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COMMITTEE OF THE WHOLE

RECORD OF THE SIXTEENTH MEETING

Held at Vigyan Bhavan, New Delhi
on Thursday, 6 December 1979, at 3.25 p.m.

Chairman: Mr. COSTA ALONSO (Mexico)

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*/ A provisional version of this document was issued on 10 January 1980.

**/ GC(XXIII)/620.

The composition of delegations attending the session is given in document GC(XXIII)/INF/188/Rev.5.

THE AGENCY'S BUDGET FOR 1980 (GC(XXIII)/612, 612/Mod.1) (continued)

1. The CHAIRMAN said that, as he wished to make a statement later that afternoon, he would give the Chair to one of the Vice-Chairmen, Mr. RÜhnsch.

Mr. RÜhnsch (Vice-Chairman) took the Chair.

2. Mr. KHOR (Malaysia) said he wished to discuss the problem of technical assistance financing from the point of view of logic. Article XIV of the Statute, the only Article on which the legal adviser had based his opinion that the inclusion of technical assistance in the Regular Budget was illegal, referred to expenditures only. Article II, in stating the aims of the Agency, made it clear that the regulatory function was a consequence of the promotional one, and Article III.A.2 clearly indicated that technical assistance, the promotional function of the Agency, was also its primary function. Safeguards, which were clearly a consequence of the Agency's promotional function, were funded from the Regular Budget, so there was no reason why technical assistance should not be funded in a similar fashion. In addition, the Board discussions on the target for voluntary contributions had been undignified and acrimonious; if technical assistance were a fixed part of the Regular Budget, such disputes and the scenes they brought in their wake could be avoided. The Statute could be amended, but that was not necessary as the aforementioned Articles provided sufficient justification for technical assistance to be included in the Regular Budget. Furthermore, there was a large discrepancy between the funds allocated to the two main functions, which so to speak constituted the twin pillars of the Agency, and if no reasonable balance were struck the difficulties already experienced would become more serious each year.

3. Mr. SILVA ARANDA (Peru) pointed out that the contention of the developed nations that, if the pattern of voluntary contributions were changed, difficulties might arise in fulfilling the pledges they had made, was little more than a threat. That was an inappropriate method of dealing with the problem. Funding technical assistance from voluntary contributions was reasonably satisfactory if all countries fulfilled their pledges, but that was not the case. Perhaps those which failed to do so should not be allowed to sit on the Board of Governors. A new mood of understanding prevailed at the Agency, as witnessed by the negotiations concerning the Convention on the Physical Protection of Nuclear Materials, at which the countries of the Third World had enabled an agreement to be reached; other groups should now in turn strive to co-operate with the Third World. The Group of 77 were not in a position to negotiate or make deals

when the needs and interests of many developing countries were at stake. In conclusion, therefore, the legal adviser should look at the rest of the Statute and attempt to discover a way in, not a way out.

4. Mr. OSREJKAR (Yugoslavia) said he could see no obstacle in the Statute to prevent technical assistance from being included in the Regular Budget; indeed, its inclusion could be justified under Articles II, III, XI and XIV. The legal adviser had expressed the opinion that it would be necessary to amend the Statute in order to remove any doubt, but there was no doubt. One could even challenge the legality of the existing practice under Article II. The Agency should adapt its modus operandi to modern circumstances by adopting the draft resolution which had been informally circulated. It was very unfortunate that there should be a confrontation over what was a crucial issue for developing countries. One could not but feel that their interests were being disregarded for the sake of formalities.

5. Mr. SINGH (India) said that the interpretation of Article XIV offered by the legal adviser was very weak and called on him to provide a detailed opinion in writing based not only on Article XIV but also on Articles II and III, taking due account of the spirit of those Articles. If that were done, delegations could usefully study his opinion before taking a decision.

6. Mr. ARAI (Japan) pointed out the importance his country attached to technical assistance and the large contributions it had made in that field. His delegation saw no need to change the existing method of financing technical assistance and hence opposed the proposal before the Committee.

7. Mr. THOMAS (German Democratic Republic), recalling the strong support his Government had always given to the technical assistance programme, said that the present system of voluntary contributions should be maintained as it was the practice followed in all other international organizations. His delegation feared for the future of the technical assistance programme if the existing concept were changed, requiring as that would an amendment of the Statute.

8. Mr. O'SULLIVAN (Ireland), speaking on behalf of the countries of the European Community, pointed out the great importance the Community attached to technical assistance and the large contributions its members had made over the years. Those countries wished to continue making contributions in the future, but if they were to do so, it was essential that the voluntary nature of the contributions be maintained.

9. Mr. ADEBARI (Nigeria) proposed that the Committee request the legal adviser to provide a draft of the amendment to the Statute which he felt would be needed if technical assistance were to be financed from the Regular Budget; that draft could then be submitted to the Plenary before the end of the Conference, and the Board would be able to give due weight to the issue during its consideration of the budget for 1981. Since the majority of the countries that benefited from technical assistance agreed that it should become part of the Regular Budget, his delegation could see no objection to the proposal.

10. Mr. SILVA ARANDA (Peru) said that one reason for the dissatisfaction of the developing countries with the system of voluntary contributions was that many States did not fulfil their pledges. The Third World countries need not call on the services of the legal adviser; they could act on their own initiative, and they fully intended to present a resolution to the effect that the technical assistance programme should henceforth be funded from the Regular Budget. Any voluntary contributions made in addition to that would of course be welcome.

11. Mr. TORRES SERRANO (Venezuela) supported the sentiments expressed by the representative of Peru and said that in addition the technical assistance and safeguards components of the budget must be balanced. The Statute clearly contained sufficient legal provision for including technical assistance in the Regular Budget and a solution would rapidly be found if all parties concerned were willing to move in that direction.

12. Mr. HABASHI (Sudan) observed that there was nothing in the Statute to suggest that an amendment would be required to implement the present proposal. The aim of the Third World was an assured source of funding on a permanent basis for the activities specified in Article II and Article III.A.2 of the Statute. It was impossible to reconcile the fact that those activities represented an essential part of the Agency's work with funding from charitable sources on a basis which offered no firm guarantee of the availability of funds.

13. Mr. GOOCH (Canada) said he wished to express his gratitude for the generous comments of the Pakistan delegate on Canada's record in providing technical assistance. The Canadian delegation, however, could not support the proposal to transfer the funding of technical assistance to the Regular Budget.

14. Mr. VYCHEZHANIN (Byelorussian Soviet Socialist Republic) said that his Government gave great importance to technical assistance but considered that the existing financing arrangement had been carefully worked out and that

there was no justification for any change. The proposed alteration might be in breach of the Statute and needed thorough consideration.

15. Mr. KENYERES (Hungary) noted that, owing to the extreme importance Hungary attached to technical assistance, it had contributed some 25% in excess of the portion corresponding to its base rate of assessment in 1979. However, he wanted to stress that such contributions should be voluntary; the Hungarian Parliament had to retain the right to decide on the allocation of its funds. His delegation could not therefore agree to the new proposals.

16. Mr. PICTET (Switzerland) supported the views expressed by the delegate of Ireland.

17. Mr. CHEZAL (Tunisia) associated himself with previous speakers who were not convinced that the funding of technical assistance from the Regular Budget would be at variance with the Statute. He believed the only argument against the change that had been proposed could be that it would be contrary to established practice, but that was not sufficient reason to oppose an innovation desired by so many delegations. The existing system meant that the amount of money available was unpredictable.

18. Stressing the importance of the subject under discussion, Mr. GRINBERG (Bulgaria) said that it would be rash to take a decision after a short discussion. His delegation did not believe that Articles II, III and XIV could be used as arguments in favour of any proposal for a change in funding. It was relevant to note that Articles IX.A, X and XI.C all used the word "may" in their opening phrases. The whole problem was complex, involving as it did political and other issues.

19. Mr. OGRYZKO (Ukrainian Soviet Socialist Republic) said the Ukraine took an active part in technical assistance and was increasing its contribution as far as possible. His delegation was not in favour of any change in the financing procedure, because it might have an adverse effect on the countries which made contributions and was contrary to the Statute. If the Committee of the Whole made any recommendation to the Plenary on the question, it would have to be in accordance with the correct procedure for introducing amendments to the Statute.

20. Mr. BASTRUP BIRK (Denmark) pointed out that his Government attached great importance to technical assistance and always contributed at least an amount

corresponding to its base rate of assessment. However, he associated himself with the views expressed by the delegate of Ireland against the proposed change.

21. Mr. ERLICSSON (Sweden) said his delegation supported the retention of the present system for financing technical assistance.

22. Referring to what had been said by the Bulgarian delegate, Mr. KHOR (Malaysia) suggested that Article XI needed to be read in conjunction with Article XIV.B.2.

23. Mr. COELHO (Brazil) said that, while some delegations were asserting that the Statute did not permit the funding of technical assistance from the Regular Budget, and held the Statute to be binding in that matter, they apparently saw no objection to the existence of special funds or to the discriminatory provision of technical assistance linked to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), although such practices were at variance with Articles XIV.F and III.C of the Statute. The important issue, however, was to find a correct and adequate method of financing the technical assistance programme.

24. Mr. CROMARTIE (United Kingdom) said he supported the suggestion made earlier by the delegate of Peru that the period between the circulation of vacancy notices and the closing date for applications should be extended to ninety days. He was also in favour of the idea put forward by Sweden that the supplementary nuclear power safety programme be included in future in the Regular Budget.

25. Concerning the proposal by the Group of 77, the United Kingdom associated itself with the statement made by the Irish delegate. The practice of financing technical assistance from voluntary contributions was widely accepted in the United Nations family and any change in the procedure by the Agency would have serious implications. Though the Statute might not specifically prohibit the transfer of technical assistance to the Regular Budget, it provided no actual basis for making the transfer and the United Kingdom delegation had grave doubts about the legality of such a change.

26. Mr. FARAHAT (Qatar) supported the proposals made by the Group of 77. The Statute contained no implicit or explicit provision which would preclude the financing of technical assistance from the Regular Budget. Moreover, it was in the interests of non-proliferation to make the proposed change in the funding procedure.

27. Mr. KIRK (United States of America) said that the problem under discussion was difficult and could not be resolved in a few minutes. It was a question which had often been given careful consideration in the past. United States lawyers had always concluded that an amendment to the Statute would be required to change the technical assistance funding system. The matter had been raised some years before and, though the move to make a change in the system had failed, there had been agreement on the fact that a statutory amendment would be required. That remained the position of the United States Government.

28. Supporting the view expressed on behalf of the European Community by the delegate of Ireland, Mr. TEODORANI FABBRI POZZO (Italy) said his country considered technical assistance to be one of the key activities of the Agency. However, his delegation believed that it should continue to be funded from voluntary contributions.

29. Mr. SIAZON (Philippines) suggested that it was essential to decide the answers to two questions: whether it was necessary to have an assured and predictable funding system for technical assistance and whether the Statute permitted such a system. Even if the Statute prohibited it, an acceptable system would still have to be found.

30. Technical assistance had been called one of the pillars of the Agency, and no one doubted that it deserved at least equal treatment with other activities. As the delegate for Peru had pointed out on behalf of the Group of 77, voluntary contributions which had been pledged had not always been paid. Such defaults in payment should perhaps bar Member States from the right to sit on the Board.

31. Table 1 of document GC(XXIII)/INF/185 showed that the total voluntary contributions between 1969 and 1978 had amounted to \$34 534 000. When that sum was considered in relation to the overall scale of nuclear costs, it was clear that Article IV.2 of NPT was not being implemented. If other Articles of the Treaty were binding, then so was Article IV, and that meant that a predictable and assured source of finance had to be made available for technical assistance.

32. Mr. NORD (Norway) said that, although his Government's policy was to channel all technical assistance to developing countries through the appropriate agencies of the United Nations, it had always contributed its share to the Agency's General Fund. His country was in favour of retaining the voluntary nature of those contributions.

33. Mr. KHLESTOV (Union of Soviet Socialist Republics) said he feared that the Committee was deviating from its agenda, under which its task was simply to consider documents GC(XXIII)/612 and Mod.1, and in particular the draft resolutions they contained. His delegation had listened with sympathy to the views expressed by the delegates from developing countries. The Soviet Union was a leading supplier of technical assistance and had announced its intention to increase its contribution to the General Fund by 20% in 1980.

34. The Statute was, however, very clear about what activities could be financed from the Regular Budget, and if technical assistance was to be included among them it would be necessary to amend the Statute. That was a matter which should not be decided in haste. The observations made by the various delegations on the subject would no doubt be reflected in the records of the Committee's meetings.

35. In the meantime, he urged that the Conference should approve the Agency's budget for 1980. Any delay would hamper the functioning of the Agency.

36. Mr. KHOR (Malaysia) said that the Group of 77 had submitted a proposal calling for the inclusion of the Agency's technical assistance in its Regular Budget. The Secretariat had been asked to give its opinion in that matter. Since the proposal had relevance to the appropriations for the Regular Budget now before the Committee, his country was unable to take action on the draft resolutions contained in the documents under consideration until the following day.

37. Mr. HERRON (Director, Legal Division), clarifying the opinion which he had given at the preceding meeting of the Committee^{1/}, said that one difficulty lay in the fact that technical assistance as such was not referred to in the Statute. However, Articles II, III.A.1-4 and III.B.3 clearly provided the Agency with authority to carry out its technical assistance programme. Moreover, technical assistance was a project activity, and accordingly belonged in the category dealt with in Article XI. As for financing, however, Article XIV.B.1(a) referred to expenditures required for the preparation of Agency projects but provided no authority for including other items, such as the cost of implementation of projects, in the Regular Budget.

^{1/} Document GC(XXIII)/COM.5/OR.15, para. 32.

38. It should also be borne in mind that in 1960 the Board had recommended to the General Conference an amendment to the Statute allowing for the financing of technical assistance from the Regular Budget, and that the General Conference had not at that time taken any action on that recommendation. He was not aware of any developments in the legal sphere which would make him change his considered opinion that it would be necessary to amend the Statute to remove any doubt if the present procedure for financing the technical assistance programme were to be altered.

39. Mr. GILLON (Belgium) said he fully understood the eagerness of the developing countries to improve the effectiveness of the Agency's technical assistance; nevertheless, the General Conference had to be guided by Article XIV.A of the Statute. It was too late now to return the budget to the Board. If the countries belonging to the Group of 77 wished to introduce changes, it would be better for them to do so in the budget for 1981.

40. Mr. SILVA ARANDA (Peru) said that the Group of 77 considered the matter under discussion to be very important and wished to hold consultations before taking a final stand on the draft resolutions. Under Rule 62 of the Rules of Procedure of the General Conference he proposed that debate on the item under discussion be adjourned until the following morning.

41. Mr. SIAZON (Philippines) supported the proposal for adjournment.

42. Mr. KHOR (Malaysia) also endorsed the proposal of the delegate of Peru.

43. He regretted to have to say that he was disappointed by the clarifications given by the Director of the Legal Division, who had only reiterated the legal opinion of the past without taking account of changing times. The Statute did not forbid the financing of technical assistance from the Regular Budget. The countries belonging to the Group of 77 had no doubts in that matter, and continued to believe that no amendment to the Statute was needed.

44. The CHAIRMAN, in the absence of any objections, took it that the Committee wished to adjourn debate on the item under discussion until the following morning.

45. It was so decided.

The meeting rose at 5.15 p.m.

