

[Cable from NZ]

7/8/03

Report on IAEA Conference on Nuclear Transport

Summary

At the recent IAEA Conference on the Safety of Transport of Radioactive Materials, coastal states made some progress in gaining provision for further international dialogue on the key issues of liability and prior notification. This can usefully complement the Forum regional dialogue with shipping states on the same issues.

Action Required

2 Pacific posts: You can, if you consider it useful, pass the text of this message across to appropriate officials as background. A separate message follows on a possible approach to the issue at the Forum.

Report

Background

3 Key interest areas, in seeking to mitigate the effect of any incident to a shipment of radioactive materials have been identified as: prior notification of shipments; the highest safety and preparedness standards; and appropriate liability and compensation arrangements in the event of any incident, (including incidents not involving the release of radioactivity).

4 New Zealand has been pursuing these priority areas through the Forum dialogue with shipping states, through bilateral approaches, and through the International Atomic Energy Agency (IAEA).

5 Of the Forum countries, only Australia, New Zealand, and the Marshall Islands (which is seldom represented) are members of the IAEA. In the IAEA therefore New Zealand works with a wider group of concerned coastal states, primarily from Latin America. (Australia has played a very useful neutral role in the IAEA, chairing discussions between concerned coastal states and shipping states.)

6 At the recent IAEA Conference on the Safety of Transport of Radioactive Materials (7-11 July, Vienna) coastal states concentrated on two issues: liability arrangements, and prior notification of shipments.

Liability

7 Coastal states proposed a working group to review and synthesise differences between, and possible shortcomings in, the various liability conventions (eg the Paris Convention, Vienna Convention, Supplementary Convention); to examine the reasons for limited adherence to them; to propose ways and means for reducing identified areas of difference and for addressing identified shortcomings (including the possibility of a new legal instrument relating solely to the transport of radioactive materials).

8 All the coastal states present came in behind this proposal and supported it. However, the shipping states did not do so. The US suggested that it would be useful to prepare a covering explanatory commentary for the Vienna and Supplementary Conventions, akin to that prepared for the Paris and Brussels Conventions by the NEA, in order to help clarify understanding of the various conventions. They and shipping states acknowledged the complexity and lack of clarity but suggested that this was the only obstacle to an effective liability regime, with the US in effect advocating adherence to the Supplementary Convention as an optimal way forward. We questioned the suggestion that the problem was limited to one of clarity, reiterating that there were shortcomings of substance as well.

9 The Chair (Max Hughes, Australia) did not feel able to take the working group idea forward (because the shipping states would have adamantly opposed it), and picked up instead the idea of preparation of an explanatory text for existing liability instruments which "would assist in developing a common understanding of what are complex legal issues, and thereby promote adherence to these instruments". He proposed therefore that this explanatory text be prepared by the Agency Secretariat, with the assistance of an independent group of legal experts appointed by the IAEA Director-General.

10 Hughes' view that this was the most the shipping states would agree to was borne out by their continuing efforts at Ambassadorial level to have him change his proposals on both liability and prior notification (see below). He refused to budge, saying that these were his recommendations as Chair.

11 Our aim will be to ensure that coastal state legal experts (including New Zealand, Ireland, Peru) are included in the group of independent legal experts. It will not be easy to advance our concerns and interests in this group, but it will usefully provide an expert legal group removed from the politics of the issue through which we can try to develop a greater understanding of our concerns among other states. We hope furthermore through this group to have clarified not just the meaning of and relationships between the various liability conventions but also the gaps and possible shortcomings in them (e.g. definition of damage, non-coverage of non-release situation, ability of non-parties to access them etc).

Prior notification

12 The Peruvians with our and other coastal state support unsuccessfully proposed another working group to examine existing practices affecting communications between governments (including prior notification and emergency response planning) and to propose ways and means of improving communications between governments. Unfortunately, this session was a less constructive one, with some of the key participants taking positions related to the Law of the Sea Convention and whether prior notification was a legal obligation or not. Others tried to avoid this unproductive fishhook, emphasising the need to focus on and develop the practice in this area, working on the basis of a voluntary practice rather than unproductive debate about legal obligation, and recognising how such notification and coastal state input to preparedness planning were important elements for the achievement of safety in such transportation.

13 The Chair recommended that informal discussions should continue among concerned states on this subject after the Conference with Agency involvement. The British appear willing to engage with coastal states on these issues, but the Japanese are much more reluctant. We are

hoping to have a two-day informal meeting immediately prior to the annual IAEA General Conference in late September.

Comment

14 For both liability and prior notification, the processes set in train are rather vague and lacking in clear Terms of Reference to ensure that the issues of concern to coastal states are adequately addressed. But at least there is, for the first time, some provision for continuing international dialogue at the IAEA on issues of central concern to coastal states.

15 This wider process through the IAEA can usefully complement the dialogue we are seeking to achieve in our regional discussions with shipping states.

16 We will be following these issues up in Vienna as we prepare, with other coastal states, for further discussion on the Transport Resolution at this year's IAEA General Conference (22-26 September).

End Message