

Board of Governors General Conference

GOV/2004/62-GC(48)/13

Date: 5 August 2004

General Distribution

Original: English

For official use only

Item 3(a) of the Board's provisional agenda
(GOV/2004/51)

Item 13 of the Conference's provisional agenda
(GC(48)/1)

Measures to Strengthen International Cooperation in Nuclear, Radiation, Transport Safety and Waste Management

Code of Conduct on the Safety and Security of Radioactive Sources: Guidance on the Import and Export of Radioactive Sources

Report by the Director General

Summary

- The purpose of this document is to seek approval by the Board of Governors of the draft Guidance for the Import and Export of Radioactive Sources that is contained in Annex 1 to this document. The Guidance is intended to assist States in working towards following the Code of Conduct on the Safety and Security of Radioactive Sources.

Recommended Action

- It is recommended that the Board approve the draft *Guidance for the Import and Export of Radioactive Sources* that is contained in Annex 1 to this document and request the Director General:
 - to transmit it to the General Conference with a recommendation that the Conference endorse it and encourage its wide implementation; and
 - to issue it as guidance supplementary to the Code of Conduct.

Background

1. At its September 2003 session, the Board approved the revised Code of Conduct on the Safety and Security of Radioactive Sources (the Code of Conduct) that was contained in Annex 1 to document GOV/2003/49-GC(47)/9. Summing up the Board's discussion, the Chairperson stated, *inter alia*, that there still were concerns regarding the import and export of radioactive sources and that the matter needed to be further explored and some guidance developed.¹
2. At the same session, the Board also approved the draft Action Plan for the Safety and Security of Radioactive Sources (the Action Plan) that was contained in Annex 1 to document GOV/2003/47-GC(47)/7. In anticipation of the need to facilitate the implementation of the Code of Conduct and of concerns regarding the import and export of radioactive sources, the Action Plan called for the development of internationally agreed procedures for importing and exporting radioactive sources.
3. On 19 September 2003 the General Conference, in resolution GC(47)/RES/7.B, welcomed the Board's approval of the revised Code of Conduct, endorsed the objectives and principles set out in it, recognized that high priority should be given to developing and following the guidance in support of the Code of Conduct as specified in the Action Plan, and urged each State "to write to the Director General that it fully supports and endorses the IAEA's efforts to enhance the safety and security of radioactive sources, is working toward following the guidance contained in the IAEA Code of Conduct, and encourages other countries to do the same".
4. Subsequently, the Secretariat issued the Code of Conduct (IAEA publication IAEA/CODEOC/2004) and further, by Note Verbale dated 22 January 2004, encouraged States to make the commitment to the Code of Conduct referred to in resolution GC(47)/RES/7.B. To date, 57 States (two of which are not Member States of the Agency) have written to the Director General as urged in resolution GC(47)/RES/7.B.
5. In February 2004, the Secretariat convened an open-ended group of technical and legal experts to develop guidance on the import and export of radioactive sources in order to facilitate the implementation of the Code of Conduct. Draft guidance was developed, but some experts considered that, given the complexity of the issues involved, the draft guidance would need technical, legal and policy review by governments. The Secretariat was requested to send the draft guidance to all Member States for comment (this was done through a Note Verbale dated 21 April 2004).
6. A follow-up open-ended meeting of technical and legal experts was held in July 2004, attended by 68 experts from 40 Member States. The experts reached a consensus on the text contained in Annex 1 and on the report by the Chairman of the open-ended group, Mr. S. McIntosh (Australia), contained in Annex 2, in which the Chairman stated that "Experts felt that, in order to give the Guidance a higher status, the draft should be submitted to the IAEA's Board of Governors before its next meeting for its approval, together with the Chairman's report."

¹ See document GOV/OR.1076, para. 61.

Code of Conduct on the Safety and Security of Radioactive Sources:

Guidance on the Import and Export of Radioactive Sources

A. Preamble

The revised text of the non-legally binding *Code of Conduct on the Safety and Security of Radioactive Sources* (the Code) was approved by the IAEA Board of Governors and endorsed by the General Conference in September 2003 (GC(47)/RES/7.B), and published as IAEA/CODEOC/2004 in January 2004. During the meetings of technical and legal experts that developed the revised text, and at the Board of Governors meeting that approved the Code, some Member States requested guidance on implementing the Code, particularly in relation to the import and export of radioactive sources. The following Guidance² was developed to support the import and export provisions of the Code.

States recognize the contribution that participation in the IAEA's Model Project to Upgrade Radiation Protection Infrastructures and other IAEA programmes has made and continues to make in strengthening the radiation safety infrastructure of a number of Member States so that they comply with the standards established by the Agency for protection against ionizing radiation and for the safety of radiation sources. States further recognize that such participation contributes toward participant States meeting the provisions of the Code and this Guidance.

B. Objective

1. The Code, in paragraphs 23-29, contains guidance concerning the import and export of Category 1 and 2 radioactive sources. In this connection, Member States have developed the following non-legally binding Guidance on the implementation of those provisions. This Guidance is not designed to impede international cooperation or commerce, as long as such cooperation and commerce does not contribute to the use of such sources for purposes that threaten safety and security. Exporting and importing States should work toward following this Guidance in deciding whether to authorize exports and imports of Category 1 and 2 sources. States should consider this Guidance in a manner consistent with their national legislation and relevant international commitments.

² The text of this guidance is the one referred to as "Version 1.5" in the report of the Chairman of the open-ended meeting of technical and legal experts which agreed consensus on this text.

C. Scope

2. This Guidance, consistent with the export/import provisions of the Code, applies to the Category 1 and 2 sources within the scope of the import and export provisions of the Code.

D. Definitions

- 3.
- a. The terms used in this Guidance have the same meanings as those terms defined in the Code, unless otherwise defined herein.
 - b. “Category 1 source(s)” means radioactive sources in Category 1 of Table 1 of Annex 1 of the Code.
 - c. “Category 2 source(s)” means radioactive sources in Category 2 of Table 1 of Annex 1 of the Code.
 - d. “Code” means the IAEA Code of Conduct on the Safety and Security of Radioactive Sources [IAEA/CODEOC/2004].
 - e. “Export” means the physical transfer, originating from an exporting State, into an importing State or to a recipient in an importing State, of one or more radioactive source(s) covered by this Guidance.
 - f. “Import” means the physical transfer, into an importing State or to a recipient in an importing State, originating from an exporting State, of one or more radioactive source(s) covered by this Guidance.
 - g. “Recipient” means the natural or legal person in an importing State that receives one or more radioactive source(s) exported by an exporting State or an exporting facility in the exporting State.
 - h. “Exporting facility” means the natural or legal person in an exporting State, from which one or more radioactive source(s) are exported to an importing State or to a recipient in an importing State.
 - i. “Exporting State” means the State of origin of an export of one or more radioactive source(s) to an importing State or a recipient in an importing State.
 - j. “Importing State” means the State of final destination for a physical transfer of one or more radioactive source(s) from an exporting State or an exporting facility.

E. Point of contact

4. Each State is encouraged to nominate a point of contact for the purpose of facilitating the export and/or import of radioactive sources in accordance with the Code and this Guidance. If more than one point of contact is designated by a State, the State should indicate which point of contact should be contacted under which circumstances. States are encouraged to provide the details of these points of contact to the IAEA.

F. Application of this Guidance

5. This Guidance provides a common framework, and States may apply this Guidance to other radioactive sources in addition to Category 1 and 2 sources. States may also apply conditions in addition to the recommendations provided in this Guidance. States may also consider this Guidance in the context of an export or import of an aggregation of sources that may pose a risk similar to Category 1 or 2 sources (see paragraph 3.3.3 of TECDOC 1344 for additional information on aggregation). This Guidance should not be construed to amend or supersede applicable guidance under other multilateral import and export arrangements. This Guidance does not apply to sources or programmes that are not covered by the guidance in the Code. States should construe this non-legally binding Guidance in accordance with activities furthering non-proliferation, nuclear security, and the avoidance of malicious acts using radioactive sources.

G. Export Authorization – Category 1 Sources (other than Exceptional Circumstances)

G.1. Consent

6. Each State should establish export authorization procedures as recommended in paragraphs 7-9 for the export of Category 1 sources other than in cases of exceptional circumstances (see paragraphs 15-16 of this Guidance for exceptional circumstances). These procedures should include appropriate enforcement measures. Prior to authorizing the export of these sources, the exporting State should obtain consent from the importing State. The nature of the consent should be determined through appropriate bilateral channels or agreements. The exporting State or exporting facility should provide prior notification under paragraph 9(b) to the importing State.

G.2. Request for consent

7. In requesting consent for the export of such a source, the exporting state should provide to the importing state the following information in writing:

- name of the recipient,
- recipient location and legal address or principal place of business,
- radionuclides and radioactivity,
- a unique identifier for the request, and
- a suggested timeframe for a decision on the request

G.3. Evaluation of Request

8. In deciding whether to authorize an export of such a source, the exporting State should:
- a. Satisfy itself, insofar as practicable, that the recipient is authorized by the importing State to receive and possess the source in accordance with its laws and regulations. This review by the exporting State should be based on a confirmation from the importing State that the recipient is authorized to receive and possess the source or sources to be exported, or on a copy of the recipient authorization. If the latter, the exporting State should review the following information:
 - name of the recipient,
 - recipient location and legal address or principal place of business,
 - relevant radionuclides and radioactivity,
 - uses, if appropriate, and
 - recipient authorization expiration date (if any).

 - b. Satisfy itself, insofar as practicable, that the importing State has the appropriate technical and administrative capability, resources and regulatory structure needed for the management of the source(s) in a manner consistent with the guidance in the Code. This review by the exporting State should be based on whether the importing State has established a regulatory framework covering at least Category 1 radioactive sources, which is in place and operational, by:
 1. promulgating radiation protection legislation and regulations;
 2. designating and empowering a regulatory body;
 3. establishing a national register or inventory of radioactive sources;
and
 4. establishing a system for the notification, authorization and control of radioactive sources.

In addition to the above, the exporting State may consider the following information, if provided to, and made available by, the IAEA with the consent of the importing State:

- responses of the importing State to the Self Assessment Questionnaire (attached and described in paragraph 18);
- whether an importing State has written to the Director General indicating that it is working toward following the guidance contained in the Code; and
- whether an importing State that participates in the IAEA Model Project to Upgrade Radiation Protection Infrastructures has met Milestone 1 of that project (see paragraph 19);

- c. Consider, based upon available information:
 - i whether the recipient has been engaged in clandestine or illegal procurement of radioactive sources;
 - ii whether an import or export authorization for radioactive sources has been denied to the recipient or importing State, or whether the recipient or importing State has diverted for purposes inconsistent with the Code any import or export of radioactive sources previously authorized;
 - iii the risk of diversion or malicious acts involving radioactive sources.

G.4. Notification prior to shipment

9. If, after considering the information in [8], and receiving consent pursuant to [7], the exporting State decides to authorize the export, it should take appropriate steps to ensure that:

- a. the export of the source is conducted in a manner consistent with existing relevant international standards relating to the transport of radioactive materials; and
- b. the importing State is notified in advance of each shipment with the following information in writing:
 - the estimated date of export,
 - exporting facility,
 - recipient,
 - radionuclides and radioactivity,
 - aggregate activity level, and
 - the number of radioactive sources and, if available, their unique identifiers.

This notification may originate from the exporting State or exporting facility. If the notification originates from the exporting facility, a copy should be provided to the exporting State. This notification should be accompanied by a copy of the consent provided under 14(b), if available, and to the extent practicable should take place at least 7 calendar days in advance of shipment.

H. Export Authorization – Category 2 Sources (other than exceptional circumstances)

10. Each State should establish export authorization procedures as recommended in paragraphs 11-12 for the export of Category 2 sources other than in cases of exceptional circumstances (see paragraphs 15-16 of this Guidance for exceptional circumstances). These procedures should include appropriate enforcement measures. The exporting State or exporting facility should provide prior notification under paragraph 12(b) to the importing State.

H.1. Evaluation of Request

11. In deciding whether to authorize an export of such a source, the exporting State should:

- a. Satisfy itself, insofar as practicable, that the recipient is authorized by the importing State to receive and possess the source in accordance with its laws and regulations. This review by the exporting State should be based on a confirmation from the importing State that the recipient is authorized to receive and possess the source or sources to be exported, or on a copy of the recipient authorization. If the latter, the exporting State should review the following information:

- name of the recipient,
- recipient location and legal address or principal place of business,
- relevant radionuclides and radioactivity,
- uses, if appropriate, and
- recipient authorization expiration date (if any).

The exporting State may permit the exporting facility to conduct the review under this subparagraph instead of the exporting State.

- b. Satisfy itself, insofar as practicable, that the importing State has the appropriate technical and administrative capability, resources and regulatory structure needed for the management of the source(s) in a manner consistent with the guidance in the Code. This review by the exporting State should be based on whether the importing State has established a regulatory framework covering at least Category 1 and 2 radioactive sources, which is in place and operational by:

- i promulgating radiation protection legislation and regulations;
- ii designating and empowering a regulatory body;
- iii establishing a national register or inventory of radioactive sources; and
- iv establishing a system for the notification, authorization and control of radioactive sources.

In addition to the above, the exporting State may consider the following information, if provided to, and made available by, the IAEA with the consent of the importing State:

- responses of the importing State to the Self Assessment Questionnaire (attached and described in paragraph 18);
- whether an importing State has written to the Director General indicating that it is working toward following the guidance contained in the Code; and
- whether an importing State that participates in the IAEA Model Project to Upgrade Radiation Protection Infrastructures has met Milestone 1 of that project (see paragraph 19);

- c. Consider, based upon available information:
- i whether the recipient has been engaged in clandestine or illegal procurement of radioactive sources;
 - ii whether an import or export authorization for radioactive sources has been denied to the recipient or importing State, or whether the recipient or importing State has diverted for purposes inconsistent with the Code any import or export of radioactive sources previously authorized;
 - iii the risk of diversion or malicious acts involving radioactive sources.

H.2. Notification prior to shipment

12. If, after considering the information in paragraph 11, the exporting State decides to authorize the export, it should take appropriate steps to ensure that:

- a. the export of radioactive source(s) is conducted in a manner consistent with existing relevant international standards relating to the transport of radioactive materials; and
- b. the importing State is notified in advance of each shipment with the following information in writing:
 - the estimated date of export,
 - exporting facility,
 - recipient,
 - radionuclide(s) and radioactivity,
 - aggregate activity level, and
 - the number of radioactive sources and, if available, their unique identifiers.

This notification may originate from the exporting State or exporting facility. If the notification originates from the exporting facility, a copy should be provided to the exporting State. To the extent practicable, this notification should take place at least 7 calendar days in advance of shipment.

I. Import Authorization

13. Each importing State should establish import authorization procedures for the import of Category 1 and 2 radioactive sources. These procedures should include enforcement measures. In deciding whether to authorize an import of such a source, the importing State should:

- a. Satisfy itself that the recipient is authorized to receive and possess the source in accordance with the laws and regulations of the importing State; and
- b. Satisfy itself that it has the appropriate technical and administrative capability, resources and regulatory structure needed for the management of the source(s) in a manner consistent with the guidance in the Code. This consideration should be based on whether the importing State has established a regulatory framework covering at least Category 1 and 2 sources, which is in place and operational, by:

- i promulgating radiation protection legislation and regulations;
- ii designating and empowering a regulatory body;
- iii establishing a national register or inventory of radioactive sources; and
- iv establishing a system for the notification, authorization and control of radioactive sources.

In making this determination, the importing State should, if it participates in the IAEA Model Project to Upgrade Radiation Protection Infrastructures, consider whether it has met Milestone 1 of that project (see paragraph 19);

- c. Consider, based on available information:
 - i whether the recipient has been engaged in clandestine or illegal procurement of radioactive sources;
 - ii whether an import or export authorization for radioactive sources has been denied to the recipient, or whether the recipient has diverted for purposes inconsistent with the Code any import or export of radioactive sources previously authorized;
 - iii the risk of diversion or malicious acts involving radioactive sources.

14. If, after considering the information in paragraph 13, the importing State decides to authorize the import, it should take appropriate steps to ensure that:

- a. A copy of the recipient authorization, or the importing State's confirmation that the recipient is authorized to receive and possess the source or sources to be exported, is provided to the exporting State or exporting facility;
- b. A copy of the consent to the import is provided to the exporting State in cases where it is requested by the exporting State (see paragraph 7); and
- c. To the extent within the responsibility of the importing State, the import of radioactive sources is conducted in a manner consistent with existing relevant international standards relating to the transport of radioactive materials.

J. Exceptional Circumstances

15. If the guidance in paragraphs 24 and 25 of the Code (see paragraphs 6-14 above) cannot be followed with respect to a particular import or export, the States involved should consider whether the import or export may be authorized in exceptional circumstances. In doing so, those States may consider the risks and benefits of such an import or export. If it is decided that such "exceptional circumstances" do exist, the exporting State should obtain consent from the importing State, in accordance with paragraph 26 of the Code.

Exceptional circumstances should be considered as:

- a. Cases of considerable health or medical need, as acknowledged by the importing State and by the exporting State. In such cases, the importing and exporting States should, so far as

practicable, make arrangements prior to the authorization of the export for the safe and secure management of the sources during and at the end of their useful life;

- b. Cases where there is an imminent radiological hazard or security threat presented by one or more radioactive sources; or
- c. Cases in which the exporting facility or exporting State maintains control of radioactive source(s) throughout the period the source(s) are outside of the exporting State, and the exporting facility or exporting State removes the source(s) at the conclusion of this period.

J.1. Request for consent

16. In requesting consent for the export of such a source, the exporting State should provide to the importing State the following information in writing:

- name of the recipient,
- recipient location and legal address or principal place of business,
- radionuclide(s) and radioactivity,
- a unique identifier for the request, and
- a suggested timeframe for a decision on the request.

K. Transit and Transshipment

17. States should consider paragraph 29 of the Code with respect to the transport of radioactive sources through the territory of any State other than the importing State or exporting State, although such transport is not subject to the import or export authorization provisions of this Guidance.

L. General

18. To facilitate the timely review of export requests, each State is urged to make available to the IAEA its responses to a Self Assessment Questionnaire (attached), and an update of those responses if they change, as soon as practicable after such change. Those responses should, with the consent of the State concerned, be made available to other States.

19. The IAEA is requested to make available in a timely manner, subject to the consent of the States concerned, as appropriate:

- a. a list of State contact points described in paragraph 4;
- b. the responses to the Self Assessment Questionnaire (see paragraph 23);
- c. a list of States that have written to the Director General that they are working toward following the guidance contained in the Code; and,
- d. any additional information concerning the Model Project participant States' progress toward meeting Milestone 1 of the Model Project to Upgrade National Radiation Protection Infrastructures which the State may wish to provide.

The provisions of paragraph 17 of the Code concerning confidentiality should apply to States receiving this information. The IAEA is requested to protect the confidentiality of the responses to the Self Assessment Questionnaire and any other information it receives in confidence pursuant to this guidance by taking appropriate security measures, including the use of secure, password protected websites.

20. The Guidance should be reviewed and, if appropriate, revised by Member States approximately five years after publication of this Guidance, or earlier if needed. However, the absence of a review of or a revision to this Guidance should not be a basis for the authorization or denial of exports and imports of radioactive sources.

21. In furtherance of harmonized action under this Guidance, States should, as necessary and appropriate, exchange relevant information and consult with other States. States understand that the provisions of paragraph 17 of the Code concerning confidentiality should apply where appropriate with respect to information provided or exchanged pursuant to this Guidance, including information made available to the IAEA that was provided to it in confidence by importing or exporting States.

22. In the interests of international safety and security, the cooperation of all States in following the recommendations in the Guidance would be welcome.

M. State Self Assessment Questionnaire

To facilitate the timely review of export requests, States are requested to make available to the IAEA through official channels their responses to a Self Assessment Questionnaire, and an update of those responses if they change. Those responses should, with the consent of the State concerned, be made available to other States. The guidance in paragraph 17 of the Code concerning confidentiality should apply to States receiving this information.

States are requested to answer the following questions, and may also provide explanations for responses:

- (i) Has your State established a regulatory framework covering at least Category 1 and 2 sources, which is in place and operational, by:
 - (A) promulgating radiation protection laws and regulations; YES/NO
 - (B) designating and empowering a regulatory body that establishes regulations and issues guidance relating to the safety and security of radioactive sources; YES/NO
 - (C) establishing a national register or inventory of radioactive sources, in accordance with paragraph 11 of the Code; and YES/NO
 - (D) establishing a system for the notification, authorization and control of radioactive sources. YES/NO
- (ii) If your State participates in the IAEA Model Project to Upgrade Radiation Protection Infrastructures, has your State met Milestone 1 of that Project? YES/NO/Not applicable
- (iii) Does your State consent to the release of the answers to this Questionnaire to other States? YES/NO

Name, Signature, Position, Organization and Date

Meeting of Technical and Legal Experts to Develop Internationally Harmonized Guidance for the Import and Export of Radioactive Sources in Accordance with the Requirements of the Current Code of Conduct on the Safety and Security of Radioactive Sources (TM26603)

Vienna, 19-22 July 2004

Report of the Chairman

1. A meeting of technical and legal experts to ‘further develop internationally harmonized guidance for implementing the *recommendations of the Code of Conduct on the Safety and Security of Radioactive Sources* in relation to the *import and export of radioactive sources*’, met from 19 to 22 July 2004 at the IAEA Headquarters in Vienna under the chairmanship of Mr S. McIntosh (Australia). The meeting was attended by experts nominated by 41 Member States (Albania, Argentina, Armenia, Australia, Belarus, Belgium, Benin, Brazil, Canada, China, Costa Rica, Cuba, Czech Republic, Ecuador, Ethiopia, Finland, France, Germany, Hungary, India, Israel, Italy, Libya, Luxemburg, Malaysia, Mexico, Moldova, Morocco, Pakistan, the Russian Federation, Serbia and Montenegro, the Slovak Republic, Spain, Sweden, Turkey, Ukraine, the United Arab Emirates, the United Kingdom, the United States of America, Viet Nam and Zambia) and observers from the EC and OSCE. The meeting was opened by Mr T. Taniguchi, DDG-NS.
2. At the outset, the Chairman recalled the discussions held at TM-26602 in February 2004. Those discussions had resulted in the development of a comprehensive draft text (“Version 1.3”), which had, in accordance with paragraph 24 of the Report of the Chairman on TM-26602, been taken back to capitals for further consideration. Version 1.3 was also circulated by the Secretariat to all IAEA Member States and relevant international organizations under a Note Verbale. A group of States had subsequently, in order to clarify and achieve wider consensus on a number of draft provisions, proposed a number of amendments to Version 1.3. An annotated text reflecting those proposals (“the annotated text”) had been circulated to Member States by the Secretariat.
3. The Group worked through Version 1.3, considering the proposals made in the annotated text and proposals made by experts present. Many of the issues discussed in the Chairman’s report of the February meeting were resolved as a result of those proposals. That consideration resulted in a large number of amendments to version 1.3, which are reflected in the attached revised text (“*Version 1.5*”).
4. As had been the case at the July 2003 meeting of experts that finalized the text of the Code of Conduct, some experts expressed concern that the application of the guidance should not impede or restrict non-proliferation activities and international initiatives directed at securing or recovering sources in an insecure condition. An additional sentence was added to paragraph 5 to reflect the view of the meeting that an interpretation that did impede or restrict such activities would be undesirable. Some experts felt that whilst in the interests of a consensus outcome they did not oppose such a provision, they did not believe that its inclusion was appropriate.
5. One other issue that attracted significant discussion was the scope of the “exceptional circumstances” provision in paragraph 15. A number of minor amendments were made to the draft

text found in Version 1.3. Some experts noted that the combined effect on the first part of paragraph 15 and of subparagraph 15(a) was that the evaluation of the health and medical need for the transfer of a radioactive source would be undertaken on a bilateral basis between the exporting and importing states. There was also discussion of the possible need for an amendment to sub-paragraph (c) to reflect the general understanding that the exporting facility, in maintaining control over the source(s) in question, did so in a manner that ensured that the arrangements for safe and secure management of the source were in place. In the event, an additional phrase was added to the first part of paragraph 15 of the draft Guidance to reinforce the need for any transfers under this paragraph to comply with paragraph 26 of the Code.

6. There was consensus to include in the draft Guidance a provision that the Guidance should be reviewed by Member States and, if appropriate revised, approximately five years after its publication (or earlier if needed). Some experts proposed that this review process should commence in 2008, and involve national experts and manufacturers, users and transporters of radioactive sources. This review process should draw upon the experiences of all those stakeholders in the implementation of the Guidance. Other experts proposed that the Agency's relevant safety standards committees and the Commission on Safety Standards should be involved in the review process. The Group noted that any final recommendations on revision should be made by a specifically convened Group, to which all Member States of the Agency and relevant international organizations would be invited, as had been the case with TM-26602 and this meeting.

7. On the subject of transit and transshipment, there was consensus support for the language found in paragraph 17. Some experts noted that developments in other fields of Agency action – such as the transport of radioactive materials – should be kept under review, in order to ensure that the language of that paragraph continued to reflect an approach consistent with that adopted in those other fields. To that end, discussions between experts in these various fields would be of assistance in the elaboration of more detailed procedures to encourage harmonization.

8. The Group again discussed the issue as to when the draft Guidance should become applicable. The Group recalled that one of the conclusions of the February 2004 meeting of manufacturers and distributors of radioactive sources (TM 26601) was their concern that, in the interests of fairness of trade, any Guidance be implemented uniformly. Noting that conclusion, the Group was of the general view that, given that the draft Guidance covers areas of international trade and cooperation among states, a harmonized implementation of its provisions was highly desirable. There was no opposition to a proposal that, given the wish of States to make amendments to their legislation and regulations, as appropriate, to enable them to follow the Guidance, an appropriate date for harmonized implementation of the Guidance could be 31 December 2005. Some experts felt that this date should be 31 December 2005.

9. Experts felt that, in order to give the Guidance a higher status, the draft should be submitted to the IAEA's Board of Governors before its next meeting for its approval, together with the Chairman's report. Some experts felt that it is necessary to reflect on legal aspects related to this draft Guidance, notably its relations with other relevant international frameworks, commitments and agreements, in particular in the areas of import/export control, nuclear safety, non-proliferation and nuclear security.

10. Related to the issue raised in paragraph 8 was a question as to whether, and how, States could express their willingness to follow the guidance from that date. A number of proposed mechanisms were floated, including a Note Verbale from States to the Director-General, the submission of a draft resolution to the General Conference on the issue and a request to the Board of Governors for further guidance on this aspect.

11. Notwithstanding the above, some experts felt that the Meeting was not an appropriate venue for final views on the two issues referred to in paragraphs 8 and 10 above, and that they might better be discussed by the Agency's Policy-Making Organs. It was also noted that, irrespective of any views of this meeting or of the Agency's Policy-Making Organs, individual States were free to write to the Director-General on this or any other matter.

12. Experts again discussed the form in which the Guidance should be published, once finalised. The preference of the meeting was for publication as an IAEA Information Circular (INFCIRC). The Chairman noted that, under normal Agency procedures, the decision on publication of documents is made by the Director-General, taking into account recommendations of the Member States.

13. Some experts underlined the importance of all States adapting their legislation, as appropriate, so that the system under the Guidance would work efficiently on a global scale. Experts also felt that non-member States of IAEA should be encouraged to follow the Guidance from the same date as Member States.

Steven McIntosh
Chairman

22 July 2004