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CODE OF PRACTICE ON THE INTERNATIONAL TRANSBOUNDARY MOVEMENT OF RADIOACTIVE WASTE

The summary records of the discussions in the Board of Governors relating to this topic in February and June 1990 are reproduced in the Annex hereto.

3364Y/5/222Y

90-03206

Excerpt from the record of the seven hundred and twenty-second meeting
of the Board of Governors, held on Wednesday, 21 February 1990

(b) RESOLUTION GC(XXXIII)/RES/509, ENTITLED "DUMPING OF NUCLEAR WASTES"

96. The CHAIRMAN said that at its most recent session the General Conference had expressed the hope that the Technical Working Group of Experts on a Code of Practice for International Transactions Involving Radioactive Waste would complete its task in time for submission of a draft code to the General Conference in 1990, and had requested the Director General to report to it - through the Board - on the implementation of resolution GC(XXXIII)/RES/509.

97. The Group had held its second session from 5 to 9 February, and had completed its work on a draft code. It was proposed that that draft code should be considered by the Board in June.

98. He therefore suggested that, unless any Governor wished to speak on the matter, the Board should revert to it in June, at which time it would consider the draft code with a view to its submission to the General Conference in September.

99. Mr. LAVIÑA (Philippines) said that, when he had asked to speak, he had assumed that the Technical Working Group's report would have been made available to members before the present meeting, so that he could have prepared his comments. However, as it now turned out, the report was not yet in the hands of some delegations.

100. To his mind, discussion of the report by the whole Board would be too unwieldy a procedure: there would not be time in June to discuss the code provision by provision, or even principle by principle. A better procedure might be for the Board to establish an open-ended ad hoc committee to consider in detail the many issues involved in the code that would require scrutiny. He did not think the Group's report could have gone far or deep enough for the Board to be able to adopt it in June for submission to the General Conference.

101. In view of the complaints by certain developing countries that they had become dumping sites for nuclear waste, he would urge that the code of practice should not be a mere guide, but should be made mandatory. The code

regulated the rights and obligations of parties involved in international transactions, and fulfilment of those obligations should be made mandatory, and possibly subject to sanctions. He proposed that the ad hoc committee should be given the mandate of considering the code of practice and of trying to elaborate a multilaterally binding international instrument regulating compliance with its provisions.

102. Mr. LOOSCH (Federal Republic of Germany) said his authorities were not yet able to take a position on the report referred to by the Director General in his opening statement. He understood that the Group of Experts had completed its work on the code of practice, and that that code would be on the Board's agenda for June. No case of reckless dumping of nuclear waste had hitherto been identified.

103. In those circumstances, it was important that the Board should receive the Group's report as soon as possible, so that it could consider it before taking any further steps. Once members had had a chance to examine the report, the Chairman might hold consultations to see if anything further needed to be done in preparation for consideration of the item at the June meetings.

104. Mr. KENNEDY (United States of America) said his delegation was seriously concerned at the proposal to establish an ad hoc committee to prepare what would in fact be an international instrument on the dumping of nuclear wastes: it would regard such a proposal as, at best, premature. The Board had barely had time to receive, much less review, the code of practice on dumping, work on which had only been completed two weeks earlier by the Technical Working Group. He understood that the Board was planning, for June, to examine in detail the code prepared by the Working Group, with a view to submitting it to the General Conference in September for adoption.

105. In his view, it would be premature at the present stage to set up a committee to establish an instrument on dumping when the code of practice had not yet even been adopted. It would be far better simply to examine the code, adopt it if appropriate, and then give Member States time to adapt their national laws and regulations to its provisions. Once experience had been gained with the operation of the code, it could be reviewed from time to time by experts to see if revision were needed, and appropriate action taken.

106. His delegation considered it quite inappropriate to attempt to establish an international instrument on the dumping of radioactive wastes when, as had already been pointed out, there was no evidence that any such dumping had ever taken place.

107. The Board should devote its attention to studying the code and to seeing how effective it proved in practice, before undertaking the major exercise of trying to prepare an international instrument for which there was no immediate need.

108. Mr. SHENSTONE (Canada) said that he shared the views expressed by the Federal Republic of Germany and the United States. The immediate establishment of another expert working group or ad hoc committee would be inappropriate; the first step was for the Board to consider the draft code and the advisability of submitting it to the General Conference.

109. The proposal for establishing a mandatory instrument immediately was hardly consistent with the successful step-by-step approach followed so far. Some years of experience with a voluntary code would be necessary before moving towards a more binding arrangement.

110. Mr. TALIANI (Italy) said the code should be given thorough consideration before any decision was taken regarding the establishment of a further working group or committee. He endorsed the proposal of the Governor from the Federal Republic of Germany that the code should be considered by the Board possibly in June following the Chairman's consultations with governors. It could then either be submitted to the General Conference for approval or treated as a progress report and returned to the working group. While one might sympathize with the views expressed by the Governor from the Philippines, it seemed clear that a mandatory code could be considered only at some future stage.

111. Mr. MGBOKWERE (Nigeria) suggested that the draft be discussed within the regional groups as well as in informal consultations prior to the June sessions of the Board. He also supported the proposal of the Federal Republic of Germany.

112. The DIRECTOR GENERAL said that the present agenda item was clearly intended for information rather than for substantive treatment, as the text of the draft code had not yet been circulated. His introductory statement had given a brief indication of the draft code's contents. According to document GC(XXXIII)/RES/509, the General Conference had expressed the hope that the working group would be able to submit a draft code of practice to the Conference's thirty-fourth regular session in 1990. As far as the role of the Board of Governors was concerned, the Director General was requested to report to the General Conference through the Board on the implementation of the resolution. Extensive consideration by the Board was apparently not required. The Board had to decide whether to submit the code, with comments, if appropriate, to the General Conference, or to set up an ad hoc working group to examine the work of the previous group. It would certainly be appropriate for the Board to consider the code in June before any further steps were taken.

113. The CHAIRMAN said it seemed to be widely felt that the proposal to set up a working group with the task of formulating a mandatory international agreement was premature, though the idea could, if necessary, be discussed further in June or at the General Conference. In the meantime he would hold informal consultations in the usual manner on the assumption that the Board wished to consider the draft code in June; for that purpose an appropriate item would be placed on the provisional agenda for the June session.

114. It was so agreed.

Excerpt from the record of the seven hundred and thirtieth meeting
of the Board of Governors, held on Thursday, 14 June 1990

(ii) Code of Practice on the International Transboundary Movement of
Radioactive Waste

26. The CHAIRMAN recalled that the Code of Practice on the International Transboundary Movement of Radioactive Waste had been prepared as a result of extensive consultations among experts from a number of Member States and international organizations. Accordingly, he suggested that the discussion should focus on matters of a policy nature - for example, whether the Code of Practice should be made binding, questions of liability and compensation for damage and the provision of technical assistance in the area of waste management - and that the Board should avoid detailed discussion of the wording of the principles established by the Code of Practice.

27. Mr. ELBARADEI (Legal Adviser) recalled that in resolution GC(XXXII)/RES/490, adopted in 1988, the General Conference had requested the Director General "to establish a representative technical group of experts with the objective of elaborating an internationally agreed code of practice for international transactions involving nuclear wastes based on, inter alia, a review of current national and international laws and regulations on waste disposal". The General Conference had been moved by reports on the illicit transfer into the territories of developing countries, notably African countries, and the disposal there of hazardous and noxious wastes, a practice commonly known as "dumping". Although no actual case of such illicit dumping of radioactive waste had been pointed out, the General Conference had deemed it appropriate to prepare a code laying down rules and basic principles to govern the transfer of radioactive waste, in order to avoid any such occurrence.

28. In accordance with the Conference's resolution, the Director General had established a group composed of experts from 20 Member States representing the different regions, in addition to observers from interested international organizations and Member States. The Group had met twice, in 1989 and 1990. At its second meeting it had adopted by consensus a code entitled "Code of Practice on the International Transboundary Movement of Radioactive Waste" and had recommended its consideration and adoption by the General Conference. It

should be noted that the title of the Code as well as its provisions used the expression "transboundary movement" and not the word "transaction" which appeared in the General Conference resolutions on the subject. That was because, in the view of the experts, the term "transboundary movement" was more comprehensive in scope and more widely used. The experts had also considered that the focus should be on the safety of the movement rather than the transaction.

29. The Code affirmed the sovereign right of every State to prohibit the movement of radioactive waste into, from or through its territory. It further affirmed that any transboundary movement of radioactive waste must be carried out in accordance with internationally accepted safety standards. To that effect, the Code specified that transboundary movements should only take place with the prior notification and consent of the sending, receiving and transit States and in accordance with their respective laws and regulations.

30. The Code exhorted every State not to permit the receipt of radioactive waste for management or disposal unless it had the administrative and technical capacity and regulatory structure for the management and disposal of such waste in a manner consistent with international safety standards. It also required the sending State to ensure to its own satisfaction that the above requirement was met prior to the international transboundary movement of radioactive waste. Furthermore, the Code placed an obligation on the sending State to permit readmission into its territory of any radioactive waste previously transferred from its territory if such a transfer had not been or could not be completed in conformity with the Code, unless an alternative safe arrangement could be made. Finally, it requested every State to adopt the necessary laws and regulations to ensure that the international transboundary movement of radioactive waste was carried out in accordance with the Code and to co-operate at the bilateral, regional and international levels for the purpose of preventing any international transboundary movement of radioactive waste not in conformity with the Code.

31. The Code relied on existing international standards for the safe transport of radioactive material and the physical protection of nuclear material, as well as the standards for basic nuclear safety and radiation protection and radioactive waste management, and it called on the Agency to continue to collect and disseminate information on the laws, regulations and

technical standards pertaining to radioactive waste management and disposal, to develop relevant technical standards and to provide advice and assistance regarding all aspects of radioactive waste management and disposal, paying particular regard to the needs of developing countries.

32. The Secretariat intended, upon adoption of the Code by the General Conference, to disseminate it as widely as possible so that it could be put into practice immediately and serve its intended purpose, namely that of governing State activities in that field and providing guidelines for the development and harmonization of policies and laws on the international transboundary movement of radioactive waste. A final provision was that the Code should be reviewed by the Agency, as and when appropriate, due account being taken of the experience gained and of technological developments. The Secretariat intended to monitor its implementation closely and to advise Member States accordingly.

33. Mr. CHERIF (Algeria) thanked the technical working group responsible for elaborating the Code of Practice for abiding closely by the guidelines set forth in resolution GC(XXXII)/RES/490, albeit only with respect to the part concerning the "review of current national and international laws and regulations on waste disposal". If one looked at the reasons for adopting the resolution and the situation which existed at the time, however, one was forced to acknowledge that it was because the existing national and international laws and regulations were inadequate and ineffectual with regard to radioactive waste disposal that it was necessary to write a code of practice which would enable new national and international regulations to be elaborated and promulgated.

34. In paragraph (vii) of the preamble to its decision, the expert group referred to "IAEA safety standards and guidelines relevant to the international transboundary movement of radioactive waste ...". However, it was the main purpose of the Code to set forth those guidelines explicitly, and the group should have done that in much greater detail. Countries exporting radioactive waste, if they existed, were under obligation to monitor scrupulously any transfer of such waste to third countries, as was currently done in the case of other products. States should assume full responsibility when authorizing such transfers, making sure that the safety standards were

fulfilled, that the transit or receiving States were indeed in a position to receive the waste, in terms of both regulatory and physical infrastructure, and that no irregularity or infringement of medical ethics was being committed. Furthermore, the sending State should commit itself to providing assistance to the receiving or transit State in the event of an unforeseeable accident. Those were among the basic principles to be included in a code of practice, which should also be a code of good conduct applicable to all, in order to prevent advantage being taken of the ignorance of certain parties and a burden being placed on them far beyond their strength and capabilities.

35. Resolution GC(XXXII)/RES/490 referred to the elaboration of an "internationally agreed" code of practice. His delegation could not see how such an agreement could be reached save through consultations with the interested national, regional and international organizations with a view to drawing up one or more conventions or regional or international agreements.

36. He informed the Board that a draft convention on the monitoring of international transboundary movements and storage of hazardous wastes of all kinds, including radioactive, had been elaborated by the Organization of African Unity (OAU) and would be submitted for the approval of a pan-African conference on the environment and sustainable development to be held in Bamako, Mali, in June. Resolution CM/Res.1225(L) adopted in July 1989 by the Council of Ministers of Foreign Affairs of the OAU and approved by the Conference of Heads of State and Government had requested that a working group consisting of environmental experts and specialists in the drafting of regulations should be entrusted with the task of elaborating that draft convention. The resolution had also requested the Executive Secretariat of the United Nations Economic Commission for Africa (ECA), the Executive Director of the United Nations Environment Programme (UNEP) and the secretariat chiefs of the specialized organizations and bodies of the United Nations to assist the working group. The report by the General Secretariat of the OAU on the implementation of that resolution indicated that the ECA and UNEP had indeed participated in the elaboration of the draft convention, but there was no mention of any real contribution by Agency experts, although the draft convention also dealt with radioactive waste. The Board was entitled to require of the Secretariat that a code of practice, which should be a source

of inspiration for any regional convention of that type, be prepared with the greatest care; the code would benefit by encompassing all aspects of the international transboundary movement of radioactive waste.

37. In conclusion, his delegation felt that the Code of Practice could be transmitted to the General Conference for examination, but that various additions should be made subsequently concerning, in particular, principles, standards, regulations, procedures and liability.

38. Mr. CHIKELU (Nigeria) recalled that his delegation had drawn the Board's attention to the question of the dumping of radioactive waste in June 1988 and sincerely thanked the members of the expert group for the speed with which they had carried out their work.

39. In drawing up the Code of Practice, the Group had taken account of public concern about unauthorized international transboundary movements of radioactive waste, particularly to developing countries, and of the dangers involved in improper management and disposal of such waste. It was important to stress that the draft Code was intended to provide guidelines to States on the development and harmonization of policies and laws relating to the international transboundary movement of radioactive waste. Since the Code was purely advisory in nature, there should be no problem in adopting it. It represented a first step towards the elaboration of a legally binding convention aimed at preventing the dumping of nuclear waste in any country.

40. His delegation therefore proposed that the Board adopt the draft Code of Practice as an interim measure. Steps should be taken subsequently to draw up, on the basis of the Code, a convention which his delegation considered absolutely necessary.

41. Mr. LAVIÑA (Philippines) thanked the Legal Adviser for his introductory statement and commended the Group of Experts for having produced the Code of Practice on the International Transboundary Movement of Radioactive Waste in a short period of time. That document, which was based on existing international standards and instruments, was very interesting but did not appear to go far enough; notably, the paragraphs on the scope of application and on basic principles could be further improved and developed. Also, the choice of the expressions "receiving State" and "sending State" was

not particularly felicitous as they had very clear meanings in legal and diplomatic practice and should not be applied to operations involving the dumping of waste.

42. Observance of the basic principles should be mandatory: if rights were to be exercised the corresponding obligations had to be met. Sanctions should also be available as, in the absence of sanctions, the Code would remain an "empty" document. Relations between the sending State - usually a developed country - and the receiving State, which was usually a developing country, were often far from equal. A treaty or a convention could play an "equalizing" role, regulating not only rights but also obligations and imposing sanctions when necessary.

43. The Philippine delegation was in favour of a binding instrument, whereas the Code under consideration was no more than a simple guide. It referred to national legislation, to be sure, but in the absence of a treaty there would inevitably be a gap between law and practice. Application of the law would vary from country to country, depending on national or local institutions and even on national interests. It was doubtful whether foreign judgements would be recognized as they were in civil cases. The receiving State or the State suffering damage from or affected by an illegal international transaction could therefore only hope to obtain justice, a hope which the present draft Code might be unable to satisfy.

44. It could be argued that the Code would be subject to certain international standards. However, certain provisions were lacking. For example, there was no compulsory settlement of disputes. The preamble merely referred to being "mindful of the relevant principles and norms of international law"; but they were not incorporated in the Code and therefore were not enforceable and could not be applied under the Code. It took account of the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, but that convention appeared insufficient to regulate transactions or violations, as otherwise the drafting of the Code would not even be necessary.

45. The Group of Experts should therefore be asked to continue to review the draft Code and, in co-ordination with the Secretariat and other agencies and with governments, to produce a draft code of conduct in the form of an

international instrument with binding force. The Standing Committee on Liability for Nuclear Damage was already considering that issue and related matters, which could include State liability by the time the committee had completed its work. The International Law Commission (ILC) was also studying the subject.

46. The Board should not be in a hurry to present its report to the General Conference, but could submit an interim report. The question of "dumping of nuclear wastes" was too complex to be dealt with in two sessions by a group of experts. The report should be redrafted in part; the subject should be dealt with in more depth, and comments and recommendations should be sought from a larger number of experts. The Group of Experts should then be requested, perhaps with assistance from the Secretariat, to collate the data and draft a binding code in the form of a treaty or convention; the Board could then take a decision, and the General Conference would have the privilege in due course of adopting multilateral instruments with binding force on the "dumping of nuclear wastes".

47. Mr. AL-MATOOQ (Iraq) noted that the purpose of the Code was to protect developing States, which had in the past been subjected to the dumping of large amounts of nuclear waste and other materials for economic or political reasons which had nothing to do with their own interests. The draft Code required a few comments.

48. International waterways or regions not under a national or international authority had not been taken into account, nor had the environmental impact of international transboundary movements. Nor did the Code consider possible accidents or the consequences of such accidents, or questions of liability in the event of an accident. The Code should therefore be more detailed and should specify the obligations of the various parties, taking into account national and international standards and regulations; in that way its scope would be broadened and it would become more acceptable.

49. Ms. FATIMA (Malaysia) said that it was primarily the duty of the countries which produced radioactive waste to ensure that such wastes were disposed of safely, and as far as possible within the territory where they had been produced. The transfer of radioactive wastes to territories or States other than those of their origin could only take place with the agreement of

the receiving State, and only if it was certain that they could be safely disposed of in conformity with international standards. Uncontrolled disposal of radioactive wastes should be avoided by all possible means.

50. The Malaysian delegation considered the Code of Practice to be a major step towards the drafting of an international instrument which would effectively control transboundary movements of radioactive wastes and prevent their uncontrolled disposal, and the Working Group of Experts and the Secretariat accordingly deserved congratulations for their work. Those efforts should be continued to arrive at a format that could more readily be incorporated into national regulations, which would facilitate its harmonization.

51. The Agency's Regulations for the Safe Transport of Radioactive Material were an excellent example of international regulations which had been incorporated by States into their national regulatory systems and adopted by the relevant international organizations, such as the International Maritime Organization and the International Air Transport Association. The Agency could consider similar regulations for the transboundary movement of radioactive waste. The revised text should in particular include a clear definition of the responsibilities of all interested parties, including the waste producers, the sending State and the receiving State. Another solution would be for the Agency to draft an instrument with binding force, for example a convention. In that respect, she noted that the Organization of African Unity had produced a draft convention aimed at controlling transboundary international movements and disposal of hazardous waste. Whether regulations or a convention, the instrument produced by the Agency should be the result of a broad international consensus in order to guarantee safety in the transboundary movement of radioactive waste.

52. With those comments, her delegation approved the proposal to transmit the Code of Practice to the General Conference, and she agreed with the Governor from Nigeria that the Code should be an interim measure.

53. Mr. AHAFIA (Ghana) said that the draft Code of Practice on the International Transboundary Movement of Radioactive Waste marked the beginning of concerted international action designed to introduce order into that sector. His delegation hoped that all States would abide by the principles

laid down in the Code in its present rudimentary form and in the revised forms which might be published from time to time. Strict adherence to those principles was essential as certain developing countries had had unfortunate experiences with commercial organizations from developed countries which had sent radiation sources to them for commercial purposes and refused to take them back at the end of their useful life. There was no means at present of penalizing such actions, and his delegation believed that the Code of Practice, or possibly a convention, should have binding force for the States which accepted it.

54. It should be emphasized that, since international transboundary movements of radioactive waste were usually the action not of States but of individual commercial organizations, all States should give particular attention to paragraph 11 of the Code, which emphasized their preventive role.

55. With those comments, the Ghanaian delegation approved the draft Code of Practice and the action recommended in paragraph 7 of document GOV/2445.

56. Mr. LORENZINI (Chile) said that his delegation was satisfied with the excellent results obtained by the Technical Working Group responsible for drafting the Code of Practice on the International Transboundary Movement of Radioactive Waste. It approved that initiative, the aim of which was to protect the territories of countries such as Chile that might be threatened by the disposal of wastes from other countries in inappropriate ways.

57. States should now develop, within the framework of that Code, internal standards which would facilitate its application and ensure the required safety of transboundary movements; that applied particularly to questions such as prior notification and the procurement of consent from the sending, receiving and transit States. Chile was prepared to collaborate, as far as it was able, in any way requested.

58. The Chilean delegation therefore approved the draft Code annexed to document GOV/2445 and hoped the Board would recommend its approval to the General Conference.

59. Mr. LOOSCH (Federal Republic of Germany) recalled that his delegation had made a substantial contribution to the presentation of resolution GC(XXXII)/RES/490 relating to international transactions involving

nuclear waste, adopted by the General Conference in 1988. He congratulated the Director General and the Secretariat for completing in full and on time the task entrusted to it, namely to submit to the General Conference a code of practice on the international transboundary movement of nuclear waste. He was happy to support the action proposed in paragraph 7 of document GOV/2445, on the understanding that other actions would be taken in due course if necessary.

60. The delegation of the Federal Republic of Germany hoped that States and individual concerns within States would respect the Code of Practice and would take whatever measures were necessary to achieve the fundamental objective of the Code.

61. Mr. ERRERA (France), after congratulating the Working Group for completing the task entrusted to it by the General Conference in resolution GC(XXXII)/RES/490, recalled that the Group included representatives from all geographical regions and experts from all disciplines (jurists, diplomats and technicians). Adoption of the Code of Practice had been possible because of the existing groundwork of regulations and standards to which reference could be made, as well as a desire to obtain results. The most urgent task now was to secure the Code's adoption by the General Conference. It was essential that the Code should become known and that Member States should agree to respect it and should do so effectively, and as soon as possible. The experience gained during its application, the development of techniques and the strengthening of regional and international bilateral co-operation, would yield valuable information which could then be integrated comparatively easily into the work on a future convention. But a vacuum should not be allowed to form while awaiting the completion of a convention, which could be a difficult and time-consuming process.

62. The firmness of French policy on that subject, which was demonstrated by the fact that France refused, had always refused and would always refuse to export nuclear waste anywhere in the world, as well as the entirely legitimate concerns expressed by developing countries, had led the French delegation to take an active part, with others, in drafting the relevant General Conference resolution. That resolution had itself been well-balanced, and it had accordingly resulted in the elaboration of a technically balanced and satisfying code within a short period of time. Such a positive achievement,

whose importance should not be underestimated, demonstrated once again the capacity of the Agency and Member States to respond rapidly to new situations and, when necessary, to a problem of extreme political sensitivity. The work should be taken further, in his delegation's opinion - and within the Agency, which appeared to be the appropriate forum for consideration of the issue, particularly with a view to the later drafting of a convention.

63. For the immediate future, the Code of Practice could be considered a good code. It should be made known to a wider public as there was much to be gained from showing that agreement could be reached on such a difficult issue. The next step was to obtain approval from the General Conference.

64. Mr. NEWLIN (United States of America) noted that the draft Code of Practice was not a binding international legal instrument, but rather a set of recommendations which did not affect existing safety and transport regulations. A non-binding set of principles was appropriate for the present time as there had been no evidence of any illegal dumping of nuclear waste. The United States delegation had no objection to the Code being transmitted to the General Conference in September for consideration, and the United States authorities would continue to study the text in order to determine whether they would be in a position to adopt it.

65. The proposal to convert the Code of Practice into a binding legal instrument was extremely premature and inappropriate for several reasons. Firstly, in Resolution GC(XXXII)/RES/490, the General Conference had called for the establishment of a code of practice and not a treaty. Many Member States had been able to support that resolution merely because the Code would not be binding. Any attempt to alter that decision at the present stage by transforming the Code of Practice into a binding document would run counter to the intention of the General Conference. Secondly, the Group of Experts had completed its work only in February. The Board would not have time to consider the document before transmitting it to the General Conference for adoption were it anything other than a code of practice. Thirdly, each Member State would need time to implement the Code.

66. Moreover, everyone would require some time to consider how the Code operated in practice before deciding whether it was really necessary to amend it or to convert it into a binding legal instrument. A point to be stressed

was that there had been no evidence whatsoever of any instance of dumping of radioactive waste by one State on the territory of another. Accordingly, he saw no reason for undue haste and believed it prudent to continue with the gradual and pragmatic approach taken so far.

67. Mr. AMMAR (Tunisia) congratulated the Working Group for completing its task within the given time period, while taking into account the needs of developing countries. The international community might find that the Code of Practice could serve as a better legal instrument - defining liability and compensation for damage that might result from the international transboundary movement of radioactive waste - if it were further improved and given a more binding nature in the future. The Agency had an important role to play in that area. The Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency were the most appropriate examples. In conclusion, the Tunisian delegation agreed that the Code of Practice should be submitted to the General Conference for consideration.

68. Mr. TALIANI (Italy) expressed strong support for the statements made by the Malaysian and French delegations.

69. Mr. SHENSTONE (Canada) said that, his delegation considered the Code, in its present form, to be a commendable and entirely acceptable document. It was an essential step towards filling the vacuum referred to by the Governor from France. It would be best to secure its adoption by the General Conference in order to ensure that the international community had at least one document available - even though it might be prudent to review it at a later stage in the light of experience gained.

70. The proposal to give the Code a more binding nature was reasonable, but premature at the present time. It was a familiar fact that the adoption of a binding legal instrument and its ratification could take years.

71. With regard to the proposal of several Governors to include liability in the Code, he noted that a distinct body, the Standing Committee on Liability for Nuclear Damage, was dealing with that extremely complex subject. It was perhaps better to keep that issue separate in order to avoid

the risk of delaying work on both fronts. It was preferable to begin by adopting the Code of Practice, returning to the various other issues later when sufficient experience had been gained.

72. In conclusion, he expressed the hope that the Board would adopt the action proposed in paragraph 7 of document GOV/2445.

73. Mr. SHINOTSUKA (Japan), referring to the suggestion to confer a binding nature on the Code of Practice, considered that, in the present circumstances, it was sufficient for the Code to serve as a guideline for the countries concerned and hoped that that point of view would be communicated to the General Conference.

74. Mr. HASHIMI (Pakistan) said that his delegation welcomed the Code of Practice but regretted that it had turned out to be excessively general and was not compulsory. However, it was a first step, and he would follow the results of the next two or three years with interest. He also looked forward to the convention that the OAU was in the process of drafting, and supported the views expressed by the Nigerian and Malaysian delegations.

75. Ms. TALLAWY (Egypt) said that Egypt, which was one of the States which had brought the problem of dumping of wastes to the attention of the international community, hoped that the initiative would be continued in the interests of all. It could not be entirely satisfactory that the document was neither binding nor fully comprehensive. However, it was an essential step forward, and, thanks to extremely close co-operation between the various delegations, a consensus had been reached. That was extremely important as, without the agreement of developed and developing countries, the Code of Practice would be of little benefit. In 1988, the delegations concerned had already insisted that the General Conference should adopt a resolution by consensus on the waste dumping issue. In fact, the governments of developed countries were obliged to demonstrate their will to act, particularly as certain companies operating on their territories sometimes engaged in activities contrary to the obligations they had undertaken.

76. She was therefore particularly happy to note that the basic principles enunciated on pages 4 and 5 of document GOV/2445, notably in paragraphs 8 and 9, made provision for States to adopt laws and regulations to deal with that problem.

77. In view of the maturity of the countries which at present made up the international community, the question whether the Code of Practice should be binding or not did not appear very important. For example, it had been noted recently that a large number of non-binding documents had resulted in very important political actions being taken in the context of the Conference on Security and Co-operation in Europe (CSCE), actions which had resulted in profound changes in Europe. Although, as the Governor from the United States had said, no dumping of nuclear waste had as yet been demonstrated, there was no certainty that there had not in fact been incidents of illegal dumping. The fact that some countries wanted a binding document was far from being a cause for concern. Some believed that such an initiative was premature and perhaps they were right, but she for one believed that it was important to bide one's time until a danger had actually taken shape. By taking voluntary measures and, if necessary, binding measures, the public would be alerted to the present danger while preparations were made to face it at the national and international levels.

78. In conclusion, the initiative under discussion was a sign of successful co-operation which should be encouraged. Any possible extension of the Code in the future should take place on the basis of a consensus between the different groups, and she hoped that a similar consensus could be reached with regard to toxic wastes. Having said that, the Egyptian delegation agreed that the Code of Practice should be transmitted to the General Conference.

79. Mr. SAN MARTIN CARO (Peru) said that his country was extremely interested in the waste transfer issue and believed that it should be studied in greater depth, although a first step, which he welcomed, had been accomplished. Under the circumstances, the final objective should be to agree on an international and binding text but, as the Governor from France had said, the Code of Practice did fill a vacuum. However, given the risks involved, the elaboration of a binding text would be justified in due course.

80. Mr. ELBARADEI (Legal Adviser) said that, when the General Conference had adopted its resolution GC(XXXII)/RES/490 in 1988, a vacuum had existed, as the Governor from France had remarked, in the sense that there had been no international standards governing the movement of waste, nor had there been any national laws or regulations governing movements and transfers of

radioactive waste. The General Conference had hoped that the Agency would act rapidly in order to establish standards which Member States could use as a basis for the drafting of laws and regulations.

81. The General Conference had requested the Secretariat to establish a code of practice and not a convention. The Working Group had faithfully fulfilled that request by producing a code which could be applied effectively and within a short space of time, once it had been adopted by the General Conference. It was a familiar fact that the elaboration of an international convention or of any other instrument with binding force would take time. For example, after one and a half years, the Basel Convention on the movement of hazardous waste had received only three ratifications. Speaking as a jurist, he naturally considered a binding legal instrument to be of great value, but if one wished to act rapidly, a code of practice was more appropriate. As had been emphasized, the present document was a first and necessary step which could be followed by others. The Agency already had numerous codes of practice, which were respected by the vast majority of Member States. The most important thing was to know whether a true consensus existed, and a true desire for international co-operation. The fact that the provisions were respected was more important than the question whether or not they were binding. Clearly, the present Code of Practice was just a first step. Moreover, the Code itself made provision for its own review, and of course the Secretariat would monitor its application and keep Member States informed. It was clearly up to Member States to decide when and how the second stage should be undertaken.

82. A number of excellent ideas had been put forward, including the Malaysian proposal that technical regulations should be established to govern the movement of radioactive waste, as had been the case for the transport of radioactive materials. The proposal to draft a convention with binding force was also a good idea which could be followed up in due course if the Board and the General Conference so wished.

83. The Agency had drafted the present document in collaboration with all other international, regional and sectoral organizations interested. The OAU had been invited to the meetings but unfortunately had been unable to attend. However, the Agency had not been invited to the meeting at which the draft

regional convention of the OAU on the movement of radioactive waste had been elaborated. The Secretariat had received a copy of the text of the convention in the previous week and was studying it. It would be happy to participate in the Bamako meeting to co-ordinate the efforts of the Agency and the OAU.

84. The CHAIRMAN said that a number of interesting comments and proposals had been made with regard to the scope and nature of the Code of Practice and the possible follow-up measures. Those comments would be reflected in the summary records of the meetings and would certainly be taken into account at the General Conference in September.

85. He understood, in the light of the discussions and the consultations which had taken place, that the Board wished to take the action suggested in paragraph 7 of document GOV/2445 and request the Director General to transmit the Code of Practice on the International Transboundary Movement of Radioactive Waste to the General Conference, with a recommendation to adopt the Code, ensure its wide dissemination and monitor its implementation, and to attach thereto the summary records of the Board's discussions at the meetings in February and at the present session.

86. It was so decided.