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GENERAL AND COMPLETE DISARMAMENT: PROHIBITION OF ATTACKS ON NUCLEAR FACILITIES

Report of the Secretary-General

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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;

"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;

^{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 wishes 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 2 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 guidelines 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 as 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 elements relevant to the prohibition of attacks against nuclear facilities contained therein. A number of modifications were made to the Coordinator's record, focused mainly on the questions of register and verification and compliance.
4. The amended Coordinator's 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.

* CD/1099, annex II.

ATTACHMENT

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

I. SCOPE

Paragraph 1

First alternative

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

Second alternative

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

Third alternative c/

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

a/ This record does not prejudice the eventual positions of delegations 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 agreements 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 elements 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 delegations stated that the third alternative of Scope based on the criterion of mass destruction read in conjunction with the first alternative of paragraph 2 of Definitions, paragraph 1 of Criteria, paragraphs 1 to 3, the first alternative of paragraph 4, paragraphs 5 and 6 of Register as well as Special Marking in paragraph 1 under Other Main Elements constitute one complete and consistent set of elements to be included in a draft treaty.

Paragraph 2

Each State Party undertakes not in any way to assist, encourage or induce any person, State, group of States, or international organization to act in contravention of this Treaty.

II. DEFINITIONS

Paragraph 1

For the purposes 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, stoppage or breakdown in the operation of a nuclear facility; 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; e/

which are included in a Register maintained by the Depositary.

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 6×10^{16} [10^{17}] Bq x MeV.

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

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

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

Paragraph 2

Additional specification suggested to the above specifications:

Nuclear facilities mentioned in paragraph 2 of Definitions 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 States 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 modifications shall be transmitted to each State Party at intervals of ... and be available to States Parties at any time in the offices of the Depositary.

Paragraph 2

States 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) Details on the exact geographical location of the nuclear facility.

Paragraph 3 i/

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:

i/ 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 procedures in paragraph 3 (a) above the Depositary may, as it deems necessary, enter into agreement with the International Atomic Energy Agency.

For the purpose of carrying out the procedures in paragraph 3 (b) above the Depositary shall, with the cooperation of States 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 confirmed according to paragraph 3 above, and shall immediately notify States 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 States 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 had provided for inclusion in the Register. Upon the receipt of such information, the Depositary shall act, mutatis mutandi, in accordance with the procedures outlined in paragraphs 3 and 4 of this section.

Paragraph 6 j/

The costs for implementing these procedures shall be borne by the requesting State.

j/ There was general agreement that the modalities as well as the placement of this provision should be further discussed.

V. VERIFICATION AND COMPLIANCE

Paragraph 1

States 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

States 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.

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 safeguards could not verify that a nuclear facility was a peaceful one but rather that nuclear material remained in peaceful use.

Paragraph 2 m/, n/, q/

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.

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.

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