

# INTERNATIONAL REGULATORY ACTIVITIES

## International Atomic Energy Agency

### *Resolutions Adopted by the IAEA General Conference (2004)\**

The 48<sup>th</sup> Session of the IAEA General Conference was held in Vienna from 20 to 24 September 2004 with the participation of delegates from 125 Member States and representatives of various international organisations. A number of resolutions were adopted by the Conference in the following fields:

#### *Nuclear Safety, Radiation, Transport and Waste Safety*

In Resolution No. 10 on Measures to Strengthen International Co-operation in Nuclear, Radiation and Transport Safety and Waste Management [GC(48)RES/10], the General Conference requested the Director General to continue the current programme of legislative assistance to Member States, to assist them in improving their national infrastructures for nuclear installations, radiation, transport and waste safety. The Conference also encouraged Member States to continue requesting IAEA safety review services in order to enhance nuclear, radiation, transport and waste safety; and encouraged Member States to promote technical cooperation for the further enhancement of safety.

With regard to the Convention on Nuclear Safety, the General Conference appealed to all Member States, particularly those operating, constructing or planning nuclear power reactors, which have not yet taken the necessary steps to become party to the Convention on Nuclear Safety to do so. The Conference also urged Contracting Parties to participate actively in the Third Review Meeting of the Contracting Parties to this Convention, to be held in Vienna in April 2005.

On the subject of the safety of radioactive waste management, in particular, the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, the General Conference reminded Member States of the relevance of that Convention and appealed to all Member States which have not yet taken the necessary steps to become party to the Joint Convention to do so. The Conference welcomed the First Review Meeting of Contracting Parties to the Joint Convention, held in Vienna in November 2003, which highlighted, *inter alia*, the importance of all countries having long-term strategies for managing spent fuel and radioactive waste, including plans for integrated decommissioning and waste management, and endorses ongoing efforts by the Secretariat and the General Committee to promote the Joint Convention.

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\* The texts of these resolutions are available on the Web site of the IAEA at the following URL:  
[www.iaea.or.at/About/Policy/GC/GC48/Resolutions/index.html](http://www.iaea.or.at/About/Policy/GC/GC48/Resolutions/index.html)

With regard to the Code of Conduct on the Safety of Research Reactors, it should be noted that in September 2001, the Board of Governors requested and the General Conference subsequently endorsed [GC(45)/RES/10.A], that the Secretariat develop and implement, in conjunction with Member States, an international research reactor safety enhancement plan which included the preparation of a Code of Conduct on the Safety of Research Reactors. This Code was prepared at two meetings of an Open-ended Working Group of Legal and Technical Experts. In March 2003, this draft Code of Conduct (in the Annex to document GOV/2003/7) was considered by the Board, which decided that it should be circulated to all Member States for comment. The revised draft was circulated to all Member States for comment together with the report of the chairman of the expert Working Group. At the March 2004 meeting of the Board of Governors, the final text of the Code was adopted. The text of this Code will be reproduced in the next issue of the *Nuclear Law Bulletin*. The General Conference in Resolution No. 10 welcomed the adoption of the Code, encouraged Member States to apply its provisions and requested the Secretariat to continue to provide assistance with its implementation.

In the field of nuclear and radiological emergency preparedness and response, the General Conference in Resolution No. 10 urged all Member States to become parties to the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, thereby contributing to a broader and improved basis for international emergency response, to the benefit of all. The Conference also encouraged Member States to improve their own preparedness and response capabilities for nuclear and radiological incidents and accidents, including acts involving the malicious use of nuclear or radioactive material or threats of such acts, and to implement the Safety Requirements for Preparedness and Response to a Nuclear or Radiological Emergency [GOV/2002/5] and the updated procedures of the Emergency Notification and Assistance Technical Operations Manual.

With regard to transport safety, the General Conference emphasised 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, and welcomed the approval of the Action Plan on the Safety of Transport of Radioactive Materials by the Board in March 2004, based on the results of the International Conference on the Safety of Transport of Radioactive Material held in July 2003. It also welcomed the valuable work that INLEX has undertaken since its establishment (see *infra*) in this field.

With regard to the safety and security of radioactive sources, the General Conference in Resolution No. 10 welcomed the approval by the Board of Governors of the Policy for Promoting Effective and Sustainable National Regulatory Infrastructures for the Control of Radiation Sources, and continues to endorse the principles and objectives of the Code of Conduct on the Safety and Security of Radioactive Sources. The General Conference further welcomed the approval by the Board of Governors of the Guidance on the Import and Export of Radioactive Sources [GC(48)/13]. An article describing this Guidance will be reproduced in the next issue of the *Nuclear Law Bulletin*.

Resolution No. 10 makes further reference to recent developments in respect of the Agency's Safety Standards Programme, radiation safety initiatives, the International Action Plan on the Decommissioning of Nuclear Facilities and education and training activities in relation to nuclear, radiation, transport and waste safety.

### *Nuclear Security – Measures to Protect against Nuclear Terrorism*

The General Conference also adopted Resolution No. 11 on Progress on Measures to Protect against Nuclear and Radiological Terrorism [GC(48)RES/11]. In particular, the Conference appealed to states that have not yet done so to accede to the Convention on the Physical Protection of Nuclear Material (CPPNM), and to work towards the adoption by consensus of amendments to strengthen that Convention.

It is recalled that in July 2004, draft amendments to the CPPNM were circulated to all States Parties, with a view to extending the scope of the Convention to cover, *inter alia*, the physical protection of nuclear material used for peaceful purposes, in domestic use, storage and transport and the physical protection of nuclear material and nuclear facilities used for peaceful purposes against sabotage. Should a majority (currently 53) of the States Parties to the CPPNM so request, the Director General will invite all State Parties to a diplomatic conference to consider the proposed amendments. For an amendment to be adopted at the Conference, Article 20 of the CPPNM requires a two-thirds majority. Consultations between States Parties to resolve a few outstanding issues continue. In his opening speech to this 48<sup>th</sup> General Conference, the IAEA Director General called on States Parties to move forward swiftly and in good faith to resolve any outstanding issues, so that he could convene a diplomatic conference in early 2005.

### *Strengthening the IAEA's Safeguards System*

In Resolution No. 14, the General Conference reiterated the need to maintain effective safeguards in order to prevent the use of nuclear material for prohibited purposes, thus contributing to collective security. It welcomed the review of the Agency's strengthened safeguards system conducted during the past year by an independent evaluation panel and by the Standing Advisory Group on Safeguards Implementation. It requested all states that have not yet done so to promptly sign additional protocols and bring them into force. The Secretariat is requested to examine innovative technological solutions to strengthen the effectiveness and improve the efficiency of safeguards.

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

The General Conference, in Resolution No. 15, reiterated its concerns expressed at the 2003 General Conference (see *Nuclear Law Bulletin* No. 72) and asked the DPRK to reconsider those actions and announcements which run contrary to international non-proliferation obligations and to promptly accept IAEA safeguards.

### *Application of IAEA Safeguards in the Middle East*

The General Conference, in Resolution No. 16, reiterated its concerns expressed at the 2003 General Conference (see *Nuclear Law Bulletin* No. 72) and calls against upon all parties concerned to take steps required for the implementation of the proposal to establish a mutually and effectively verifiable NWFZ in this region.

### ***Establishment of INLEX***

The Director General decided in 2003 to appoint a group of experts to explore and advise on issues related to nuclear liability. This Group called the International Expert Group on Nuclear Liability (INLEX) consists of 20 expert members from nuclear power and non-nuclear power countries and from shipping and non-shipping states. It serves three major functions, namely:

- to create a forum of expertise to explore and advise on issues related to nuclear liability;
- to enhance global adherence by nuclear and non-nuclear states to an effective nuclear liability regime, *inter alia*, on the basis of the Convention on Supplementary Compensation for Nuclear Damage and the Annex thereto, the Vienna Convention on Civil Liability for Nuclear Damage, the Paris Convention on Third Party Liability in the Field of Nuclear Energy, the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, and the amendments thereto; and
- to assist in the development and strengthening of the national nuclear liability legal frameworks in IAEA Member States to protect the public and the environment, and to enhance nuclear safety.

INLEX has held three meetings to date, all at Agency headquarters. The first meeting was held on 16 and 17 October 2003, the second from 22 to 26 March 2004 and the third from 13 to 16 July 2004. In the course of these meetings, INLEX finalised the discussion and review of explanatory texts (including an overview of the modernised IAEA nuclear liability regime) on the nuclear liability instruments adopted under Agency auspices. It recommended the circulation of the explanatory texts to Member States as constituting a comprehensive study of the Agency's nuclear liability regime in order to aid the understanding and authoritative interpretation of that regime. The overview was submitted for information to the September 2004 Session of the Board of Governors and meeting of the General Conference, in the Annex to document GOV/INF/2004/9-GC(48)/INF/5. The explanatory texts were placed on the Agency Web site.

The explanatory texts will serve as a basis for the future work of INLEX, regarding in particular the further identification and exploration of issues pertaining to the application and scope of the nuclear liability instruments adopted under Agency auspices. In the context of recommending measures to be taken to enhance adherence to an effective nuclear liability regime, INLEX has, in cooperation with the Secretariat, developed, with a view to its being sent to Member States, a questionnaire on the status of adherence by Member States to nuclear liability instruments adopted under Agency auspices. INLEX's future programme of work will include the preparation of materials for regional and national workshops and for legislative assistance missions to target countries, organised with a view to strengthening Member States' legal frameworks related to nuclear liability.

INLEX will also consider the need to further develop the Agency's nuclear liability regime, taking into account concerns of countries both with and without nuclear power programmes. In this context, INLEX is working towards the identification of possible ambiguities and/or gaps in the existing international instruments. In addition, INLEX will undertake work relating to the identification of the advantages and/or disadvantages of adhering to a global nuclear liability regime.

## European Union

### *Directive on Public Access to Environmental Information (2003)*

This Directive 2003/4/EC of the European parliament and of the Council of 28 January 2003 repeals and replaces Council Directive 90/313/EEC of 7 June 1990 on the Freedom of Access to Information on the Environment. It was decided in the interest of increased transparency to replace Directive 90/313/EEC rather than to amend it, so as to provide interested parties with a single, clear and coherent legislative text.

Directive 2003/4/EC governs public access to information in the nuclear field, as “environmental information” is defined to include any information in any form on “factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment” [Article 2(1)(b)].

The new directive aims to correct shortcomings identified in the practical application of the 1990 Directive, to adapt the text to the so-called electronic revolution in order to make a “second generation” directive reflecting the changes in the way information is created, collected, stored and made available to the public, and to pave the way for Community ratification of the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention – see *Nuclear Law Bulletin* No. 62), signed by the EC on 25 June 1998, by aligning the provisions of the directive to requirements of the Convention regarding access to environmental information.

The Preamble of Directive 2003/4/EC notes that increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment. The new directive imposes stricter obligations upon Member States, notably as regards the active dissemination of environmental information by public authorities and the extension of the right of access to information from citizens of the EU to any person, regardless of their residence.

The key requirements of the new directive include:

- access to information must be granted where the interests of the public outweigh the interests protected by the exceptions to such access. It is expected that it will be the exception rather than the norm to refuse requests for environmental information and companies will have no right to veto information they would prefer not to see in the public domain;
- public authorities will have 20 working days to supply information requested by the applicant; bodies which are under the control of public administrations will also have to supply environmental information when requested within 20 working days; and
- the directive introduces two types of review procedures (an administrative procedure as well as a judicial procedure) to challenge acts or omissions of public authorities in relation to a request for access to environmental information. The information commissioner will eventually oversee the judicial procedure.

Environmental information is defined to mean air, water and soil quality, biological diversity, noise and health and safety implications. Following implementation of the directive the applicant may

be able to request from the public authority environmentally significant information such as data collected on emissions.

The directive will be evaluated every four years after its entry into force and subject to revision based on the submission of reports by Member States outlining their experience. The directive obliges the Member States of the European Union to have their legislation in place at the latest by 14 February 2005.

### ***Directive on Public Participation in Respect of Certain Plans and Programmes Relating to the Environment (2003)***

Directive 2003/35/EC of the European parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC [OJ L 156 of 25/06/2003, p. 17] was adopted on 26 May 2003.

Such plans and programmes relating to the environment include nuclear power plants, installations for the production and enrichment of nuclear fuel, the reprocessing of spent fuel and the collection and processing of radioactive waste.

Directive 2003/35/EC provides for public participation in the preparation of environmental plans and programmes, in the sectors of waste management, air pollution and protection of water against nitrate pollution, and of projects with significant environmental impact. The directive implements the second pillar of the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention – see *Nuclear Law Bulletin* No. 62), signed by the EC on 25 June 1998, into EU legislation.

The directive introduces for the first time public participation in the decision-making on environmentally significant projects. To do so, it amends the EIA Directive (Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment) and the IPPC Directive (Directive 96/61/EC on integrated pollution prevention and control).

This directive further specifies the type of information to be provided to the public for the purposes of public consultation. Reasonable time-frames are required to ensure an effective involvement of the public in environmental decision-making at an early stage. The directive further establishes access to justice, giving the public a possibility to challenge the legality of decisions, acts or omissions subject to the public participation provisions.

Member States are obliged to adopt their laws and other provisions to comply with this directive by 25 June 2005 at the latest.

### ***Proposals for Directives on Nuclear Safety and Radioactive Waste Management (2004)***

Following the rejection in June 2004 of the January 2003 Commission proposals for Directives on the Safety of Nuclear Installations and on the Management of Spent Nuclear Fuel and Radioactive Waste (see *Nuclear Law Bulletin* No. 72), a revised package was presented by the Commission on 8 September 2004 [COM(2004)536].

The new proposal preserves the initial objective of the two texts but takes account of some of the comments expressed by the European parliament and the council.

With regard to the safety directive, the Commission maintains its proposal to establish a common framework for the enlarged EU to apply existing rules and principles in the nuclear safety field. These rules and principles are very close to the obligations outlined in the 1994 Nuclear Safety Convention and the requirements established over the past 25 years by national safety authorities within Commission Working Groups, and within the Western European Nuclear Regulators' Association (WENRA). However, revised Article 4 underlines that the responsibility for the safety of nuclear installations remains with the operators and national authorities. The same article also states that each Member State has to establish and maintain a legislative and regulatory framework to govern the safety of nuclear installations.

Another principal modification is that the requirement to ensure sufficient financial resources to cover decommissioning costs has been removed from the draft safety directive. The Commission has indicated that it will deal with this issue separately in another instrument. Furthermore, a new article in this revised directive proposes to set up a Committee of Regulatory Authorities composed of representatives of the national regulatory bodies. However, the idea of site inspections has been removed and therefore the notion of peer review as figured in the original proposal appears to have been discarded.

Concerning the waste directive, the Commission maintains its proposal for each Member State to be obliged to draw up a final radioactive waste management programme with deadlines, and the requirement to strengthen research and development activities in this field. However, the original deadline of 2018 for the operation of permanent waste repositories has been deleted. The Commission recommends "the possibility to give priority to the solution of deep geological disposal" but refers also to other options. It also proposes a Commission-based committee of experts to carry out tasks relating to reporting issues.