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GENERAL AND COMPLETE DISARMAMENT: PROHIBITION OF  
ATTACKS OR NUCLEAR FACILITIES

Report of the Secretary-General

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. INTRODUCTION .....	1 - 3	2
II, REPORT OF THE CONFERENCE ON DISARMAMENT ON <b>THE</b> SUBJECT <b>OFRADIOLOGICAL</b> WEAPONS .....	4	3
III. REPORT OF THE DIRECTOR GENERAL <b>OF THE</b> INTERNATIONAL ATOMIC ENERGY AGENCY .....*	5	3
<b>Annex.</b> Report of Contact Group <b>B</b> of the Ad Hoc Committee on Radiological <b>Weapons</b> of the Conference on Disarmament .....		5

## I. INTRODUCTION

1. On 4 December 1990, the General Assembly adopted resolution 45/58 J entitled "Prohibition of attacks on nuclear facilities", the operative part of which reads as follows:

**"The General Assembly,**

**"...**

**"1. Recognizes** that an armed attack or a threat of **armed** attack on a safeguarded nuclear facility, operational or under construction, would create a **situation in** which the Security Council would have to **act immediately in accordance** with the provisions of the Charter of the United Nations, including **measures** under Chapter VII;

**"2. Encourages** all States to **be ready** to provide **immediate** peaceful assistance in **accordance** with international law to any State, if it so **requests**, whose **safeguarded nuclear facilities** have been subjected to an armed attack, and calls upon all States to **abide by any decisions** taken **by** the Security Council **in accordance with the** Charter in relation to the attacking **State**;

**"3. Appeals** to States that participate in the **Conference on** Disarmament to **overcome** their differences, and **urges** the **cooperation** of all **States** for the successful resolution of this **issue** in the near **future**;

**"4. Calls upon** all States that have not done so to become parties to Additional Protocol I of 1977 **1/** to the Geneva Conventions of **12 August 1949 2/** and upon **all States parties** to that Protocol to **consider**, in the context of a **possible** diplomatic **conference**, how to improve the present regime with regard to the protection of nuclear **facilities**;

**"5. Notes** that States, in their mutual interest, have adopted confidence-building **measures**, in a bilateral or regional framework, designed to promote the aim of protecting nuclear facilities, taking into **account** the **specific** characteristics of each **region**, and **recognizes** that other **States** may adopt similar measures, where appropriate<sup>8</sup>

**"6. Appeals** to all States to take **into** account, when **reviewing** their military policies, the danger of **radioactive releases** potentially resulting from an **attack on** a nuclear facility;

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**1/** United Nations, **Treaty Series**, vol. 1125, No. 17512.

**2/** Ibid., vol. 75, Nos. 970-973.

"7. **Requests** the Secretary-General to report **on** the subject to the General **Assembly** at **its forty-sixth session.**"

2. Pursuant to the **request contained in** paragraph 7 of the resolution, the Secretary-General **wisher to** report that the Conference **on** Disarmament **considered** the **issue** at its 1991 session under **its** agenda item 7, entitled "**New types of weapons of mass destruction and new systems of such weapons, radiological weapons**". A detailed account of the subject **considered** by the **Conference on Disarmament is contained** in section II of the **present** report.

3. In 1991, the International **Atomic Energy Agency** (IAEA) also **considered** the issue **under its** agenda item entitled "**Prohibition of all armed attacks against nuclear installations devoted to peaceful purposes whether under construction or in operation**". The relevant part of the report of the Director General of **IAEA** is contained in section **III**.

## II. REPORT OF **THE** CONFERENCE ON DISARMAMENT ON THE SUBJECT OF RADIOLOGICAL WEAPONS

4. The **Conference** on Disarmament, at its 1991 **session**, re-established the Ad Hoc **Committee** on Radiological Weapons with a view to reaching **agreement** on a convention prohibiting the development, production, stockpiling and **use of** radiological **weapons**. In carrying out **its** task, the Ad Hoc Committee decided to continue the **same method** of work adopted at the previous **sessions**, that is, that Contact Group A would **continue to consider** the prohibition of radiological **weapons in** the "**traditional**" sense and **that** Contact Group B would continue to **consider** issues relevant to the prohibition of attacks against nuclear facilities. **The** report of Contact Group B and its attachment is reproduced as an annex to the present report.

## III. REPORT OF **THE** DIRECTOR GENERAL OF THE **INTERNATIONAL ATOMIC ENERGY AGENCY**

5. Pursuant to General **Conference** resolution **GC(XXXIV)/Res/533** of 1990, the Director General of **IAEA in** 1991 submitted a report to the General Conference under item 11 **(e)** of the provisional **agenda**, entitled "Prohibition of all armed attacks against nuclear installations devoted to peaceful purposes whether under construction or in operation", as contained in document **GC(XXXV)/INF/297**. Paragraph **8** of the report **reads** as follows:

"8. **The** relevance of current consideration of this **subject was** shown in 1991 by attacks on nuclear installations in **Iraq** and by the reported threat of **attacks on the Krsko** nuclear power plant **in** Yugoslavia.

"(a) During the United **Nations-authorized** military action against Iraq following Iraq's occupation of Kuwait, **some** nuclear installations in Iraq were bombed. The Director General referred to this in the Board last **February**. **The** Board did not discuss the matter at that time and has not done **so** subsequently from the point of the view of the General Conference resolution under consideration.

"(b) Following **expressions** of international **concern** for the security of the **Krsko** nuclear power **plant**, the Acting Director General, in a letter of 4 July 1991 to the **President of Yugoslavia**, asked for confirmation that all **necessary** precautions had been taken to **ensure** that no **hostile** action against the **Krsko** plant or military action in its **immediate** vicinity could endanger its integrity and safety. In a letter of 8 July 1991 the Yugoslav **Ministry** of Foreign Affairs **stated** that the inviolability and safety of the **Krsko** nuclear power plant was a **continuing and undiminished** concern of the Yugoslav **Government** and of other **appropriate** authorities. There has been no **reported evidence** of damage to the power plant. It may be mentioned, in **this** connection, that **Yugoslavia** is a party (since 1979) to Protocol II additional to the **Geneva** Conventions of 12 August 1949, article 15 of which prohibits attacks on 'works or installations containing dangerous **forces**, namely **dams, dykes** and nuclear electrical generating stations' if such attacks may **cause** 'the release of dangerous forces and consequent severe losses among the **civilian population**'."

## ANNEX

**Report of Contact Group B of the Ad Hoc Committee on Radiological Weapons of the Conference on Disarmament\***

1. In **accordance** with the decision taken by the Ad **Hoc** Committee on Radiological Weapons at **its 1st** meeting on 25 February 1991, Contact Group **B** was re-established to continue consideration of the issues relevant to the prohibition of attacks against nuclear **facilities**.
2. Contact **Group B** held eight meetings from 18 March to 12 August **1991**. In addition, the Coordinator held a number of informal consultations with delegations.
3. According to guideline<sup>8</sup> set out during **the 1st** meeting **of** the Ad Hoc Committee, Contact Group **B** **used as a basis** for **its substantive** work the Coordinator's record <sup>a8</sup> contained in the report of **the** Ad Hoc Committee to the Conference on **Disarmament** in 1990 (CD/1027, annex II, **attachment**). The Contact Group reviewed the **possible** element<sup>8</sup> relevant to **the** prohibition of attacks **against** nuclear facilities contained therein. A number of modification<sup>8</sup> were made to the Coordinator's **record**, **focused** mainly on the questions of **register** and verification **and** compliance.
4. The amended **Coordinator's** <sup>8</sup> record is attached to the report **and reflects the current stage** of the Contact Group's consideration of the **question**.
5. The Coordinator's record **is** not binding upon **any** delegation and its **main** purpose **is** to facilitate future **consideration**. It is **recommended** that it be appended to **the** Ad Hoc Committee's report to **the** Conference on Disarmament, **as a basis** for future work.

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\* CD/1099, annex PI.

ATTACHMENT

**Possible elements relevant to the prohibition of  
attacks against nuclear facilities a/, b/**

I. SCOPE

**Paragraph 1**

**First alternative**

Each State Party undertake8 never under **any circumstances** to attack nuclear **facilities** covered by this Treaty.

**Second alternative**

Each **State** Party undertake8 never under **any circumstances** to attack or to threaten to **attack** any nuclear facility.

**T h i r d    a/**

Each State Party undertake8 **never under any circumstances to release** and disseminate radioactive **substances** by attacking **nuclear** facilities covered by **this** Treaty.

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**a/** This record **does not** prejudice the eventual position8 of delegation8 relating to the question of "**linkage**", or the **positions** of **delegations** on the question of the need of having additional legal protection for nuclear facilities. As to the latter, the View **was** expressed that additional **discussion** on **existing** international agreement8 pertaining to **the** question **was** needed.

**b/** One delegation **stated** that, apart from the fact **that** the elements listed were controversial, the third alternative under Scope, paragraph 1, of the **Definitions** and the sections on Criteria and Special Marking were not essential to the elaboration of a convention. The section on Special Marking could have been **recast** within the section on **Register**. That **was** not, however, the case of the other element8 mentioned, **particularly** the **section** on Criteria, which, in **its** opinion, seemed incompatible with the rule of **jus cogens** in Article 2, paragraph 4, of the Charter of the United **Nations**.

**c/** Some delegation8 stated that the third alternative of Scope **based** on the criterion of mass8 destruction read in conjunction with **the** first alternative of paragraph 2 of Definitions, paragraph 1 of Criteria, paragraph8 1 to 3, **the** first alternative of paragraph 4, paragraph6 5 **and** 6 of Register as well as Special Marking in paragraph 1 under Other **Main Element8** constitute one complete **and consistent** set of element8 to be included in a draft **treaty**.

## **Paragraph 2**

Each State Party undertake<sup>8</sup> not in any way to **assist**, encourage or induce **any person, State, group of State<sup>8</sup>, or international organization** to act **in** contravention **of** this Treaty.

## II. DEFINITIONS

### **Paragraph 1**

For the purpose<sup>8</sup> of this Treaty, the term "**attack**" means any act by a State which **is designed to cause** or **causes, directly** or indirectly:

- (i) Any **damage** to, or the **destruction of**, a nuclear facility] or
- (ii) Any interference, interruption, **impediment**, <sup>8</sup>stoppage or breakdown in the operation of a nuclear facility<sup>1</sup> or
- (iii) Any injury to, or the death of, any of the **personnel** of a nuclear facility.

### **Paragraph 2**

#### **First alternative**

For the **purpose** of **this** Treaty, the term "**nuclear facilities**" means: **d/**

- (i) Nuclear **reactors**;
- (ii) **Intermediate** spent fuel **storages**;
- (iii) **Reprocessing plants**;
- (iv) **Waste deposits**, including temporary waste **storages**;
- (v) **Installations** for production or use of **important** and intensive **sources** of **gamma** radiation<sup>3</sup> **e/**

which are included **in** a **Register** maintained by the **Depositary**.

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**d/** The suggestion was made to add two further **categories** after "**(iii) Reprocessing plants**", namely: (iv) Nuclear fuel **processing plants**; and (v) Uranium **enrichment plants**.

**e/** The view was expressed that this provision should be further refined.

**Second alternative**

A nuclear facility means a nuclear reactor or any other facility for the production, handling, treatment, **processing** or **storage** of nuclear fuel or **other** nuclear material,

## III. CRITERIA

**Paragraph 1**

The nuclear facilities mentioned in paragraph 2 of **Definitions** shall meet the following **specifications: f/**

- (i) They **shall** be stationary on **land; g/, h/**
- (ii) Nuclear **reactors;** designed for a thermal power which could **exceed** '1 [10] Megawatt, **shall** have reached their **first** criticality and shall not have been **decommissioned;**
- (iii) Intermediate spent fuel **storages;** designed for storing radioactive material exceeding  $10^{17}$  [ $10^{18}$ ] Bq;
- (iv) **Reprocessing plants;** designed **for** containing radioactive material exceeding  $10^{17}$  [ $10^{18}$ ] Bq;
- (v) Waste **deposits; containing** radioactive material exceeding  $10^{17}$  [ $10^{18}$ ] Bq;
- (vi) **Installations** for production or **use** of **intensive** sources of gamma radiation; designed to contain radioactive material **whose gamma-radiation-dissipated power is equal to or greater than**  $6 \times 10^{16}$  [ $10^{17}$ ] Bq x MeV.

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**f/** The view **was** expressed that nuclear **facilities** mentioned in paragraph 2 of Definition **should** be **used** for peaceful purposes and subject to IAEA safeguards.

**g/** The view **was** expressed that nuclear facilities stationed in territorial water **and** the **exclusive** economic **zones** should also be considered.

**h/** The view **was expressed** that such nuclear facilities should not belong to weapon **systems**.



## Paragraph 2

### Additional specification suggested to the above specifications:

Nuclear facilities mentioned in paragraph 2 of Definition<sup>8</sup> which are under the **safeguards** of the International Atomic Energy Agency are covered by the provision of **this** Treaty.

## IV. REGISTER

### Paragraph 1

The **Depositary** shall establish, on the **basis** of initial **communications** by State<sup>8</sup> Parties, **as** set out in paragraph 2 below, a comprehensive **Register** of nuclear facilities covered by this Treaty, and **shall** maintain this **Register** on the **basis** of **subsequent communications** on **changes**, **as** set out in paragraph 5 below.

Certified **copies** of the Register shall be transmitted to each State Party . . . **days** after entry into force of the **Treaty**.

Certified copies of the **Register** in its entirety including **all** modification<sup>8</sup> shall be **transmitted** to each State Party at **intervals** Of . . . and be available to States **Parties** at **any** time in the office<sup>8</sup> of the **Depositary**.

### Paragraph 2

State<sup>8</sup> **Parties** requesting that nuclear facilities under their jurisdiction be included in the **Register** shall for each such facility communicate to the **Depositary** the following written **information**:

- (a) Identification of the type of nuclear **facility**;
- (b) Detailed specifications in accordance **with** paragraph 1 of Criteria Of **this** Treaty!
- (c) Detail<sup>8</sup> on the exact geographical location of the nuclear facility.

### Paragraph 3 1/

Upon **receipt** of a request **for** an inclusion in the **Register**, the **Depositary** **shall** without delay initiate **procedures** to confirm that the **information** contained in **the** request is **correct**:

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1/ The view **was** expressed that this provision called **for** further discussion.

(a) Through, to the extent **possible**, documentation from the International Atomic **Energy Agency**; and/or

(b) Through other **means**, including a **mission** to the facility, when **necessary**.

For the **purpose** of carrying out the procedure<sup>8</sup> in **paragraph** 3 (a) above the **Depositary** may, as it deem<sup>8</sup> **necessary**, enter into agreement with the International Atomic Energy Agency.

For the purpose of carrying out the procedure<sup>8</sup> in paragraph 3 (b) **above** the **Depositary** shall, with the cooperation of State<sup>8</sup> Parties to the Treaty, **compile and** maintain a list of qualified **experts**, whose services could be made available to **undertake such missions**.

#### **Paragraph 4**

##### **First alternative**

The Depositary **shall** include the facility in the **Register** as well as the information required by paragraph 2 of **this section**, as soon as the information given in the request **has been confined** according to paragraph 3 above, **and shall** immediately notify State<sup>8</sup> **Parties** to the Treaty of the aforesaid inclusion.

##### **Second alternative**

The Depositary **shall** include the facility **in** the Register as well as the information required by paragraph 2 of **this section and** shall immediately notify State<sup>8</sup> **Parties** to the Treaty of the **aforesaid** inclusion.

#### **Paragraph 5**

A State Party shall inform the Depositary, within . . . **days/months**, of any **change** in the information it ha<sup>8</sup> provided for inclusion in the **Register**. Upon the receipt of such information, the **Depositary shall** act, mutatis mutandi, in accordance with **the p<sup>ro</sup>cedures** outlined in paragraph<sup>8</sup> 3 and 4 of **this section**.

#### **Paragraph 6 i/**

The costs for implementing these procedure<sup>8</sup> shall be borne **by** the requesting State.

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i/ There we<sup>8</sup> **general agreement that the modalities** as well as the placement of this provision **should** be further **discussed**.

## V. VERIFICATION AND COMPLIANCE

### Paragraph 1

State Parties to **this Treaty shall make every possible effort to consult one another and to cooperate in solving any problems** which may be raised in relation to the objectives of, or in the application of the provisions of, the Treaty.

### Paragraph 2

A State Party may lodge a complaint with **the Depositary in case it believes** that any other State Party is in breach of obligations deriving from this Treaty. Such complaint **shall** include all relevant information and all possible evidence **supporting** the validity of the complaint.

### Paragraph 3

#### First alternative

Within . . . days of the receipt of a **complaint** from any State Party the Depositary **shall** initiate an investigation to **ascertain facts relevant to** the complaint. Such an investigation may include a fact-finding **mission** to or at the site of the nuclear facility concerned and to any other **site** as may be **appropriate**. The fact-finding **mission** shall **submit its findings to** the Depositary within . . . days.

#### Second alternative

Within . . . days of the receipt of a complaint from any State Party the Depositary **shall** initiate an **investigation to ascertain facts relevant to** the complaint. Such an investigation **shall** include a fact-finding **mission** to or at the site of the nuclear facility concerned **and to any other site** as may be appropriate. The fact-finding **mission shall submit its findings to** the Depositary within . . . days.

### Paragraph 4

For purposes of carrying out a fact-finding **mission** the Depositary shall maintain a **list** of qualified **experts, selected on as wide a geographical basis as possible, whose services may be available to undertake such missions.**

### Paragraph 5

State Parties undertake to **cooperate** in carrying out **the** investigation which the **Depositary** may initiate on a complaint **received from any State Party**. The Depositary **shall** inform the **States Parties of the results** of the investigation. A copy of **the** report on the **investigation shall be transmitted** also to the Security Council and **the General Assembly** of the United Nations.

**Paragraph 6**

**First alternative**

The **Depositary** shall, upon request of a State Party, **convene** the Conference of States **Parties** to **consider** the report on the **investigation** as well as possible courses of action.

**Second alternative**

The **Depositary shall** immediately **convene** the Conference of States **Parties** to consider the report on the **investigation** and to adopt such **measures as** may be appropriate.

**Paragraph 7**

**First alternative**

The **continuing** application of IAEA safeguards at a **nuclear** facility will form **an** essential part of the arrangements to verify that the facility is a peaceful nuclear facility within the meaning of the Treaty. **k/, l/**

**Second alternative**

The determination that a facility **is** and remains a peaceful **nuclear** facility within the meaning of the Treaty **shall** be made by the application of IAEA safeguards. **k/, l/**

**Third alternative**

The application of IAEA safeguards to a nuclear facility shall be of no relevance to the verification of compliance with obligations **assumed** by States Parties to **this** Treaty.

VI. OTHER MAIN ELEMENTS

**Paragraph 1**

A State Party may mark **its nuclear** facilities included in the Register with Special Marking.

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**k/** It **was** stated that the application of **IAEA** safeguards was irrelevant to the objectives of this Treaty and that **if** anyway **addressed**, the **issue belonged** under the provisions for inclusion in the Register.

**l'** The view was expressed that the **application** of IAEA safeguard8 could not verify that a nuclear facility **was a** peaceful one but rather that nuclear material remained *in* peaceful use.

**Paragraph 2 m/, n/, o/**

States **Parties** undertake to provide or support **assistance** to any State Party harmed **as** a result of the violation of the Treaty.

**Paragraph 3**

**Provisions** Of this Treaty are without **prejudice** to the obligations of States **Parties** undertaken in other international **instruments** relevant to the **subject** of **this** Treaty,

**Paragraph 4**

The Secretary-General shall **be** designated **as** Depositary of **this** Treaty.

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**m/** The view was **expressed** that the obligation of States Parties to provide **assistance** was limited to the radiological damage **caused** by an attack.

**n/** The view was expressed that the assistance to be provided or **supported** to any harmed State Party **should** not be limited to cases of violations by States **Parties**, but should **also** cover harm inflicted by attacks **from** states not party to the Convention.

**o/** The view **was** expressed that there **should** be no mandatory obligation of States Parties to provide assistance.