



**INTERNATIONAL ATOMIC ENERGY AGENCY**

**Consultancy Meeting:  
Review and Further Development of  
The Nuclear Security Fundamentals**

**IAEA Headquarters, Vienna**

**25-27 May 2009**

**Chairman's Report**

**June 2009**

**Report by Patrick Adams, Chair  
Of the Consultancy Meeting**

**On**

**Review and Further Development of the  
Nuclear Security Fundamentals Document  
IAEA Headquarters, Vienna**

**25-27 May 2009**

**Chairman's Summary**

The Consultancy Meeting on Review and Development of the Nuclear Security Fundamentals Document was held at the IAEA Headquarters, Vienna between 25 and 27 May 2009. There were 12 participants from 7 Member States, one consultant and four IAEA participants (Annex A). The participants at the meeting reviewed and commented on the drafts of the document, particularly the two main drafts, one residual from the previous January 2009 meeting (Rev 3) and the latest draft dated 14 May 2009 (Rev 5) (Annex B). The participants offered their concerns, proposals and comments to the Chair and to the Secretariat in the course of the three working days.

**BACKGROUND**

The IAEA, in consultation with Member States, has instituted a Nuclear Security Series of documents that, taken as a whole, will assist States to develop, implement, maintain and strengthen their national nuclear security regimes and to evaluate the appropriateness and effectiveness of those regimes. This fundamentals document represents the top tier document in the series and as such needs to demonstrate the relationship of this document to both international instruments and the lower tier documents in the Nuclear Security Series of documents. Previous meetings had been held regarding this document.

**PURPOSE**

- To review and further develop the Nuclear Security Fundamentals draft document;
- To solicit input and comments from the consultant group; and,
- To gain consensus for the plan of next steps.

**OPENING**

The meeting was opened by Mr. B Weiss, who welcomed the consultant group and provided some background on activities associated with the document since the last meeting in January 2009. He spoke of both the influences and evolution to the present document (Rev 5). He provided that internal Agency reviews, including those conducted by the Office of Legal Affairs

(OLA), and the recent Nuclear Security Symposium had resulted in changes to the document that would be explained through the course of the meeting.

He further advised that the OLA will publish a document that provides an overview of the International Legal Framework for Nuclear Security, which will represent a source document for this and other documents in the Nuclear Security Series. Further, he elaborated on the document “Future of the Agency, Second Pillar Safety and Security” document which was provided to the meeting attendees and stated that this document provided additional rationale for the Nuclear Security Series. This document was provided for information purposes.

On behalf of the Head of the Nuclear Security Office, IAEA, Mr. Colgan welcomed the participants to the meeting, briefly spoke about the background of the meeting and pointed to issues arising from the Reference Group Meeting the week previous to this meeting and provided that legal input had affected the security series on whole and indeed, this document. He mentioned that both of these issues would affect the way ahead for this document.

Mr Weiss introduced the Chair of the meeting, Mr. P.J. Adams, Canada, who welcomed the participants and briefly outlined the agenda of the meeting.

The Agenda was adopted without change.

## **PRESENTATIONS**

The IAEA Secretariat presented briefings on

- Tables of International Instruments potentially supporting the nuclear fundamentals and security series documents, and
- Terms and definitions as they impact both this document and the subsequent lower tier documents in the Nuclear Security Series. *(This discussion provided a proposal to potentially establishing a “sub group” to examine particular language use (terms and definitions) in the document with a view to potentially “tightening” some definitions for the use of this document and its sub tier documents in the Nuclear Security Series)*
- *Decision: It was recommended that this issue be resolved by the agency, separate from this work on the Fundamentals document.*
- ***Of particular note, the delegation from Japan provided a matrix depicting the various language usages across the security documents and this is seen as an excellent tool for facilitating further discussion.***

Details were provided surrounding the document evolution from Rev 3 to Rev 5 and it was explained that the major changes were driven by the Nuclear Security Symposium (April 2009) and issue that came to light as a result of that symposium (gaps identified) and intra-agency reviews and input into the process that resulted in changes.

The group noted that some of the direction delineated in the chairman’s report from January 2009 CM was not incorporated into the May 14, 2009 draft (Rev 5), including the need for the document to provide explicit linkage between the international

instruments and the Nuclear Security Series. The group was disappointed in this outcome and requested that an OLA representative attend the next meeting to provide insight as to how this issue may be resolved. It was further stated that OLA determined that their draft document of the International Instruments was not finalized and therefore, it was “premature” to use it as a reference. However, OLA had agreed to provide precise wording to note the relationship between their International Instruments document and the Essential Elements. It should also be noted that Ms. Comella presented a set of tables showing the linkage between the international instruments and the Essential Elements. These tables are Annex C and were for the consultants’ use in drafting the document.

## **INITIAL COMMENTS**

Initial comments from the meeting attendees expressed concern that the document had changed considerably since the last meeting and there was insufficient information provided to them in advance of the meeting to articulate the rationale, and instilling a sense that a level of transparency was lost in the document evolution(s). The group felt it was important that they be provided in the future with clear explanation of change rationale and that documents be provided not less than three weeks in advance of meeting to permit adequate review and contemplation. Further, it was clearly expressed that the Chairman’s Report of this meeting, capture the desires and direction of the group in sufficient detail to permit detailed comparisons of future document revisions. It was also stressed that any future revisions utilize the guidance provided in the meeting to the extent practical and possible, and, where the guidance was not utilized, that an explanation for the variance be provided. It was also requested that a mechanism be utilized to demonstrate all future document changes for both ease of review and consideration of document contents and to provide transparency to the change process. It was generally felt that Rev 5 of the document represented significant change and departure from Rev 3 without clarity for the change process and this would slow the document review and its progression to a Technical Meeting.

## **SPECIFIC FINDINGS AND RECOMMENDATIONS**

During detailed review of the document, the following findings and recommendations were made to the Secretariat to guide in further document development:

### Background:

- Section 1.1.1 should reflect the AdSec definition of Nuclear Security (harmonization issue);
- 1.1.2 Omit first nine words and it was felt by some that the crucial issue of “sovereignty” versus responsibility be explored and detailed comment be provided explaining if “responsibility remains resident in the document (OLA was sought to speak on this issue). The item was “parked” until resolution was sought; This remains unresolved at this time;
- 1.1.3 No change;
- 1.1.4 it was determined that this should move to the document “Foreword” when constructed;

- 1.1.5 It was felt that this should move to the document “Foreword”, and further that it was too narrow in content and required broadening. Particular attention should be paid to potentially “sensitive” words or expressions during its re-write and broadening;
- 1.1.6 It was requested that this be re-written using “Security measures and safety measures have in common the aim of protecting persons, property and the environment from the harmful effects of radiation. Security and safety measures may be complimentary or overlapping in achieving their common aim. Security measures and safety measures need to be designed and implemented in an integrated or compatible manner so that safety measures do not compromise security and that security measures do not compromise safety and that synergies can be achieved where practicable;” (from 1.3.3 Rev 4)
- It was also felt that this area required additional language to capture the system accountability and not limit the interfaces to sabotage events;
- 1.1.7 It was felt that this area could move to immediately follow 1.1.3 and that the text needed to be expanded to elaborate on the relationship to the other documents in the Nuclear Security Series.
- It was strongly felt that the background or introduction must explain the relationship of this document to the international instruments and its sub tier Recommendations, Detailed Technical Guidance and Implementing documents within the Nuclear Security Series and explicitly point out that the CPPNM objectives and Fundamental Principles were established in support of the physical protection of nuclear materials and facilities, whereby the Nuclear Security Fundamentals- Objective and Essential Elements Document is created to encapsulate the larger scope of nuclear security regime.

#### Purpose of the document

- There was general consensus that the purpose must clearly provide: to whom the document applies and how it should be utilized.
- 1.2.1 There was general consensus that the wording from Rev 3 section 1.3.1 be re-instated as the “purpose” text. It was understood by the attendees that OLA had influenced change to this section. It was requested that this issue be revisited. It was strongly felt that this, or similar wording be used for this section. The group requested that if OLA desired change to the wording, that detailed rationale be provided to the group for consideration, and proposed text aligning to the content be provided for review and potential inclusion. In the interim, the previous wording should be included as a “placeholder”. Further, it was determined that the following wording (or alike) be included in the section: “*The Nuclear Security Fundamentals document is intended for national policy makers, legislative and regulatory bodies and organizations, institutions and individuals involved in the formation, maintenance or enhancement of a state’s nuclear security regime*”; Further, the purpose needed to explain the relationship of this document to the international instruments and its sub tier Recommendations, Detailed Technical Guidance and Implementing documents within the Nuclear Security Series.

#### Scope

- 1.3.1 It was generally agreed that the scope should be split into two distinct paragraphs. This section was parked for later consideration if time permitted however it was not revisited due to time constraints.

### Structure

- 1.4.1 It was suggested that the IAEA consultant consider realigning the document structure from its current format- (Chapter 2 Nuclear Security Objective and Chapter 3 Essential Elements of a Nuclear Security Regime) to Chapter 2, Fundamentals, Section 2.1 Objective and Section 2.2 Essential Elements of a Nuclear Security Regime. This structure both provides logic to the flow and presents a sound basis for the document title “Nuclear Security Fundamentals-Objective and Essential Elements”. This approach was widely accepted as a sound direction for the IAEA consultant to explore.

### Nuclear Security Objective

- There were numerous comments raised by the meeting participants regarding the evolution, changes and expansion of the objective and aims. This was an issue shared by all present that had not been involved in the document re-drafting or peripheral meeting on the document. This issue generated considerable comment and discussion for the remaining portions of the document review.
- A question was raised regarding possibly using “assist in mitigation” in section 2.1 versus the current wording. This was not accepted and the current wording remains. It was determined that the current wording is intentionally broad and should not be limited such that it applies to the breadth of nuclear security.
- A comment was raised regarding the use of the words “unlawful”, “malicious act”, “unauthorized” and “criminal act” in section 2.2. This comment requires resolution and refers back to the need for common terms and definitions as addressed earlier in this document. Preferably, these words should receive attention before the next CM on this document.
- It was noted that the aims to achieve the objective had experienced growth through the introduction of four new bullet points (aims). Discussions regarding the fact that nuclear security was broader than the issues extracted from the CPPNM. Despite this, the group felt the aims had expanded, in some cases becoming too specific, and perhaps were, in fact, measures instead of aims. Rational for the changes was provided, particularly issues regarding criminalization, loss of control, the need for a national registry and detection of loss/theft of material and lastly, international cooperation as these were envisioned as keys to a successful nuclear security regime. It was stated that this list expansion was particularly influenced by knowledge gain and insights from the Nuclear Security Symposium (April 2009). There was broad acceptance of four of the eight aims.
- Subsequent to considerable discussion, it was determined that the group would return to the four aims agreed to in January 2009 and grow or expand the aims from that as a starting point. It was agreed that broad objectives supported and

lent them selves to the essential elements. To that end it was suggested that broad objectives and broad aims best supported essential elements.

- Bullet 1- It was agreed that the first bullet (from Rev 3 version) add the words, after unlawful taking, “and loss of regulatory control”...; There were again concerns regarding the use of the wording “unlawful”;
- Bullet 2 -No change;
- Bullet 3- No change;
- Bullet 4- No change
- It was recognized that there was an apparent gap to address the issues of criminalization, deterrence and international cooperation in the aims through the basic retention of the four bullet aims from the Rev 3 version. It was agreed to add a further bullet regarding “fulfillment of international obligations”;
- One meeting attendee suggested amending the overall objective (2.1) (Rev 5) to include the wording “ prevent worldwide” to broaden its application;
- A new bullet was proposed to include wording to the effect “prevent and combat offences involving nuclear and other radioactive material in and out of regulatory control. No firm decision was reached on this issue;
- It was explained to the group that the important issue of criminalization was emphasized during the Nuclear Security Symposium as a vital aspect of a nuclear security regime. After lengthy discussions regarding deterrence, criminalization and law enforcement, no consensus was achieved that deterrence and/or criminalization could be stand alone aims or items that could be included in the earlier agreed aims, nor indeed, if they were aims. The discussion did not preclude further and future examination of the issue regarding criminalization or deterrence; however it was clear that the law enforcement issue would not be further considered as an aim;
- A member of the meeting proposed that the overall objective(s) be re-examined to potentially introduce them as, in their broadest sense, prevention, detection,(when prevention failed) and response(when prevention failed). From that different logic approach, broader aims could then follow which could include key issues such as deterrence, criminalization etc, and that the aims could be logically ordered to link to their parent objective. The group agreed to look at a potential framework which is attached. It was determined that two “section two” versions be produced, one reflecting the framework and contents from Rev 3 with an additional bullet added regarding international obligations and one utilizing the newly proposed framework (Annex D)with expanded aims, including criminalization.

#### Essential elements

- It was agreed that essential elements in subsections 3.2.2, 3.2.7,and 3.2.8 were acceptable and did not require further discussion.
- 3.2.1
  - It was re-emphasized that the wording in 3.1.1 had changed from “state sovereignty” to “state responsibility” as was previously provided in the Rev 3 document. This issue remains a substantial concern;
- 3.2.3



- it was requested the drafter examine the use of the wording “institution” in bullet 3 and propose an alternative in a broader sense;
  - It was agreed that bullet 4 should be split into two bullets, -the first bullet to end “...*carry out nuclear security functions*”. (3<sup>rd</sup> line of current Rev 5, bullet 4) -and the second bullet to read “Ensures that the first line of responsibility...”;
  - It was agreed that the word “*requirements*” in bullet 5 (3<sup>rd</sup> line) be replaced with “*regulations*”; and further that:
  - the bullet commence with the words “verifies compliance” (**Note:Due to varied notes and recollections of the discussion on this bullet, this requires revisiting at the next meeting**)
- 3.2.4
    - It was explained that this essential element was formed from a break out of bullet five from the first essential element in the Rev 3 version of the fundamentals document;
    - It was agreed that the title should be re-examined in light of the following bullet included below and a suggested title may be [Import/Export and Trans-shipment of Nuclear and radioactive Material];
    - It was agreed that the section should be reviewed and rewritten to be narrower than present and focus on transportation issues and material but not include “other commodities”.
- 3.2.5
    - It was explained that this essential element was formed from a break out essential element due to its importance, uniqueness and central component in the nuclear security regime;
    - It was agreed the title should read “Criminalization and Combating Offences and that a bullet be introduced to cover the aspect of the investigation process involved in the combating of offences;
    - The drafter was requested to re-examine bullets 3 and 4, particularly the word “punishment” and the term “prosecution or extradition” due to their potential sensitivity;
- 3.2.6
    - It was explained that this element was broken out from the last element in Rev 3 subsequent to the Nuclear Security Symposium and due to its deemed importance and functional area;
    - It was agreed that the following words from the first bullet be extracted and utilized instead as a chapeau to the essential element “Consistent with international obligations and commitments to national law, establish the mechanism for ...”;
    - Exchange the ordered placing of bullets three and four;
    - Include in bullet four (multilateral and bilateral agreements);
    - Delete the opening word “otherwise in current bullet four;

- 3.2.7, 3.2.8 and 3.2.9
  - It was suggested that subsections 3.2.7, 3.2.8 and 3.2.9 could be combined. This suggestion was strongly rejected by consensus;
- 3.2.7
  - It was agreed that this subsection did not adequately cover “major public events” nor did the definition of “threats” as contained in the document adequately cover major events. The drafter was requested to explore how this could be accomplished to meet the need as discussed and agreed by the meeting participants;
- 3.2.9
  - It was agreed the title of this essential element required amendment and the drafter was requested to propose a new title more appropriate to its contents;
  - It was agreed that the last bullet link be amended from 3.2.9 to 3.2.10 and that 3. 2.12 also be added for linkage,
  - It was agreed that wording should be examined and include (with a definition earlier in the document) “strategic locations” This same wording ties to 3.2.7 above and may be preferable to “major public events”
- 3.2.10
  - Discussion not completed, deferred to next meeting;
- 3.2.11
  - The inclusion of the wording nuclear security “incidents” in lieu of “breaches” resulted in discussion with a prevailing view that “security event” would be more appropriate and broad enough to encapsulate all types of “occurrences”, whether criminal in nature or not;
  - It was agreed that the document text for this section would revert to the text from Rev 3, section 3.2.9.
  - It was further agreed that the title be amended to “Planning and Preparedness for, and Response to Nuclear Security Events;
  - It was agreed that the words “vital area” would be removed from this section;
- 3.2.12
  - Not discussed, deferred to next meeting;
- 3.2.13
  - Not discussed, deferred to next meeting;

### General

It was determined through discussions that the essential elements form components of risk management and that this should be mentioned in the introduction to the essential elements;

A determination on the status or use of the explanatory text needs to be made and should be a discussion point next meeting;

It was suggested that “testing” (as currently used in the Rev 5) be reworded to “testing (including performance testing)”. This should be discussed next meeting.

There was considerable discussion regarding the use of the terminology “Security events” in lieu of “security incidents”. It was generally felt that “Security events” was broader and more appropriate however full concurrence was not achieved. This discussion should be revisited next meeting.

## **CONCLUSION**

The consultancy meeting completed most of the tasks that it was charged with however portions of the document require additional work and questions raised in this report, in some areas, remain outstanding. It is prudent that another CM be convened in advance of a TM to finalize the document and prepare it to a state suitable for a TM. Further, it was stated that the presence of a member from the OLA staff to the next meeting would greatly facilitate discussion and understanding of some of their views on the document wording and content. Accordingly, all the comments on the working draft of the document were recorded to the extent possible and will be considered. The next CM meeting is scheduled for 27-30 July 2009.

The chair gratefully acknowledges the assistance, cooperation and insightful input from all meeting participants.

