



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 30, 1995

MEMORANDUM TO: Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards

Carlton R. Stoiber, Director
Office of International Programs

FROM: John T. Greeves, Director *J. Greeves*
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

SUBJECT: REPORT ON CONVENTION ON THE SAFETY OF RADIOACTIVE
WASTE MANAGEMENT, JULY 3-7, 1995

During the week of July 3-7, 1995, I participated as a member of a United States (US) delegation, for the first open ended meeting on the Convention on the Safety of Radioactive Waste Management. The meeting was attended by 128 participants from 53 countries. Mr. Richard Stratford of the Department of State (DOS) lead the US delegation. Other US representatives included David Huizenga, Benjamin McCrae, and Sophia Angelini of the Department of Energy (DOE), and Gary Scott (DOS). The meeting was opened by Mr. Morris Rosen of the International Atomic Energy Agency (IAEA) and the first action was to elect Professor Alec Jean Baer (Switzerland) as Chairman of the meeting. A list of attendees and the Agenda are attached (Attachments 1 and 2).

The meeting began with opening position statements by countries participating. Essentially, all countries agreed that following the form of the Nuclear Safety Convention (NSC) was the preferred approach. The NSC would serve as a model and the Waste Convention would be developed as a "sister" convention. There would be reporting requirements, and peer reviews would be used to assure compliance with the Convention.

Although there was general agreement about the structure of the Convention, there was significant debate about several issues. Inclusion of Spent Fuel, designated as a potential resource material, was debated extensively. A number of countries including France, United Kingdom, Japan, and China did not want to include spent fuel in the Convention. Most other countries called for management of spent fuel to be included in the Waste Convention. There was general agreement to use the recently approved RADWASS Safety Fundamentals document as a basis for developing the Convention. The participants reviewed both the NSC and the Safety Fundamentals document to identify items that were generally suitable for inclusion in the Convention. Detailed discussions are presented in the Chairman's report (Attachment 3).

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Other significant discussions involved the use of regional repositories and treatment of naturally occurring radioactive materials (NORM). There was no consensus on these issues and the Chairman requested participants to provide papers at the next meeting for countries that had developed positions on these issues.

The second meeting of the Group of Experts is scheduled for December 4-8, 1995. A draft of the Convention is expected to be available by October in preparation for the second meeting of the Expert Group. The DOS expects to forward an early draft for our comment in the near future. When this document is available, I suggest we meet to further discuss our participation in this international convention. If you have any questions regarding this report or the attachments, please contact me at 415-7437.

Attachments: As stated

cc: M. Malsh
M. Knapp
W. Reamer

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**GROUP OF EXPERTS ON A
CONVENTION ON THE SAFETY OF
RADIOACTIVE WASTE MANAGEMENT**

**RWSC/1/INF/1/REV.1
1995-07-06**

**First Meeting
Vienna, 3-7 July 1995**

LIST OF PARTICIPANTS

PARTICIPANT	TITLE
ALGERIA	
Mr. A. Boukhemis	Second Counsellor, Permanent Mission
ARGENTINA	
Mr. D. Beninson	Chairman, National Board of Nuclear Regulation
Mr. G. J. Maffei	Minister Plenipotentiary, Permanent Mission
Mr. M. Estrada Oyuela	Legal Adviser, National Board of Nuclear Regulation
Mr. A. Arbor González	Counsellor (Nuclear), Permanent Mission
AUSTRALIA	
Mr. P. Duerden	Counsellor (Nuclear), Permanent Mission
AUSTRIA	
Mr. F. W. Schmidt	Federal Chancellery, Department for Nuclear Coordination and Non-Proliferation
Mr. R. Scheffenegger	Federal Ministry for Health and Consumer Affairs, Radiation Safety Department
Mr. P. Krejsa	Research Centre Seibersdorf, Department for Radioactive Waste Safety, Seibersdorf
Mr. P. Böhm	University of Vienna
BANGLADESH	
Mr. M. A. Quaiyum	Chairman, BAEC
BELGIUM	
Mr. B. Ouvry	First Secretary, Permanent Mission
E. Dettleux	Expert, ONDRAF-NIRAS
BRAZIL	
Ms. A. M. Xavier	Head, Waste Disposal, Licensing & Control Superintendent, Brazilian Nuclear Energy Commission - CNEN
BULGARIA	
Mr. R. Dobrev	Counsellor, Permanent Mission

CANADA

Mr. G. Jack
Mr. P. Brown
Mr. P. MacKinnon
Mr. J. Webb

Atomic Energy Control Board
Department of Natural Resources
Counsellor, Permanent Mission
Counsellor(Science & Technology), Permanent Mission

CHILE

Mr. J. Acuña-Pimentel
Mr. L. Parodi Gambetti
Mr. C. Silva

Counsellor, Permanent Mission
First Secretary, Permanent Mission
Scientific Counsellor, Permanent Mission

CHINA

Mr. LIU Zungi
Mr. ZHU Jialuo

Mr. ZHAO Yamin

Mr. ZHAO Yimin
Mr. ZHENG Kemin

Mr. JIN Youcai

Counsellor, Permanent Mission
Vice Chairman of Commission of Science and
Technology, CAEA
Director of Division of Radiation Protection, National
Environmental Protection Agency
Counsellor, Permanent Mission
Deputy Director, Division of Agency's Affairs, Bureau
of International Cooperation, CAEA
Adviser, Permanent Mission

COLOMBIA

Mr. J. Roballo Lozano

First Secretary, Permanent Mission

CROATIA

Mr. D. Subasic

Director of APO-Hazardous Waste Management Agency

CUBA

Mr. D. Perez Martin

Counsellor, Permanent Mission

CZECH REPUBLIC

Mr. M. Kucerka

Ministry of Industry & Trade, Head of Fuel Cycle and
NPP Operation Unit

DENMARK

Mr. S. Hoe

Ministry of the Interior, Emergency Management
Agency

Mrs. S. Bregnhøj

Ministry of the Interior, Emergency Management
Agency

ESTONIA

Mr. M. Sinisoo

Senior Counsellor, Ministry of Foreign Affairs

FINLAND

Ms. P. Janka
Mr. E. Ruokola

Senior Adviser, Ministry of Trade & Industry
Finnish Centre for Radiation and Nuclear Safety

FRANCE

Mr. J. Hulst
Mr. M. Léger
Mr. C. Pinel

Deputy Director, DSIN
Director Legal Affairs, CEA
Legal and Contract Division, CEA

GERMANY

Mr. von Dobschuetz

Mr. Roethemeyer
Mr. Pelzer

Federal Ministry for the Environment, Nature
Conservation and Nuclear Safety
Federal Office for Radiation Protection (BfS)
Institute for International Law, University of Goettingen

GREECE

Mr. M. Antonopoulos-Domis

Ms. A. Papathanasiou
Mr. P. Papadimitropoulos

Director, Institute of Nuclear Technology &
Radioprotection
Legal Division, Foreign Ministry
Permanent Mission

HOLY SEE

Mr. M. Ferraris

Adviser, Permanent Mission

HUNGARY

Ms. I. Czoch

Deputy Director General, Hungarian Atomic Energy
Commission

INDIA

Mr. K. Balu
Mr. A. Mohan

Department of Atomic Energy
Counsellor, Permanent Mission

IRELAND

Mr. F. Turvey

Radiological Protection Institute of Ireland

ISRAEL

Mr. M. Marelly

Nuclear Research Center

ITALY

Mr. R. Di Sapia
Mr. G. Grossi
Mr. R. Mezzanotte
Mr. P. Risoluti

Counsellor, Permanent Mission
ANPA
ANPA
ENEA/ERG/RAD, Casaccia

JAPAN

Mr. M. Konomura

Mr. M. Ohsawa

Mr. S. Machida

Mr. K. Fujiki

Mr. H. Yuzaki

Director for Nuclear Safety Review, Nuclear Safety Bureau, Science and Technology Agency
General Manager, Presentation Management Research Program, Radioactive Waste Management Project, Power Reactor and Nuclear Fuel Development Corp.
Official, Science and Nuclear Energy Division, Foreign Policy Bureau, MOFA
Counsellor, Permanent Mission
Deputy Director, Nuclear Energy Industry Division, Agency of Natural Resources and Energy, Ministry of International Trade and Industry

REPUBLIC OF KOREA

Mr. J.C. Rim

Mr. C.L. Kim

Mr. J.S Lee

Counsellor (Scientific Affairs), Permanent Mission
Senior Researcher, Nuclear Environment Management Centre, Korea Atomic Energy Research Institute
Head, Radwaste Management Section, Nuclear Power Generation Department, Korea Electric Power Corp.

KUWAIT

Mr. Y. Bakir

Director, Radiation Protection Department, Ministry of Health

MALAYSIA

Mr. R. Abdul Aziz Raja Adnan

Science Attaché, Permanent Mission

MEXICO

Mr. L. J. Campuzano Piña

Mr. S. Ajuria Garza

First Secretary, Permanent Mission
Scientific Attaché, Permanent Mission

MOROCCO

Ms. I. Soufi

Chef du Département de Sûreté Nucléaire et de Radioprotection, CNESTEN

NETHERLANDS

Mr. H.J. Regeur

Mr. H. A. Selling

Ms. R. Parzer

Counsellor, Permanent Mission
Ministry of Housing, Planning and Environment (SVS)
Ministry of Foreign Affairs, Scientific Cooperation Department

NEW ZEALAND

H.E. Mr. A.H. Cook

Resident Representative, Permanent Mission

NORWAY

Mr. P. K. Pedersen

Mr. E. Stranden

Ms. A. A. Sørli

Mr. A-T. Eid

Assistant Director General, Ministry of Foreign Affairs
Deputy Director General, Norwegian Radiation Protection Authority, Østerås
Senior Engineer, Norwegian Radiation Protection Authority, Østerås
Senior Executive Officer, Ministry of Environment

PAKISTAN

Mr. M. Jameel

Minister (Technical), Permanent Mission

PHILIPPINES

Mrs. V. S. Bataclan

Mr. N. Servigon

Minister-Counsellor, Permanent Mission

Second Secretary, Permanent Mission

POLAND

Mr. J. Włodarski

National Atomic Energy Agency

ROMANIA

Mr. I. Porojan

Minister-Counsellor, Permanent Mission

RUSSIAN FEDERATION

Mr. V. D. Akhunov

Ministry of the Russian Federation on Atomic Energy
Division of Ecology and Management of Radioactive
Waste

Mr. A. A. Erastov

Mr. D. Bakouniaev

Ministry of the Russian Federation on Atomic Energy
Second Secretary, Permanent Mission

SAUDIA ARABIA

Mr. I. Al-Taifi

First Secretary, Permanent Mission

SLOVAK REPUBLIC

Mr. V. Jurina

Mr. E. Bédi

Mr. L. Konečný

Mr. V. Pročka

Ministry of Health of the Slovak Republic
State Health Institute of the Slovak Republic
Nuclear Regulatory Authority of the Slovak Republic
First Secretary, Permanent Mission

SLOVENIA

Mr. M. Gregorič

Ms. I. Mele

Director of Slovenian Nuclear Safety Administration
Director of Agency for Radiowaste Management

SOUTH AFRICA

Mr. P. Metcalf

Mr. P. J. Bredell

Senior Manager: Scientific, Engineering and Technical
Services of the Sth. African Council for Nuclear Safety
General Manager of Nuclear Fuels

SPAIN

H.E. Mr. J. A. de Yturriaga

Mr. F. Fariña

Mr. E. Sánchez Sordo

Mr. A. Rodríguez Becciro

Resident Representative, Permanent Mission
Nuclear Safety Council
Ministry of Industry and Energy
ENRESA

SWEDEN

Mr. I. Persson

Mr. S. Nörrby

Mr. G. Johansson

Mr. A. Wernhoff

Ministry of the Environment
Nuclear Power Inspectorate
Radiation Protection Institute
Second Secretary, Permanent Mission

SWITZERLAND

Mr. Alec Jean Baer
Mr. H.-R. Hodel
Mr. P. Koch

Governor for Switzerland, Board of Governors
Minister plenipotentiary, Permanent Mission
Federal Office for Energy

THAILAND

Mr. P. Yamkate

Director of Waste Management Division, Office of the
Atomic Energy for Peace of Thailand

TURKEY

Mr. Ö. Ozerden

Counsellor for Scientific Affairs, Permanent Mission

UKRAINE

Mr. V. Tatarinov

Head of Department, Ministry of Environmental
Protection & Nuclear Safety of Ukraine

Mr. Y. Polurez

First Secretary, Permanent Mission

Mr. O. Gerasimenko

Attaché, Legal Department, Ministry of Foreign Affairs

UNITED KINGDOM

Mr. S. Claughton
Mr. A. McGlone
Mr. J. McHugh
Mr. P. Stephenson
Mr. P. Dickenson
Mr. A. J. Wratten

Department of the Environment
Department of the Environment
Her Majesty's Inspectorate of Pollution, Bristol
Scottish Office, Edinburgh
Nuclear Installations Inspectorate
AEA Technology

UNITED STATES OF AMERICA

Mr. R. J. K. Stratford
Mr. D. Huizenga
Mr. G. L. Scott
Mr. J. T. Greeves
Mr. J. B. McRae
Ms. S. Angelini

Department of State
Department of Energy
Department of State
Nuclear Regulatory Commission
Department of Energy
Department of Energy

OBSERVERS

TITLE

COMMISSION OF EUROPEAN COMMUNITIES

Mr. S. Bertolotti	Directorate General I (External Economic Relations)
Mr. K. Schaller	Directorate General XI (Environment, Nuclear Energy and Civil Protection)
Mr. G. Valero Jordana	Directorate General XI (Environment, Nuclear Energy and Civil Protection)

NEA/OECD

Mr. P. Reyners	Head, Legal Affairs
----------------	---------------------

UNEP/SBC

Mr. Fathalla	Legal Officer, Secretariat of the Basel Convention
--------------	--

WHO

Mr. Chin Min Lee	Special Representative of the Director-General
------------------	--

Chairman of the Group of Experts

Mr. A.J. Baer	
---------------	--

IAEA

Mr. G. Webb	Scientific Secretary, Division of Nuclear Safety
Ms. O. Jankowitsch	Scientific Secretary, Legal Division
Mr. M. Rosen	Assistant Director General for Nuclear Safety
Mr. W. Sturms	Director, Legal Division

**GROUP OF EXPERTS ON A CONVENTION
ON THE SAFETY OF RADIOACTIVE WASTE MANAGEMENT**

RWSC/1/WP.1/Rev.1

3-7 July 1995

AGENDA

1. Opening
2. Election of Chairman
3. Organization of work
4. Preparation of a convention on the safety of radioactive waste management
 - (i) Objectives, principles and scope of the convention
 - (ii) Obligations of the Contracting Parties
5. Future work
6. Adoption of the report
7. Other matters

**GROUP OF EXPERTS ON A
CONVENTION ON THE SAFETY
OF RADIOACTIVE WASTE MANAGEMENT**

1995-07-06

**First Meeting
3-[7] July 1995**

REPORT OF THE CHAIRMAN

1. The first open ended meeting of the group of legal and technical experts on the Convention on the Safety of Radioactive Waste Management, convened by the Director General pursuant to the decision of the Board of Governors in March 1995 following General Conference resolution GC(XXXVIII/RES/6) met from 3-[7] July 1995. The meeting was attended by 128 participants from 53 countries and observers from the CEC, NEA/OECD, UNEP/SBC and WHO. The meeting was opened by Mr. Morris Rosen, ADG-NENS (text of opening remarks attached). The meeting unanimously elected Professor Alec Jean Baer (Switzerland) as its Chairman. The provisional agenda as amended by the Chairman (attached) was adopted.

2. This Report intends to reflect the issues that were addressed during the discussions on Monday, Tuesday and Wednesday (morning session) rather than attempt at concluding on "majority" or "minority" views. The agreed purpose of the discussion was to select main substantive elements to be included in a convention, as a basis for establishing a set of tentative provisions for a first draft text.

3. On agenda item 4 "Preparation of a Convention on the Safety of Radioactive Waste Management", a number of delegations submitted written statements regarding the establishment of a convention on the safety of radioactive waste management.¹ (Statements are attached.) In an introductory general discussion, experts agreed that the Convention on Nuclear Safety, adopted in June 1994, was to be considered as a model for the purpose of establishing this convention. The intention was to develop a "sister" convention on radioactive waste safety: notably it should also be an "incentive" convention and should follow a similar structure; it should contain a reporting requirement to a Meeting of Contracting Parties and rely for its

¹ Management is understood to include: "All activities, administrative and operational, that are involved in the handling, pretreatment, treatment, conditioning, storage and disposal of waste from a nuclear facility. Transportation is taken into account." (Glossary Safety Fundamentals.)

implementation on a peer review process, thus acknowledging the sole national responsibility for radioactive waste management activities. The Convention, as far as the safety of waste management is concerned, should take over where the Convention on Nuclear Safety ceases to apply so as to avoid any gaps. Also the new convention should not contain too many technical details. It should however be an independent instrument covering the safety of radioactive waste management. In establishing the provisions of the Convention due note should be taken of other relevant binding instruments. Consideration should be given to including the substance of the contents of the Code of Practice on the International Transboundary Movement of Radioactive Waste (INFCIRC/386). The question considered to be open regarding the scope of application of the Basle Convention should be resolved.

4. Agenda item 4(i) Definition, Scope and Objectives

(a) Objectives

There was some discussion as to whether the text of the Convention would necessarily have to include a specific provision on "Objectives". It was agreed that one or several objectives could be formulated on the basis of e.g. paragraph 201 of the Waste Management Fundamentals, which reads:

"The objective of radioactive waste management is to deal with radioactive waste in a manner that protects human health and the environment now and in the future without imposing undue burdens on future generations."

(b) Definitions and Scope

The experts recognized that the discussion on this item would not be conclusive and required some further consideration. It was generally noted that these two provisions were complementary: a succinct wording of the provision on scope would require that the relevant terms used be comprehensively defined, or vice versa. Preference appeared to be given to a short provision on scope of application. The issue of protection of property could also be addressed.

5. After considerable discussion, it was proposed that the Convention would apply to the full range of radioactive wastes as described in the Waste Management Fundamentals (paragraph 102), namely "liquid", "gaseous" and "solid form" wastes. It was discussed whether the Convention was to be made applicable both to wastes at and from or only from essentially all types of facilities. Wastes from military applications could - to some experts - be deemed to fall under the scope of the Convention, at the point at which such wastes ceased to have any military relevance.

6. The application of the initial Convention to materials contaminated with naturally occurring radionuclides would need careful definition.

7. The provision on scope of application of the Convention, or the definition of radioactive waste could also reflect the concepts of exclusion, exemption and clearance, and, possibly, refer in the context of effluent discharges, to authorized discharge levels.

8. The issue regarding the inclusion of spent nuclear fuel either (a) designated as waste or (b) designated as a potential resource material, requires further consideration including safety-specific aspects and the need to apply uniformity. It will be addressed separately.

9. There was some support for the suggestion made to include a general definition of radioactive waste complemented by a list of examples in order to illustrate what wastes were understood to be included, e.g. operational wastes from nuclear reactors and wastes from industrial, research and medical uses of radioactive materials, including radiopharmaceutical manufacture.

Item 4(ii) Obligations

10. In order to facilitate structuring discussion of this item, it was agreed to consider the main relevant input documents successively.

The discussion on obligations was understood to be subject to clarification of the scope of application of the Convention and of the definition of radioactive wastes. The extent and the nature of obligations could indeed not be defined independently.

Safety Fundamentals: The Principles of Radioactive Waste Management²

11. In general, experts noted that this document that had been recently approved by the Board of Governors could be considered as a good starting point for discussion. Some delegations however expressed reservations as to this document's applicability to a binding convention. In consideration regarding each of the "Principles" in turn, there was, however, no substantial dissent from the general message embodied in the major statements of principle. Caution was expressed that the language used was not necessarily suitable for a convention and that – although they may serve as useful guides on some topics – incorporation of such principles in the Convention might cause terminological problems.

Safety Series 111 S-1: Safety Standard "Establishing a National System for Radioactive Waste Management"²

12. It was generally recognized that the contents of this document, particularly as to requirements defined as "responsibilities associated with radioactive waste management"³ convert the broad statements of principle of the "Fundamentals" into a form possibly more suitable for the Convention. Each of these requirements was considered by the experts, who agreed that they were generally suitable for inclusion in the Convention. The establishment of national inventories of wastes referred to in paragraph 418(e) requires separate and detailed consideration in the Convention.

13. Reference was also made to the inventory list established by the preparatory meeting held in February 1995 as regards the need for a reporting system and other

² Contained in GOV/2783 of 20 February 1995.

³ Responsibilities: To establish and implement a legal framework; to establish a regulatory body; to define responsibilities of waste generators and operators of radioactive waste management facilities; to provide for adequate resources; to enforce compliance with legal requirements; to implement the licensing process; to advise the Government; to manage radioactive waste safety; to identify an acceptable destination for the radioactive waste; to comply with legal requirements.

aspects of the review process. The Convention, it was suggested, could be more explicit than the Convention on Nuclear Safety in giving Contracting Parties guidance on the content of such reports. There was some discussion as to whether the peer review process envisaged could be regional, possibly grouping countries with different levels of nuclear programmes.

Chapter 2 "Obligations" of the Convention on Nuclear Safety (INFCIRC/449)

14. In a detailed discussion Article by Article, a number of provisions were found that could readily be transferred to a Convention on Radioactive Waste Management by appropriate adjustments and changes of wording. For some, however, this was not the case and there were some aspects that had no counterpart article in the Convention on Nuclear Safety.

15. Articles that could find some analogy were: "4. Implementing Measures", "5. Reporting", "8. Regulatory Body", "9. Responsibility of the License Holder", "10. Priority to Safety", "12. Human Factors", "15. Radiation Protection" and "18. Design and Construction". However, even in these cases the articles will need to be carefully redrafted taking note of the new overall context.

16. "Article 6. Existing Nuclear Installations" would need to be modified to cover a wide array of different situations, in particular the results of past practices including closed waste disposal facilities, current practices involving waste management and current waste disposal facilities. Some of these past practices may require intervention, others however may not.

17. "Article 7. Legislative and Regulatory Framework" would require additional subdivisions of the licensing process to cover different circumstances. For operating facilities such as nuclear power plants, waste management is usually licensed as part of an overall facility license; a different license would be needed for operation of a disposal facility and there would presumably also be a license needed for the post-closure period. Procedures will need to be developed to address release of the disposal site for eventual unrestricted use.

18. "Article 11. Financial and Human Resources" would require a clear definition of lifetimes for storage, operating disposal facilities and for closure. An appropriate funding system will have to be devised for each stage in the lifetimes of facilities.

19. "Article 13. Quality Assurance", although broadly applicable, will need modifying to cover quality assurance aspects of the management of wastes.

20. "Article 14. Assessment and Verification of Safety". Many of the aspects of safety assessment and verification, although written in the context of nuclear installations would be transferable with appropriate modification to waste management facilities. For the assessment and verification of the safety of waste management practices, however, some new text will be required.

21. "Article 16. Emergency Preparedness". There is clearly a need for an article covering emergency preparedness drafted in a similar style, but recognizing that the level of immediate hazard is lower than for nuclear power plants, so the emergency provisions are less onerous. It was noted that there were other relevant instruments dealing with emergency preparedness.

22. "Article 17. Siting". In the context of waste disposal facilities, siting is an integral part of the safety and some provisions under this article may be more appropriately located in the revised version of Article 14. Nonetheless, some aspects of siting should be considered in a revised Article 17. It was noted that the Antarctic Treaty provided that waste should not be disposed of in that location. One expert suggested that potential future siting of a repository in international waters could be contemplated.

23. "Article 19. Operation". Provisions (i)-(vii) could readily be transferred with appropriate modification. Provision (viii) dealing with radioactive waste management covered many important aspects relevant to the new convention. After considerable discussion, it was generally agreed that these provisions should form substantial Articles in their own right rather than being included in a modified Article 19 (viii).

24. Following the above consideration of Chapter 2, it was decided to defer consideration of matters contained in Chapters 3, Meetings of the Contracting Parties, and 4, Final Clauses and Other Provisions, to a later date. The Chairman, however, asked for preliminary discussion of other topics that, in his opinion, had not so far been sufficiently considered.

Regional Repositories

25. The possible establishment of repositories in a given country accepting waste from other countries in the region had been raised on a number of occasions. Following an extensive discussion, it was agreed in general that terms that the Convention need not address but should not preclude the establishment of such repositories; this would result from agreements concluded among states. In the context of the safety of such repositories, the provisions of the convention should apply; in particular no repository should be established in a country that is not a Contracting Party to the Convention nor should countries party to the convention send wastes to such a repository. Reference to this matter could also be made in the Convention's Preamble.

26. Some experts referred in this context to the principle of self-sufficiency which would, if adhered to rigidly, appear to prevent the establishment of regional repositories. It was recognized, however, that particularly for small countries with modest amounts of waste, the availability of a disposal route for some categories of waste outside the country would promote overall safety and economic efficiency.

Lifetime

27. A substantial difference in the facilities and installations covered in this convention as compared to those contained in the Convention on Nuclear Safety is the time scales involved. Clear definitions are required but should broadly determine three periods.

- (i) The active operational lifetime of the facility

(ii) The post-closure period under an institutional control that may include monitoring.

(iii) The period following cessation of institutional control.

[Transboundary Movement of Wastes Through the Environment]

[Inclusion in the Scope of Spent Nuclear Fuel]

28. Schedule for future work.

- First Chairman's draft of convention on the safety of radioactive waste management, encompassing objectives, definitions, scope and obligations to be ready by late August 1995,
- Draft sent to a group of "Friends of the Chair" for their comments by the end of August 1995,
- Comments by the "Friends of the Chair" to be received by the Chairman by the end of September 1995,
- Second Chairman's draft incorporating comments to be made by the "Friends of the Chair" circulated to all Member States by the end of October 1995 in preparation for the second meeting of the expert group,
- Second meeting of the group of experts: 4-8 December 1995.

29. Dates of meetings in 1996:

25-29 March 1996

Early July 1996

Early December 1996

*See Addendum to this Report.

Addendum to Report of the Chairman

1. Transboundary movement of radioactive waste through the environment

A draft proposal was tabled by Ireland. It was clarified that the proposal referred to the migration of radionuclides through the environment from releases. In the discussion it was felt that the spirit underlying the proposal was understandable but that it would be extremely difficult to arrive at a formulation which could be verified in a technical sense. The difficulty was that general words such as "acceptable" and "unacceptable" were open to wide interpretation and there is currently no appropriate international definition of "acceptability". The suggestion of using the public dose limit from the Basic Safety Standards, for example, was felt inappropriate. It was, however, suggested that the peer review process could address this issue.

The Chairman proposed that this topic be studied further with input solicited from experts with particular interest in the issue to be provided to the Secretariat.

2. Wastes from activities not normally regarded as nuclear

In clarifying this topic, the Chairman gave examples of tailings from non-uranium mines, tailings from gold mines that could contain substantial uranium levels and chemical enrichment of natural radionuclides.

The discussion revealed that the scope and nature of the problem required further clarification although instances were cited in which substantial amounts of radioactivity existed in these categories of wastes. For this reason, the Chairman encouraged experts with national experience in this matter to prepare inputs for discussion at future meetings.

3. Illicit trafficking of nuclear wastes

It was recognized that this question was being addressed in other fora and that the experts would be kept informed of developments.

4. Waste equivalence

Although this had been raised earlier, it was felt to be a technical problem and it was agreed to defer it for later consideration.

(addendum to Chairman's report, cont.)

-2-

5. Spent nuclear fuel

The issue regarding possible inclusion of spent fuel in the scope of the Convention (see para. 8 of main Chairman's report) was introduced by the Chairman for further discussion in terms of (i) spent fuel declared as waste following the (national) decision not to reprocess, or (ii) spent fuel stored with the intention to reprocess, or to consider possible reprocessing at a later date.

It was generally recognized that spent fuel declared as waste - as well as waste from reprocessing - would be covered by the Convention.

As to the second category ((ii) above), the main problem perceived by the experts was how to prevent a gap in covering the safety of such spent fuel - without necessarily defining it as wastes.

The discussion covered both statements of national positions, including the relevance of a national strategy on this matter and existing national legislation, and comments as to manners in which the safety of spent fuel could be handled without gaps when in storage between the reactor and the reprocessing facility.

Several tentative suggestions were made as to how the issue could be addressed. These included: a convention on reprocessing; an obligation of a Contracting Party to declare its intention as to spent fuel; extension of the scope of the Convention on Nuclear Safety; a flexible definition of waste allowing for spent fuel to "move" in and out of the scope of the Convention.

As a preliminary conclusion it was agreed that a technical solution had to be considered as regards the safety of spent fuel and that at the same time all pertinent legal aspects had to be taken into account. The Chairman suggested that interested experts might wish to submit background notes - not specifically focussed on national positions - for further consideration of this issue by the expert group.

Proposal by Chairman regarding future work

1. **First Chairman's draft of convention on the safety of radioactive waste management, encompassing objectives, definitions, scope and obligations ready by Late August 1995**
2. **Draft sent to a group of "Friends of the Chair" for their comments
End of August 1995**
3. **Comments by the "Friends of the Chair" to be received by Chairman
End of September 1995**
4. **Second Chairman's draft incorporating "Friends of Chair's" comments to be circulated to all Member States by the end of October 1995 in preparation for second expert group meeting**
5. **Date of second meeting of group of experts 4-8 December 1995**

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Proposed dates for meetings of group of experts in 1996

1. **25-29 March 1996**
2. **Early July 1996**
3. **Early December 1996**

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