

INTERNATIONAL REGULATORY ACTIVITIES

International Atomic Energy Agency

*Resolutions adopted by the IAEA General Conference (2003)*¹

The 47th Session of the IAEA General Conference was held in Vienna from 15 to 19 September 2003 with the participation of the delegations from 137 Member States and representatives of various international organisations. Resolutions were adopted by the Conference, *inter alia*, in the following areas.

Nuclear Safety, Radiation, Transport and Waste Safety

Under Resolution No. 7 on Measures to Strengthen International Co-operation in Nuclear, Radiation, Transport and Waste Safety, the General Conference welcomes with satisfaction the decision of the Board to establish, as Agency safety standards, the Safety Requirements on “Site Evaluation for Nuclear Installations” (in document GOV/2003/51) and the Safety Requirements on “Remediation of Areas Contaminated by Past Activities and Accidents” (in document GOV/2003/52), and encourages Member States to incorporate these safety requirements into national regulatory programmes, to the fullest extent possible. Further, the General Conference appeals to all Member States which have not yet taken the necessary steps to become Party to the Convention on Nuclear Safety to do so. The General Conference recognises the progress made in preparing a Code of Conduct on the Safety of Research Reactors, and notes that the final version of the draft Code is expected to be resubmitted for consideration by the Board of Governors in March 2004.

With regard to radiation safety, the General Conference welcomed progress in implementing the International Action Plan for the Radiological Protection of Patients, as well as the approval by the Board of Governors of the International Action Plan for Occupational Radiation Protection. It further welcomed the steps taken by the Secretariat to assist in developing an international framework for the protection of the environment from ionising radiation.

The General Conference appealed to all Member States who have not yet become Party to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management to take all necessary steps to do so. The General Conference reminded all Member States that the first Review Meeting of Contracting Parties to this Convention would be held in Vienna in November 2003.

1. The texts of these Resolutions are available on the Web site of the IAEA at the following URL: www.iaea.org/worldatom/About/Policy/GC/GC47/Resolutions

The General Conference urged all Member States to become Parties to the Convention on Early Notification of a Nuclear Accident and to the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency. It also encouraged the Member States to implement, where necessary, instruments for improving their own preparedness and response capabilities for nuclear and radiological incidents and accidents including their arrangements for responding to acts involving the malicious use of nuclear or radioactive materials and threats to use such acts.

Concerning the Code of Conduct on the Safety and Security of Radioactive Sources, the General Conference noted that radioactive sources are used throughout the world for a wide variety of beneficial purposes. However, the ineffective, interrupted or sporadic regulatory or management control of radioactive sources has led to serious accidents or malicious acts, or to the existence of orphan sources. The General Conference recognised the need for effective and continuous regulatory control, and welcomed the approval by the Board of Governors of the revised IAEA Code of Conduct on the Safety and Security of Radioactive Sources. It endorsed the objectives and principles set out in the Code, while recognising that the Code is not a legally binding instrument.

With regard to transport safety, the General Conference noted concerns about a potential accident or incident during the transport of radioactive materials by sea, and the importance of the protection of people, human health and the environment as well as protection from actual economic loss, as defined in relevant international instruments, due to an accident or incident. It further noted that the International Conference on the Safety of Transport of Radioactive Material, held in Vienna from 7-11 July 2003, found that the current regulations provide a high level of safety and provide a good basis for an effective regulatory process and ensure strict implementation of guidelines. The General Conference stressed the importance of having effective liability mechanisms in place to insure against harm to human health and the environment as well as actual economic loss due to an accident or incident during the maritime transport of radioactive materials. It acknowledged the Conference President's conclusion that the preparation of an explanatory text for the various nuclear liability instruments would assist in developing a common understanding of the complex issues and thereby promote adherence to these instruments. Further, it welcomed the decision of the Director General to appoint a group of experts to explore and advise on issues related to nuclear liability. The General Conference emphasised the importance of maintaining dialogue and consultation aimed at improving mutual understanding, confidence building and enhanced communications in relation to safe maritime transport of radioactive materials. Finally, it urged Member States that do not have national regulatory documents governing the transport of radioactive materials to adopt such documents expeditiously.

Nuclear Security – Progress on Measures to Protect Against Nuclear Terrorism

The General Conference also adopted Resolution No. 8, which recalls the potential implications of terrorist acts for the security of nuclear materials, nuclear facilities, radioactive sources and other radioactive materials. It further calls upon Member States to promote an effective security culture in their physical protection. Resolution No. 8 appeals to States which have not yet done so to accede to the Convention on the Physical Protection of Nuclear Material, and encourages States to apply the physical protection objectives and fundamental principles endorsed by the Board of Governors and set out in document GOV/2001/41. Finally, Resolution No. 8 welcomes the finalisation of the work of the legal and technical experts convened by the Director General to prepare a draft of an amendment aimed at strengthening the Convention.

Strengthening the IAEA's Safeguards System

In Resolution No. 11, the General Conference stressed the need for effective safeguards in order to prevent the use of nuclear material for prohibited purposes, and urged all States which have yet to bring into force comprehensive safeguards agreements (and their additional protocols) to do so as soon as possible in conformity with their national legislation. It further requested the Secretariat to examine innovative technical solutions to strengthen the effectiveness and to improve the efficiency of safeguards.

Safeguards in the Democratic People's Republic of Korea (DPRK)

The General Conference, under Resolution No. 12, commended the impartial efforts of the Director General and the Secretariat to apply comprehensive safeguards in the DPRK. Further, the General Conference deplored the steps taken by the DPRK which led the Board to find it in non-compliance with its NPT safeguards agreement, and the DPRK's continued unwillingness to enter into the substantive dialogue offered by the IAEA regarding the application of comprehensive safeguards. To this end, Resolution No. 12 urged the DPRK to reconsider those actions which run contrary to voluntarily undertaken, international non-proliferation obligations, to promptly dismantle any nuclear weapons programme in a transparent, verifiable and irreversible manner and to maintain the essential verification role of the IAEA. Resolution No. 12 stressed the desire for a peaceful resolution through dialogue to the DPRK nuclear issue, leading to a nuclear free Korean Peninsula with a view to maintaining peace and security in the region, and particularly welcomed the six-party talks which took place in Beijing from 27 to 29 August 2003.

Application of IAEA Safeguards Standards in the Middle East

Resolution No. 13 affirmed the urgent need for all States in the Middle East to accept the application of full-scope IAEA safeguards to all their nuclear activities as a step in enhancing peace and security in the context of the establishment of a nuclear-weapon free zone (NWFZ). Further it called upon States in the Middle East to take measures, including confidence-building and verification measures, aimed at creating a NWFZ. To this end, the General Conference requested the Director General to consult with the States of the Middle East to facilitate the application of safeguards to nuclear activities as relevant to the preparation of model agreements.

Implementation of United Nations Security Council Resolutions relating to Iraq

On 19 September 2003, the General Conference adopted Decision No. 12, endorsing a statement by the President to the effect that the General Conference commended the IAEA for its verification activities in Iraq under the mandate provided by UN Security Council Resolutions from November 2002 to March 2003. It also noted with satisfaction that there is no proliferation risk from the type and quantity of uranium compounds at the Baghdad Yellowcake Facility and expressed appreciation for the continuation by the IAEA of its NPT safeguards activities in Iraq.

European Union

In the past months, the Commission has adopted several regulations and legislative proposals based on the provisions of the Euratom Treaty to supplement or update the legislation in force in the field of nuclear energy. In addition, recent initiatives based on the provisions of the Treaty establishing the European Community and currently examined by the Council of the European Union may stand to affect nuclear activities in the European Union.

Proposals for Directives on nuclear safety and radioactive waste management (2003)

On 30 January 2003, the Commission adopted a proposal for a Council Directive setting out basic obligations and general principles on the safety of nuclear installations and a proposal for a Council Directive on the management of spent nuclear fuel and radioactive waste (COM/2003/0032/final).

Both proposals are based on the provisions on Health and Safety in Chapter 3 of Title II, especially Article 32 of the Treaty which allows the basic safety standards to be revised or supplemented. These proposals are specifically designed to supplement the existing health standards in order to meet the objectives set in the Treaty; notably the obligation imposed by Article 2(b) to “establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied”. In accordance with Article 32, they were adopted after consultation of the Group of Experts from the Member States provided for in Article 31 of the Euratom Treaty.

The first: “proposal for a directive setting out the basic obligations and general principles on the safety of nuclear installations” was drafted with the main objective to ensure that health protection against ionising radiation will be assured during the whole life of nuclear installations, from design to decommissioning. The proposal sets out basic obligations and general principles contained in the international conventions and gives them force of Community law. To ensure the credibility of the system the proposal institutes, in a Community framework, a cross-checking of the national safety authorities. Another objective of this initiative is to confirm the necessity to have available adequate financial resources to cover the cost of decommissioning of nuclear installations.

The objective of the second: “proposal for a directive on the management of spent nuclear fuel and radioactive waste” is to place an obligation on the Member States to establish a clearly defined programme for the disposal of radioactive waste, including deep disposal of high-level waste. The proposal sets out a concrete timetable to that end: in the case of short-lived low and intermediate-level waste, authorisation for the development of appropriate disposal site(s) shall be granted no later than 2008 and authorisation for the operation of the facility no later than 2013. The deadline for the authorisation for the operation of the disposal facility is fixed at 2018 for high-level and long-lived radioactive waste, which shall be disposed in a geological repository. The programmes may include, as an alternative solution to disposal, the shipment of radioactive waste or spent fuel to another Member State or third country under strict conditions of compliance. This alternative solution will require the agreement of the recipient of the waste. The proposal also intends to encourage co-operation between the Member States in common areas of research and technological development.

New Regulation on the application of Euratom safeguards (2002)

In 2002, the Commission proposed a new Commission Regulation (COM 2002/099 final) on the application of Euratom safeguards, which will replace the Regulation No. 3227/76.

The new Regulation will introduce additional requirements on reporting to the IAEA for which the Commission carries legal responsibility under the Protocols Additional to the Safeguards Agreements between Member States, the Community and the IAEA. Furthermore clear definitions of waste categories, new Inventory Change Codes and special annexes for reporting transfers of waste are to be introduced to reflect current practices in the industry and the experience gained in effective accountancy and control of waste under the Euratom Treaty. This part of the proposal is also in line with the wider reporting requirements for waste introduced by the Additional Protocols. Finally the new reporting format will introduce changes in the format and the content of accountancy reports.

Control of high activity sealed radioactive sources (2003)

On 24 January 2003, the Commission adopted a proposal for a Council Directive on the control of high activity sealed radioactive sources (COM/2003/0018 final). Based on Articles 31 and 32 of the Euratom Treaty, this proposal aims at supplementing the Basic Safety Standards Directive with a view to strengthening control by the competent national authorities on those sealed radioactive sources posing the greatest risk and to emphasise the responsibilities of holders of such sources.

This proposal is meant to contribute to higher safety and security for European citizens against the risks associated with the handling and storage of highly radioactive sources. It further sets-out to prevent exposure to ionising radiation arising from inadequate control of high activity sealed radioactive sources and to harmonise controls in place in the Member States by putting in place specific requirements to ensure that each source is kept under control.

Recommendation on the protection and information of the public with regard to the continued contamination of certain wild food products following the Chernobyl accident (2003)

On 14 April 2003, the Commission adopted Recommendation 203/247/Euratom on the protection and information of the public with regard to exposure resulting from the continued radioactive caesium contamination of certain wild food products as a consequence of the accident at the Chernobyl nuclear power station.

According to this recommendation, the Member States should take appropriate measures to ensure that the maximum permitted levels in terms of caesium-134 and caesium-137 are respected in the Community for the placing on the market of certain wild products and should inform the population in affected regions of the health risks involved. The Community Rapid Alert System laid down in Regulations (EC) No. 178/2002 of 28 January 2002 should be used for exchanging information between the Member States on recorded cases of exceeding the maximum permitted levels.

Proposals for decisions authorising the Member States to sign and ratify the Protocol to amend the Paris Convention (2003)

On 9 July 2003, the Commission adopted two proposals for Council decisions authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to sign and ratify the Protocol amending that Convention, or to accede to it, in the interest of the European Community.

The Protocol to amend the Paris Convention was negotiated by the Commission for matters falling within the jurisdiction of the European Community, in accordance with the Council's directives of 13 September 2002. However, since the Paris Convention and the Protocol to amend it are not open to participation by regional organisations, it has been deemed justified, on an exceptional basis, that the Community exercise its powers through its Member States which are Parties to that Convention. All Member States of the European Union, except Austria, Ireland and Luxembourg, are Contracting Parties to the Paris Convention.

Community authorisation was required previous to the signature of the Protocol to amend since it affects Community rules on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters laid down in Council Regulation (EC) No. 44/2001 of 22 December 2002. Indeed, the Community has exclusive jurisdiction with regards to amending Article 13 of the Paris Convention, which determines the court that has jurisdiction in claims for compensation for damage caused by nuclear accidents, as it affects the corresponding rules of Council Regulation (EC) No. 44/2001.

Proposal for a Directive on environmental liability with regard to the prevention and remedying of environmental damage (2002)

On 23 January 2002, the Commission adopted a proposal for a Directive of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage [COM (2002) 17 final].

The proposal aims to establish a framework whereby environmental damage, which is defined in the proposal as “biodiversity damage”, “water damage” and “land damage”, would be prevented or remedied through a system of environmental liability. Whenever possible, the operator that has caused the environmental damage or an imminent threat of such damage occurring must, in accordance with the « polluter-pays » principle, bear the cost associated with the implementation of the necessary liable or restorative measures. In cases in which no operator can be held liable or an operator is liable but unable to pay, Member States are required to find an alternative source of financing the measures in question.

The scope of the proposal does not cover such nuclear risks or environmental damage or imminent threat of such damage as may be caused by the activities covered by the Euratom Treaty or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the following international conventions:

- the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;
- the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage;

- the Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;
- the Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention;
- the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.

The proposal was discussed in a first reading by the European Parliament which adopted its Opinion on 14 May 2003. On 18 September 2003, the Council adopted its Common Position. The Common Position keeps nuclear activities out of the scope of the proposed directive and specifies that the exclusion of nuclear risks covered by international instruments extends to any future amendments to these instruments. However, it is now proposed that the report be submitted to the Commission before ten years after the entry into force of the Directive, which shall then conduct a review of the matters excluded from the scope of the directive including nuclear damage.

The Common Position has now been sent to the European Parliament for a second reading, in accordance with the co-decision procedure.

Proposal for a Regulation on the law applicable to non-contractual obligations (2003)

On 22 July 2003, the Commission adopted a proposal for a Regulation on the law applicable to non-contractual obligations, the so-called “Rome II” Regulation. The purpose of this proposal is to standardise the Member States’ rules of conflict of laws regarding non-contractual obligations. This Regulation extends the harmonisation of private international law in relation to civil and commercial obligations which is already well advanced in the Community with the Council Regulation (EC) No. 44/2001 and the Rome Convention of 1980.

The proposed Regulation would apply to all situations involving a conflict of laws, i.e. situations in which there are one or more elements that are alien to the domestic social life of a country that entail applying several systems of law. It would cover all non-contractual obligations in civil and commercial matters, except those in matters listed in Article 1, paragraph 2.

The non-contractual obligations arising out of nuclear damage are among the matters excluded from the scope of the proposed Regulation. The importance of the economic and state interests at stake and the Member States’ contribution to measures to compensate for nuclear damage in the international scheme of nuclear liability explain this exclusion.