of the *Criminal Code* relating to conspiracy activity can be applied. However, the matter of brokering is dealt with quite exhaustively by Canadian federal legislation in one fashion or another. The various elements of the issue are addressed by the EIPA, the *Defence Production Act* (DPA), and the *Firearms Act* (FA), amongst others. With respect to the EIPA, brokers who act as exporters of record for items on the *ECL* are required to apply for an export permit. Under the *DPA*, the domestic possession, examination and transfer of "controlled items" including most munitions are strictly controlled; whereby, any broker who would have access to controlled goods or technology would be regulated. The *FA* also regulates business involved in firearms, which could include brokering. In addition, all firearms under the act are registered in Canada. The *United Nations Act* and *Anti-Terrorism Act* cover brokering related to UN embargoed destinations and brokering as they relate to financing and terrorism.

In addition, Canada has an explicit prohibition related to transhipment or diversion, and potentially brokering, of any goods included on the *ECL* to be made from Canada or any other place to any country included on the *Area Control List* (ACL).

Nuclear

Nuclear and nuclear-related dual-use imports and exports are subject to additional controls under the *Nuclear Safety and Control Act* (1997), and the *Nuclear Non-Proliferation Import and Export Control Regulations*.

The Canadian Nuclear Safety Commission (CNSC) licenses the import and export of nuclear and nuclear-related materials, equipment and technology identified as presenting proliferation risks. The schedules of the *Nuclear Non-Proliferation Import and Export Regulations* (NNPIECR) detail the controlled substances, equipment and technology subject to export and import controls under the *Nuclear Safety and Control Act (1997)* (NSCA). The schedules found in the NNPIECR are consistent with commitments under the Nuclear Suppliers Group (NSG), including the NSG Guidelines. Canadian importers and exporters are required to obtain and comply with licences controlling the international transfer of nuclear and nuclear-related items, and need to demonstrate the measures that will be taken to facilitate Canada's compliance with the Convention on the Physical Protection of Nuclear Material (CPPNM). The CNSC evaluates and takes appropriate action on export and import

licence applications respecting all of Canada's nuclear non-proliferation, safeguards and security obligations. Under the EIPA and NNPIECR, exporters are also obliged to request that the importer obtain an End Use Certificate or Import Licence, whichever is applicable, from the government of the destination country.

Major nuclear exports are also made subject to bilateral nuclear cooperation agreements (NCAs) between Canada and the importing country. These agreements establish reciprocal obligations designed to further minimize the proliferation risk associated with international transfer of major nuclear items. Through its NCAs, Canada retains re-export control of items made subject to an NCA; importing countries are obliged to request and receive consent from Canada before retransferring such items. Canadian authorities implement administrative arrangements with their foreign counterparts to effectively fulfill the terms and conditions of these agreements.

Catch-all controls

In 2002, Canada implemented 'catch-all' controls that cover the export of any goods and technology not listed elsewhere on the ECL. Goods for Certain Uses (item 5505) imposes a permit requirement on any goods and related technology if it is determined that the goods or technology are destined to an end-use or end-user involved in the development or production of chemical, biological or nuclear weapons or Weapons of Mass Destruction (WMD), or their missile delivery systems. Before exporting any goods or technology whatsoever exporters must assure themselves that the exported item is not being transferred, directly or indirectly, to a WMD end-use/end-user.

Intangible transfers

Royal Assent of amendments to the EIPA was given in 2005 that provide more explicit controls over technology and the intangible transfer of technology. These amendments should come into force in 2006.

Area Controls

The EIPA also establishes an Area Control List, "including therein any country to which the Governor in Council deems it necessary to control the export of any goods". Regardless of being listed or not on the Export Control List (ECL), any goods or technology going to a country on the Area Control List require a permit before they can be exported. Myanmar is currently the only country listed on Canada's Area Control List.

For any nation that is subject to a United Nations Security Council embargo, additional approvals may also be required. Under the *United Nations Act (1985),* Section 2:

> [w]hen, in pursuance of Article 41 of the Charter of the United Nations ... the Security Council decides on a measure to be employed to give effect to any of its decisions and calls on Canada to apply the measure, the Governor in Council may make such

orders and regulations as appear to him to be necessary or expedient for enabling the measure to be effectively applied

Enforcement

Export and border controls are enforced by the Canada Border Services Agency (CBSA), which comes under the aegis of Public Security and Emergency Preparedness Canada (PSEPC). CBSA has a Strategic Export Control Unit dedicated to countering the proliferation of nuclear, chemical, and biological weapons and their means of delivery, and related material. This unit has responsibility for all related counter proliferation concerns as well as enforcement of export controls related to military and other strategic goods. It carries out this enforcement through application of the *Export and Import Permits Act* (EIPA) and the Customs Act, and their associated regulations.

A variety of technology is in use to help prevent certain goods and technology from entering and leaving Canada. Over the past few years, approximately $65 million has been invested to increase the inventory of detection equipment, including by adding the following:

- 106 X-ray systems, including baggage, mobile, and roll-in cargo systems;
- 12 Mobile Vehicle and Cargo Inspection Systems (VACIS, gamma-ray systems), used to detect contraband, weapons and other dangerous goods in marine containers, rail cars, or trucks;
- 3 Pallet VACIS (gamma-ray systems), used to scan pallets and large pieces of freight at marine container examination facilities;
- 3 Contraband Outfitted Mobile Examination Trucks (COMET);
- 5 Remote Operated Vehicles (ROV) for under-vessel detection, used in marine vessel operations;
- 12 flexible videoprobes, used to search for undeclared currency and contraband;
- More than 75 density meters, used at major border and marine ports to determine the density of a surface or object. The meters can discover hidden walls and help detect contraband;
- 105 fibrescopes, used at major border and marine ports to view areas that are inaccessible by the naked eye due to obstructions;
- 19 submersible pole cameras, used at marine ports and major commercial border crossings to inspect ships, containers and tractor trailers;
- 23 miniature pole cameras, used at major international airports to inspect aircrafts;

- Over 100 laser range finders, used to measure the inside of commercial containers; and,

- Over 100 mirror kits, used to inspect the undercarriage of vehicles and other hard to reach areas.

This technology is used in the examination of both inbound (import) and outbound (export) shipments.

Dedicated export examination/enforcement teams are located at the major ports of departure from Canada. These are supported by the work of dedicated export control intelligence officers in all regions, a national targeting centre and the Strategic Export Control Unit which directs the national program and provides a link for the program with other national, foreign and international agencies.

In January 2004, the Government of Canada established the National Risk Assessment Centre (NRAC). The NRAC, which operates 24 hours a day/7 days a week, acts as a focal point and an interface between intelligence agencies at the international, national, and local levels to protect Canada against current and emerging threats. Through the analysis and sharing of information, the NRAC increases Canada's ability to detect and stop the movement of high-risk goods into and out of the country by using sophisticated intelligence-gathering techniques and technology.

Canada is also an active participant in the Container Security Initiative (CSI), a multinational program that protects containerised shipping from being exploited or disrupted. It is designed to help safeguard global maritime trade while allowing cargo containers to move faster and more efficiently through the supply chain at seaports worldwide. The CSI is an extension of the Advance Commercial Information (ACI) Initiative, implemented in April 2004. Through the CSI program, Canadian officials will be deployed to foreign seaports to pre-screen and examine cargo containers before they are loaded aboard a vessel destined to Canada.

Canada is also an active participant in the multinational Proliferation Security Initiative (PSI). The PSI aims to help prevent trafficking in nuclear, chemical and biological weapons, their means of delivery, and related material. Canada hosted a PSI meeting in April 2004.

**Laws and regulations as well as law enforcement efforts your Government has taken or intends to take:**

- **further information on transit and trans-shipment controls, including appropriate penalties for violations of such controls, over nuclear, chemical, biological weapons and their means of delivery, including related materials.**

Under the *Export and Import Permits Act* (EIPA), any transfer of controlled goods and technology, including technical assistance, as defined by Canada's *Export* Controls List (ECL), requires a permit. Canadian controls, on items transiting or being transhipped through Canadian waters, airspace or territory, apply when the items break shipment or enter into the Canadian economy. Canada participates in various export control regimes and it complies with international law.

Transit

"Transit" is considered for all goods that originate outside Canada that are included in the ECL, under Item 5401, pursuant to the EIPA. Exemptions exist for goods in transit which are in bond on a through journey on a billing that originates outside Canada, where the billing indicates that the ultimate destination of the goods is a country other than Canada and, in certain cases, goods that are shipped from the U.S. (for example, when the export is accompanied by a certified true copy of the U.S. Shipper's Export Declaration). In lieu of an end-use certificate, transit cargo is reported via a Customs in-transit cargo control document.

Transhipment

"Transhipment" is considered when goods have been unloaded or in any way removed from the means of transportation by which they came into Canada, their loading, placing or board, or within or upon the same or any other means of transportation. Transhipped cargo to all destinations is reported via a cargo control document/manifest. An end-use certificate is required when the items have been removed from transit.

The current Transhipment Regulations as applied under the EIPA will be subject to review in the coming fiscal year. Under the EIPA, Canada has an explicit prohibition related to transhipment or diversion of any goods included on the ECL to be made from Canada or any other place to any country included on the Area Control List (ACL).

Re-Exports

While it is true that Canada does not have formal re-export regulations, there are certain circumstances existing whereby other Canadian measures address the illegal movement outside Canada of goods with a Canadian nexus. For example, the *Criminal Code* (subsection 7(3.72)) can be applied extra-territorially in certain circumstances (cf page 2, and Annex 1, of this report).

Certain major nuclear exports are made subject to bilateral nuclear cooperation agreements (NCAs) between Canada and the importing country allowing Canada to retain re-export authorization of those items. Importing countries are obliged to receive consent from Canada before retransferring such items (cf. page 13 of this report).

Canada's *Chemical Weapons Convention Implementation Act* (1995) and its associated regulations (2004) as well as its *Biological and Toxin Weapons Convention Implementation Act* (2004), both prohibit the transfer of chemical and biological weapons.

As stated above, Canada also has an explicit prohibition related to transhipment or diversion of any goods included on the ECL to be made from Canada or any other place to any country included on the Area Control List (ACL).

Penalties

Penalties, under the EIPA, can be deemed an indictable offence and liable to a fine in an amount that is at the discretion of the court and/or to imprisonment for a term not exceeding ten years. Export and border controls are enforced by the Canada Border Services Agency (CBSA). CBSA has a Strategic Export Control Unit dedicated to countering the proliferation of nuclear, chemical, and biological weapons and their means of delivery, and related materials. This unit has responsibility for all related counter proliferation concerns as well as enforcement of export controls related to military and other strategic goods. It carries out enforcement through the applications of the EIPA and the *Canada Customs Act*, and their associated regulations. In the case of offences under the Criminal Code, penalties will vary.

Penalties under the *Nuclear Safety and Control Act* (1997) range from a fine not exceeding $5,000 and/or imprisonment for a term not exceeding six months, to a possible fine not exceeding $1,000,000 or to imprisonment not exceeding 5-10 years, or both.

Penalties under Canada's *Chemical Weapons Convention Implementation Act* (1995) range from a fine not exceeding $5,000 or to imprisonment for a term not exceeding 18 months or both, to a fine not exceeding $500,000 or to imprisonment for a term not exceeding 5 years. The provisions of the Criminal Code apply for the purposes of enforcing the Act.

Contravention of Section 6 of the BTWCIA is an indictable offence and liable on conviction to a fine not exceeding $1,000,000 or to imprisonment for up to 10 years or both.

## Annex 1

### Extra-territorial application of certain offences

The Criminal Code (subsection 7(3.72) establishes that, in certain circumstances, the offences set out in section 431.2 (page 2) will be applied extraterritorially:

> Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, or being an accessory after the fact or counselling in relation to an offence against, section 431.2 is deemed to commit that act or omission in Canada if
>
> (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, under any Act of Parliament;
>
> (b) the act or omission is committed on an aircraft
>
> (i) registered in Canada under regulations made under the *Aeronautics Act*,
>
> (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under those regulations, or
>
> (iii) operated for or on behalf of the Government of Canada;
>
> (c) the person who commits the act or omission
>
> (i) is a Canadian citizen, or
>
> (ii) is not a citizen of any state and ordinarily resides in Canada;
>
> (d) the person who commits the act or omission is, after the commission of the act or omission, present in Canada;
>
> (e) the act or omission is committed against a Canadian citizen;
>
> (f) the act or omission is committed with intent to compel the Government of Canada or of a province to do or refrain from doing any act; or
>
> (g) the act or omission is committed against a Canadian government or public facility located outside Canada.

## Annex 2

### Category I, II and III nuclear material

| Item | Column 1<br>Nuclear Substance | Column 2<br>Form | Column 3<br>Quantity (Category I)[1] | Column 4<br>Quantity (Category II)[1] | Column 5<br>Quantity (Category III)[1] |
|---|---|---|---|---|---|
| 1. | Plutonium[2] | Unirradiated[3] | 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[3] -- uranium enriched to 20% $^{235}$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 |
| 3. | Uranium 235 | Unirradiated[3] -- uranium enriched to 10% $^{235}$U or more, but less than 20% $^{235}$U | N/A | 10 kg or more | Less than 10 kg, but more than 1 kg |
| 4. | Uranium 235 | Unirradiated[3] -- uranium enriched above natural, but less than 10% $^{235}$U | N/A | N/A | 10 kg or more |
| 5. | Uranium 233 | Unirradiated[3] | 2 kg or more | Less than 2 kg, but more than 500 g | 500 g or less, but more than 15 g |
| 6. | Fuel consisting of depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content)[4] | Irradiated | N/A | More than 500 g of plutonium | 500 g or less, but more than 15 g of plutonium |

1. The quantities listed refer to the aggregate of each kind of nuclear substance located at a facility, excluding the following (which are considered separate quantities):

   (*a*) any quantity of the nuclear substance that is not within 1 000 m of another quantity of the nuclear substance; and

   (*b*) any quantity of the nuclear substance that is located in a locked building or a structure offering similar resistance to unauthorized entry.

2. All plutonium except that with isotopic concentration exceeding 80% in plutonium 238.

3. Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 1 Gy/h at 1 m unshielded.

4. Other fuel that by virtue of its original fissile content is classified as Category I or II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 1 Gy/h at 1 m unshielded.

## Annex 3

### Bilateral nuclear agreements: Model language on agreed levels of physical protection

*Model agreement, Annex E: Agreed Levels of Physical Protection*

The agreed levels of physical protection to be ensured by the appropriate governmental authorities in the use, storage and transportation of the materials of the attached table shall as a minimum include protection characteristics as follows:

**Category III**

Use and Storage within an area to which access is controlled.

Transportation under special precautions including prior arrangement between sender, recipient and carrier, and prior agreement between States in case of international transport specifying time, place and procedures for transferring transport responsibility.

**Category II**

Use and Storage within a protected area to which access is controlled, i.e. 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.

Transportation under special precautions including prior arrangement between sender, recipient and carrier, and prior agreement between States in case of international transport specifying time, place and procedures for transferring transport responsibility.

**Category I**

Materials in this Category shall be protected with highly reliable systems against unauthorized use as follows:

Use and Storage within a highly protected area, i.e. 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 objective the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

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.