

Open-ended Meeting of Technical and Legal Experts on the Code of Conduct on the Safety and Security of Radioactive Sources: Lessons Learned from Implementing the Supplementary Guidance on Import and Export Controls

Vienna, 26 - 28 May 2008

Report of the Chairman

1. An open-ended meeting of technical and legal experts for sharing of information as to lessons learned from States' implementation of the Supplementary Guidance on Import and Export of Radioactive Sources (the Guidance) was held from 26 to 28 May 2008 at the IAEA Headquarters in Vienna under the chairmanship of Mr S. McIntosh (Australia). This meeting was suggested by the first information exchange meeting of technical and legal experts for sharing of information as to States' implementation of the Code of Conduct on the Safety and Security of Radioactive Sources (the Code) and the Guidance, held in 2007 in the framework of the formal process for information exchange established in 2006.

2. The meeting was attended by 167 experts from 87 Member States of the IAEA (Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, China, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Haiti, Hungary, India, Indonesia, Iran, Iraq, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Kyrgyzstan, Lebanon, Lithuania, Luxembourg, Madagascar, Malaysia, Mali, Mexico, Republic of Moldova, Mongolia, Montenegro, Morocco, Nicaragua, Niger, Nigeria, Norway, Pakistan, Palau, Panama, Philippines, Romania, Russian Federation, Seychelles, Sierra Leone, Slovak Republic, South Africa, Syrian Arab Republic, Tajikistan, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela, Vietnam and Yemen) and 4 non-Member States of the IAEA (Bahrain, Burundi, Cambodia and Togo). The meeting was also attended by observers from the European Commission, the Organization for Security and Co-operation in Europe (OSCE) and the International Source Suppliers and Producers Association (ISSPA). The Scientific Secretaries for the meeting were Mr H. Mansoux (Division of Radiation Transport and Waste Safety) and Mr W. Tonhauser (Office of Legal Affairs).

3. The meeting was opened by Mr Taniguchi, Deputy Director General of the IAEA Department of Nuclear Safety and Security. In his opening remarks, Mr Taniguchi recalled the formal process for a voluntary, periodic exchange of information among States on their implementation of the Code and Guidance that was endorsed by the IAEA Board of Governors in 2006. The first information exchange meeting organized in the framework of this formal process took place in June 2007 ('the 2007 information exchange meeting'). That meeting indicated significant but uneven progress in implementing the provisions of the Code (see the meeting report, available at <http://www-ns.iaea.org/tech-areas/radiation-safety/code->

[conduct-info-exchange.htm](#)). The availability of sufficient resources and expertise was an ongoing challenge in many States. In particular, several issues that relate to the harmonized implementation of the Guidance were raised, and it was suggested that these issues should be further discussed at a dedicated international meeting.

4. The objective of this meeting was therefore to provide for a forum where participants could share their experiences and lessons learned in implementing the Guidance: the successes and improvements in the control of the international transfer of sources, but also challenges and difficulties faced. In line with the non-legally binding nature of the Code and the Guidance, participation in the meeting was on a voluntary basis and the meeting was open to all Member and non-Member States of the IAEA, whether or not they had made a political commitment to the Code and/or to the Guidance.

5. After the opening session, the Secretariat presented the status of international support for the Code and the Guidance. It was noted that 92 States had written to the Director General of the IAEA to express political commitment to implement the Code, and that 46 of those States had additionally notified the Director General of their intention to act in a harmonized manner in accordance with the Guidance. 80 States had nominated points of contact for facilitating exchange of information, and 36 States had completed and returned the Self-Assessment Questionnaire provided in the Annex to the Guidance. The Secretariat also briefed the participants on the main on-going programmes of the IAEA to assist States in implementing the provisions of the Code and the Guidance, and invited them to suggest any improvements in these programmes.

6. In preparation for the meeting, the Secretariat invited a few States with significant experience in the export of category 1 and 2 sources to make a presentation. In addition, the Secretariat invited all participants to prepare a brief written report from on their experience with import and export of category 1 and 2 radioactive sources, to be used as reference material for the discussions, and to be shared with others during and after the meeting. The meeting was organized in thematic discussion sessions. The key issues discussed are summarized below.

7. Participants noted that implementation of the Guidance had only recently commenced, and that it was therefore too early to make a definitive assessment of its impact on the safety and security of radioactive sources and on international trade and cooperation. Nevertheless, some preliminary conclusions could be drawn, and they were shared during the course of the meeting.

8. One participant suggested that the next information exchange meeting should explore the possibility of transforming the Code into a convention.

Experience and lessons learned from implementing the Guidance – exporting States’ and sources suppliers’ experience

9. Participants from Argentina, Canada, China, the Russian Federation, the United Kingdom, the United States of America and the International Source Suppliers and Producers Association (ISSPA) made presentations on their experience, in particular when exporting radioactive sources to other States. Some similar experiences were shared by all:

- Implementing the Guidance required some modifications to the national regulations;

- Communication and coordination with the importing State is difficult when there is no point of contact designated; and
- Given the recent promulgation of the Guidance, exporting States had only recently promulgated necessary regulations and are only now considering how to harmonize their procedures and assessments with other exporting States. Exporting States also recognized that many potential importing States were still in the process of making their national regulatory systems consistent with the provisions of the Code and the Guidance. However, they looked forward to increased harmonization of procedures, increased knowledge about the regulatory adequacy of States and more thorough application of the Guidance.

10. Lack of coordination between regulatory bodies and users in both exporting and importing States had caused some delay in the process of authorizing some source transfers. For instance, a few cases in which the exporting State's request for consent was sent to the regulatory authority of the importing State prior to the importing facility's submission of an application to import a source were reported. It was acknowledged that in such cases, the implementation of the Guidance has increased delays for the users. Again, this was to some extent inevitable with the introduction of a new regulatory regime with which importing and exporting facilities were not familiar, and should diminish over time.

11. It was recalled that in the case of return of disused sources to their manufacturer, the original importing State is now the exporting State, and it was important that those States carried out the responsibilities of an exporting State under the Guidance (keeping in mind that the categorization of the source or sources in question was to be decided as of the date of its return, rather than the date of the original transfer). In a few cases, such sources had been re-exported without complying with the Guidance.

12. ISSPA advised that they appreciated the need for and supported such regulation of import and export, and that the new regulations derived from the Guidance had not had a major impact on their members. However, their experience in complying with these new requirements (mainly the request for consent) revealed some challenges in the practicalities of their activity. Time delays for obtaining the consent, time validity of exporting or importing license, seven days' notification requirement and high fees have delayed or even stopped source deliveries. To ensure that international controls on import and export of radioactive sources do not hinder international commerce or detract from the beneficial use of radioactive sources, ISSPA suggested that the problems identified above need to be resolved and that this could be completed, in part, through increased harmonization and consistency in implementation of the Code and Guidance globally, for example, through bilateral agreements between States. Further, ISSPA suggested that, when feasible, import authorization be included in a possession and use licence, and that multiple source transfers to a user in a country could be accommodated by a single authorization, thereby simplifying the overall process for industry and government.

13. To facilitate the beneficial use of radioactive sources, participants felt that States should consider cooperating in establishing bilateral agreements, which would provide increased harmonization and consistency in implementation of the Code and Guidance. Discussions under those agreements might consider expedient review and approval for consent, appropriate licence validity periods to accommodate business, regulatory and transport requirements, flexibility of the seven day notification period, fee structures, and, when feasible, allowing the import authorization to be included under a recipient's licence of possession or use and allowing multiple source transfers to a user in a country to be

accommodated via single authorization. Such discussions would be assisted by the involvement of the industry.

Experience and lessons learned from implementing the Guidance from the perspective of the importing States

14. As noted in paragraph 7 above, it was too early to make a definitive assessment of the impact of the implementation of the Guidance on the safety and security of radioactive sources and on international trade and cooperation. Nevertheless, at this stage, the participants felt the Guidance to be useful. The application of the Guidance enhanced their ability to regulate and track radioactive sources within their States. Participants noted the importance of expeditious handling of requests for consent, as there was the potential for the beneficial uses of sources to be hampered or, in the extreme, for the choice of isotope to be influenced by considerations of possible delays in processing of forms – contrary to the objectives of the Code.

15. Concerns about the illegal (deliberate or inadvertent) transfer of sources were raised. In particular, the fate of orphan sources detected at national borders or elsewhere was – as in the 2007 information exchange meeting – a matter of some concern, as was the issue of the return of disused sources to a supplier which no longer exists. Although, in accordance with paragraph 8(c) of the Code, every State should have in place an effective national legislative and regulatory system of control over the management and protection of radioactive sources, including national strategies for gaining or regaining control over orphan sources, they may still not have the capacity to manage long-lived sources for the necessary time periods. It was recalled that the Guidance does not address these issues, but focuses only on the regulatory control of the legal transfer of sources between States (nor does the Guidance cover the transfer of depleted uranium containers between States, although this may be subject to safeguards obligations). On the other hand, all issues relating to the continuity of regulatory control over radioactive sources are relevant to the Code, and there would be opportunities at the next information exchange meeting on the Code (scheduled for 2010) for in-depth discussions on them.

Experience with the application of ‘exceptional circumstances’

16. Only one case of authorization of export of a source under the exceptional circumstances defined by the Guidance was reported. This authorization was granted in accordance with paragraphs 15-16 of the Guidance. It was noted that it was therefore too early to form any judgements as to the significance of this provision, and that future discussions on the harmonization of implementation of this provision may be needed.

17. There was some discussion on the meaning of the exceptional circumstances provision. It was recalled that the exceptional circumstances provision is not a mechanism to avoid normal regulatory processes in States whose regulatory structures were consistent with the Code. Rather, it is meant to cover exports to that small number of States where no recipient authorization existed, with no regulatory structure and/or with no expertise in radiation protection. Whilst it would normally be difficult to justify the supply of radioactive sources to such States, paragraph 15 of the Guidance notes that there may be circumstances in which the export or import of a source is justified – in which case the provisions of paragraphs 15-16 should be followed.

Experience with transit and transshipment of sources

18. Some States reported about cases where transit or transshipment of radioactive material across their territory could be facilitated by notification of the State's point of contact. The issue of applying the provisions of the Code and the Guidance to such transits and transshipments was raised. It was recalled that, when drafting the Code and Guidance, participants were conscious of the political sensitivity of matters related to prior consent and notification of transit and of the need to avoid creating new standards in this area. It was also recalled that the IAEA Safety Requirements No. TS-R-1, Regulations for the Safe Transport of Radioactive Material, contain comprehensive provisions relating to the notification of competent authorities of States of transit. In this regard, it was recalled that the report of the 2007 information exchange meeting noted that the cooperation and coordination of relevant national agencies, such as customs, immigration, intelligence and other security agencies was necessary.

19. However, it was noted that the thresholds for provision of notification under the Transport Regulations may differ from the categorization of sources used under the Code and Guidance, which might mean that the transit of such sources is not notified to either the competent authority under those Regulations or the point of contact under the Guidance. It was unclear to participants whether there would be a significant number of sources which would fall into this 'gap' in notification requirements. The Secretariat, in consultation with TRANSSC and other relevant Agency mechanisms, was therefore requested to study this question and advise the 2010 information exchange meeting thereon. One expert suggested that the notification of transit States be made a condition of the relevant export authorization.

Experience with the existing forms, the list of points of contact and the protected web-page

20. The three forms developed by the IAEA two years ago have been used by major exporting countries, and in some cases adjusted, based on the feed-back from the first cases. For instance, Canada modified the field related to the period of validity of the consent, proposing to the importing State a default period of 12 months. Few cases of incomplete forms returned were reported. Overall, it was considered that the forms are helpful and useful, and States were encouraged to use them when requesting consent to the export of Category 1 sources, requesting confirmation that the recipient is authorized to hold Category 1 or 2 sources or notifying the importing State prior to shipment. It was suggested that the Secretariat make these forms available on the public web page dedicated to the Code, rather than the protected web page.

21. It was suggested that a mechanism through which the actual transfer of a source and its safe and secure transport to the importing State is notified by the importing State or importing facility to the exporting State could be introduced. Although not required by the Code or the Guidance, such an acknowledgement of receipt would allow the exporting State to close the export transaction with greater assurance of its completion in a safe and secure manner. That mechanism might be facilitated by the development of an additional form to be completed by the importing State and provided to the exporting State. The meeting requested the Secretariat to prepare such a form. It was recalled that the forms developed by the Secretariat are not required by the Code and the Guidance. They are just models made available to facilitate the exchange of information between States, and they can be modified by States as necessary.

22. The list of points of contact – of which there were now 80 - was found to be very useful. The meeting urged all States – both Member and non-Member – that had not yet done so to provide point of contact details to the Secretariat as soon as possible. Failure to do so would hamper the provision of sources for beneficial purposes to those States. The importance of keeping contact details up to date – particularly where the point of contact was a named individual rather than a position or an institution – was stressed. In this connection, the observation by the 2007 information exchange meeting that nominations of national point of contact should preferably be by position rather than by name was recalled. It was also recalled from the 2007 information exchange meeting that if States have differing regulatory bodies and points of contacts for parts of their territory or autonomous regions, such information should be provided to the Agency. It was also suggested that national regulatory bodies advise their licensees of the appropriate point of contact in the importing State. One expert suggested that a definition of ‘Point of Contact’ be inserted in the Guidance.

23. If a point of contact had not been identified, a logical first contact might be the national regulatory body in the importing State. It was therefore suggested that the Secretariat add a link to the “directory of national regulatory bodies for the control of radiation sources” that it established in 2006 to the web page, in addition to the list of Point of Contact for import and export.

24. The protected web page might provide a venue for circulation of States’ reports to meetings such as this, and also for exchange of information between points of contact on their implementation of the Guidance. More formalized networking between points of contact and regulators, using existing or new network structures at the regional and international level, was also suggested as a means to facilitate communication and exchange of experience on the import and export of radioactive sources. The meeting noted that such regional discussions could feed into the next information exchange meeting.

Assessment of the ‘appropriate technical and administrative capability, resources and regulatory structure’ of the importing State by the exporting State

25. Prior to granting an authorization for the export of a category 1 or 2 source, the exporting State should “satisfy itself, insofar as practicable, that the importing State has the appropriate technical and administrative capabilities, resources and regulatory structure needed for the management of the source in a manner consistent with the guidance in the Code...” (paragraphs 8(b) and 11(b) of the Guidance). As noted in the 2007 information exchange meeting, there is currently no common approach among exporting States as to how they so satisfy themselves. Major exporting States explained that they were facing difficulties in making their assessment of the regulatory and technical capacity of many importing States, and are collecting all possible information in order to assist their assessment. Better access to such information will enable exporting States to grant export authorizations more promptly and consistently and for the benefit of the importing State. Typical sources of information used were:

- Whether the importing State has made a political commitment to the Code and/or the Guidance;
- The importing State’s response to the Self-Assessment Questionnaire, if available;
- The existence of a written authorization for the importing facility to import or possess such sources;
- Information provided by the importing State’s point of contact;

- Information provided by the importing State during the 2007 information exchange meeting; and
- If the information collected through these sources is not sufficient, or if a point of contact does not exist in the importing State, diplomatic channels, contact with other ministries also dealing with the export of goods to the importing State and/or contact with the source exporter may also be used in order to provide sufficient information for an assessment to be made.

26. Although exporting States may seek additional sources of information, the provision by all importing States to the IAEA of a point of contact and a response to the Self-Assessment Questionnaire would greatly aid their decision-making process. The meeting urged all States – both Member and non-Member – that had not yet done so to provide a response to the Self-Assessment Questionnaire to the Secretariat as soon as possible and to make it available on the protected page of the web site. Moreover, importing States should ensure that necessary updates are sent to the IAEA, both for the point of contact and the response to the Self-Assessment Questionnaire.

27. Participants felt that a harmonized approach should be used to avoid contradictory assessments by exporting States. However, it was recognized that a harmonized approach might be difficult to establish, since such an assessment cannot be reduced to a simple quantification process. The exporting State has the final responsibility for making the assessment and granting a specific export license, and may give different weights to specific factors in the assessment. In that connection, it was suggested that interested States should discuss, on a bilateral or ad hoc basis, the criteria they apply in making these assessments – for example cases of denial of export. Such discussions might best occur prior to the next information exchange meeting.

28. The IAEA currently provides assistance to exporting States in obtaining points of contact in the importing State, but does not provide any assessment of the adequacy of the regulatory structure of a particular Member State (for example, the results of an IRRS mission to that State) to other States. Some participants suggested that the provision of such information (perhaps in summary form and with the consent of the State involved) would assist exporters to reach decisions as to the ability of States to manage sources safely and securely. Others noted that these missions are conducted for the purpose of providing frank reviews and advice to the concerned States, with emphasis on non-compliances, weaknesses and areas for improvement, and not to provide an evaluation to a third party. It was noted that the provision of such information might best be done bilaterally rather than through the IAEA.

Conclusions

29. A number of conclusions were reached:

29.1. The importance of States making a political commitment to the Guidance was emphasized. It was recalled that a political commitment to the Code did not automatically equate to a political commitment to the Guidance - although it was possible to make a commitment to both documents in a single communication to the Director-General.

29.2. Many States have already provided national points of contact to the Secretariat, and this information is available on the IAEA webpage dedicated to the Code. It was recognized that this information is of mutual benefit to both importing States and exporting States, and all States (even those which had not yet made a political commitment) are encouraged to provide their point of contact to the Secretariat and to inform it of any future updates or changes to that information.

29.3 Some States, including some which had not made a political commitment, have already provided responses to the Self-Assessment Questionnaire to the Secretariat. States which had not yet done so were encouraged to provide such a response to the Secretariat as soon as possible and to make it available on the protected page of the web site. Moreover, States should ensure that necessary updates are sent to the IAEA, both for the point of contact and the response to the Self-Assessment Questionnaire.

29.4 The provision of information to exporting States on the regulatory and technical capacity of importing States would assist those exporting States in reaching prompt and consistent decisions on applications for export authorizations which would also be of benefit to the importing State. To that end, all States were encouraged to utilize, consistent with the provisions of the Code and the Guidance, appropriate bilateral, regional and multilateral networks and other mechanisms to provide such information.

29.5 The Secretariat was requested to assist States to develop regional networks or utilize existing networks to discuss the implementation of the Guidance. The discussions within those networks would feed into the general information exchange mechanism under the Code, as foreseen by paragraph 3(b) of the 'Process for the Sharing of Information as to States' Implementation of the Code of Conduct on the Safety and Security of Radioactive Sources and its associated Guidance on the Import and Export of Radioactive Sources' (GOV/2006/40-GC(50)/3, Annex 2).

29.6 A potential gap which might exist in relation to the notification of the transit or transshipment of sources across the territory of States was identified. The Secretariat was requested to analyse the scope of any such gap, in consultation with TRANSSEC and other relevant Agency mechanisms, and to advise the next information exchange meeting thereon. That information exchange meeting would then consider what action, if any, should be taken in that regard.

29.7 Paragraph 20 of the Guidance provides that "The Guidance should be reviewed and, if appropriate, revised by Member States approximately five years after publication of this Guidance, or earlier if needed. It was felt that the next information exchange meeting (presently planned for 2010) would provide an opportunity to undertake that review. In that connection, it was noted that any revision to the Guidance would necessitate the institution of a fresh process of political commitment, and should therefore be approached with caution.

29.8 It was suggested that, during future information exchange meetings on the Code, some time should be dedicated to a further discussion on the implementation of the Guidance.

30. In relation to funding the meeting, Mr Taniguchi had noted that Canada and the USA had provided the extra-budgetary funding to the IAEA specifically to support participants from States that otherwise could not have attended the meeting.

31. Participants suggested that the Director-General might wish to submit this report to the Agency's policy-making organs for their information and take it into account in developing future Agency actions in this area.



Steven McIntosh
Chairman
28 May 2008