STAKEHOLDER INVOLVEMENT IN INTERNATIONAL CONVENTIONS GOVERNING CIVIL NUCLEAR ACTIVITIES

Workshop on Stakeholder Involvement in Nuclear Decision-Making
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Who are the stakeholders?

Different positions under international conventions depending on the intent of the legislator:

I. Governments and governmental bodies (national/regional/local) including nuclear regulators?
II. + The public but only national citizens?
III. + The public including also citizens of countries that are contracting parties to the same international legal instrument?
IV. + NGOs (non-governmental organisations)?
V. + CSOs (civil society organisations)?
VI. + Indigenous communities?
What is meant by involvement?

Different positions under international conventions depending on the intent of the legislator:

I. “We could not care less about them”
II. “We will give them the information”
III. “We will listen to what they have to say” after the major decisions (siting, design and construction) have already been taken
IV. “We will listen to what they have to say prior to taking the major decisions”
V. “We will listen to what they have to say and we will take their comments into account prior to taking the major decisions”
IAEA Convention on Nuclear Safety (1994)

A “traditional” international legal instrument focusing on governments and governmental bodies as the main stakeholders and limiting the involvement of the public and intergovernmental organisations to receiving information receiving and observing.

- Obligation to consult on the likely safety impact of proposed nuclear installation applies to governments of other Contracting Parties (art.17(iv))
- Establishment of a regulatory body by government (art.8)
- Peer Review Mechanism is restricted to government delegates meeting in group sessions (art.20)
IAEA Convention on Nuclear Safety (1994)

- No explicit obligation to consult the public

Examples: Safety assessment prior to construction & commissioning and throughout life of nuclear installation (art.14) and for siting of a proposed nuclear installation (art. 17(ii)) but no public consultation obligation

- Obligation to inform own population and competent authorities of States in vicinity about emergency planning and response (art.16.2)
IAEA Convention on Nuclear Safety (1994)

- No complaint mechanism by citizens or NGOs

- Intergovernmental organisations may attend meetings of the Parties but only as an observer and if consensus by all Contracting Parties (art.24.2)

- Confidentiality and the right to protect information (art.27)
Similar stakeholder involvement provisions as the IAEA Safety Convention ("sister convention") privileging governments and governmental bodies

Examples: Siting of facilities (art.6.1(iv) and art.13.1(iv)), Prior consent for import/export of waste (art.27.1(i)), Peer Review Mechanism (art.29-33)

- Public involvement is limited to receipt of information

*Examples: Publication of national reports on public websites, Recognition of the public’s right to know (Preamble), Obligation to make information on siting of proposed facilities available to the public (art.6.1(iii) and art.13.1(iii))*

- Confidentiality versus transparency (art.36)

- A “traditional” legal instrument focusing on governments as stakeholders but goes further on public information and public involvement than both IAEA instruments

- Legal instrument: “EU Directive”, as opposed to “EU Regulation”, is not directly applicable but sets a goal that must be achieved and gives discretion to each EU Member State to devise legislative instruments to reach that goal

- Obligation to share nuclear safety information with workers, the public, local authorities and stakeholders in vicinity of installation (art.8.1)

- Obligation for the regulator to engage in cooperation activities on safety with regulators of other EU Member States in vicinity of the installation (art.8.3)

- Obligation to let the public participate effectively in decision-making on licensing (art.8.4)

- Similar stakeholder provisions as the EU Directive on Nuclear Safety

- Obligation to share information on management of SF/RW with workers and the public (art 10.1)

- Obligation to let the public participate effectively in decision-making on the management of SF/RW (art.10.2)
Stakeholder involvement differences with the Aarhus & Espoo Conventions?

- Unlike international and EU legal instruments governing civil nuclear activities, “public participation in decision-making” is at the very heart of the Aarhus & Espoo Conventions.

- “Public participation” together with “public access to information” and “judicial access” are key for the success of the Aarhus & Espoo Conventions.

- Environmental impact assessments (EIA/EA/EIS) constitute a recognised instrument to engage the public and civil society in decision-making.
How to explain these differences?

- Technicality of nuclear information?

  Probably a good reason but not a sufficient one to justify the current level of involvement given to stakeholders other than governments and governmental bodies.

- Nuclear security?

  Probably a good reason but does not justify that stakeholders other than governments and governmental bodies should not be involved in “some” decision-making on civil nuclear activities.
Conclusion

- Stakeholder involvement in international nuclear conventions is very much focused on governments and governmental bodies.

- Environmental law conventions such as Aarhus and Espoo contribute to enhancing transparency and involvement of more stakeholders in the nuclear sector including the public, NGOs and intergovernmental organisations.