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AMENDMENT OF ARTICLE VI.A.2 OF THE STATUTE

Report by the Board of Governors

1. In response to General Conference resolution GC(XXV)/RES/389, the Board discussed amendment of Article VI.A.2 of the Statute at its February and June meetings. Also, the Chairman and Vice-Chairmen have held extensive consultations on this issue. The Chairman reported on these consultations to the Board on 11 June and the text of his statement is reproduced in Annex I.
2. It is clear that there is absence of consensus and that this issue should continue to be discussed. Annex II contains the records of the Board's discussions on this issue since the 1981 session of the General Conference.

A N N E X I

Statement made by the Chairman of the Board of Governors on 11 June 1982

Since our meetings in February, when you asked us to do so, the two Vice-Chairmen, Ambassadors Nimpuno and Keblusek, and myself have held extensive consultations with a large number of Governors. We have had consultations with almost all Governors or with their alternatives or representatives.

I feel that I must say, at the outset, that there appears from these consultations to be no formula or set of ideas - including the two formal proposals for amendment that have already been submitted to the General Conference - that could find general favour as a possible solution to this issue. I must therefore report that it is our joint view that we have not been able to find a common basis on which a possible acceptable solution could be built at this stage.

Having said this, I should like to share with you some of the impressions that we formed in the process of these consultations.

Despite the absence of a consensus on an acceptable solution, it seems to me that there is a fairly widely shared opinion regarding six points:

- First, the present composition of the Board reflects not only a certain geographical distribution of the Agency's membership but also a very delicate technical and political balance. We sensed that a majority of those with whom we consulted were of the view that such a political balance should continue to be maintained in the Board.

- Secondly, some delegations and some geographical area groups nevertheless feel, some strongly, that the present composition of the Board should be modified.

In this connection there is an undercurrent of feeling that an increase in the representation of one area should be accompanied by an increase in the representation of other areas. Many delegations appear also to be of the view that this would not only upset the necessary balance but also make the Board so large as to be almost unmanageable as an executive organ of the Agency.

- Thirdly, there is at present no consensus regarding a formula that might reflect a new geographical, technical and political balance; in fact, opinions vary not only from one geographical area group to another but sometimes even within a single group.

- Fourthly, even those delegations which would like to see a change in the present arrangement could live with it in the absence of an alternative which they could accept.

At the same time, many delegations appear to feel that an alternative acceptable to others may not be acceptable to them, and rather than risk a search for an alternative that may become unmanageable in the process, they would prefer to continue to accept the present arrangement.

- Fifthly, the difficulties and frustrations experienced so far on this issue are leading to undesirable tension, and further efforts need to be organized in an appropriate manner so that consultations may continue. There is, however, divergence of views on what is appropriate or acceptable in this regard.

- And lastly, some delegations feel that it should be possible, without altering the overall basic political balance, to arrive at an arrangement that would permit an evolution in the composition of the Board to reflect technical or geographical changes - especially in the relative importance of various areas.

In the light of these considerations, I think that it would be helpful to hold further consultations in order to explore what such an arrangement might be and also whether there may not be possibilities for an evolution in the composition of the Board without amendment of Article VI of the Statute.

The two Vice-Chairmen and I found that the atmosphere in which these consultations took place greatly facilitated the exchange of ideas without the adoption of formal positions, and we hope very much that subsequent consultations will take place in the same helpful atmosphere.

I should add in the absence of Ambassador Nimpuno, whose duties required him to be elsewhere, that I have discussed the thrust of this statement but not its details with him.

What I had to say is not likely to please all Governors, but I felt I should opt for clarity rather than fuzz our views in reporting our findings to you. The three of us would like to express our gratitude for your co-operation and the frank but helpful manner in which you spoke to us in the consultations.

In these circumstances, if the Board agrees, I would suggest that we consider now the question of our report to the General Conference pursuant to resolution GC(XXV)/RES/389 adopted by the Conference last September.

I would propose that - in response to that resolution - we submit to the Conference a fairly brief report, possibly on the lines of the draft that I have circulated to you.

A N N E X I I

Summary records of the discussion on the item
"Amendment of Article VI.A.2 of the Statute"
at meetings of the Board of Governors
held in February and June 1982

RECORD OF THE 590TH MEETING (held on 25 February 1982)

AMENDMENT OF ARTICLE VI.A.2 OF THE STATUTE

60. The CHAIRMAN recalled that in resolution GC(XXV)/RES/389, adopted by the General Conference at its twenty-fifth regular session in September 1981, the Board was requested to consider and submit its observations and recommendations on proposed amendments of Article VI.A.2 of the Statute for approval by the General Conference at its twenty-sixth regular session with a view to giving equitable representation to the under-represented areas of the world, taking fully into account the earlier resolutions adopted by the Conference on that question and the discussions that had taken place in the Conference and the Board.

61. Mr. HAWAS (Egypt) said that, although the principle of equitable geographical distribution of seats on the Board had not been questioned, and the fact that the area of Africa was considerably under-represented had not been disputed at any time during the past four years, no progress had been made towards correcting that imbalance. His delegation therefore urged the Board to take appropriate action in accordance with resolution GC(XXV)/RES/389 and the other resolutions of the General Conference mentioned therein. It maintained its position, expressed on behalf of the area of Africa as a whole, that Africa should have three additional seats on the Board.

62. Mr. MAPARA (Zambia) said that the fact that the area of Africa was under-represented on the Board was not disputed, and that the wish to correct that imbalance was a valid one. The last time Article VI.A.2 had been amended was in 1973, and since then many States had joined the Agency. Twenty-five African countries were now Members, and others might well join in the future. The situation had changed considerably since the time of the last amendment. Three additional seats on the Board were thus being requested for Africa and two for the Middle East and South Asia.

63. When seats on the Board were to be allotted to Member States, their degree of technological advancement tended to be emphasized. In his view, however, all Members should be regarded as equal. In any case, although African countries might not be advanced in nuclear technology, a number were important suppliers of source materials.

64. However that might be, he believed that Third World countries, and African countries in particular, would be prepared to consider a formula other than that of three additional seats for Africa and two for the Middle East and South Asia, provided it led in the final analysis to equitable representation on the Board.

65. Mr. ISMAIL bin AMBIA (Malaysia) said that the member countries of the Group of 77 attached great importance to resolution GC(XXV)/RES/389 and were concerned that the issue should be settled, since it tended to disrupt the harmony of relations between developed and developing countries in the Agency.

66. The implications of the General Conference resolution were complex and far-reaching, and discussions had been held on them between the regional groups represented in the Group of 77 with a view to reaching a sound and balanced position. He asked the Chairman whether he or one of the Vice-Chairmen would be prepared to hold informal consultations with the Group of 77 and other groups concerned. It was to be hoped that in that way some progress could be made which would result in productive discussions at the next series of Board meetings.

67. Mr. KOREF (Panama) supported the proposal that the Chairman or Vice-Chairmen should hold consultations with the representatives of various groups. For many years the amendment of Article VI.A.2 had been discussed without any agreement having been reached. He believed that the consultations to be organized by the Chairman should be aimed at amending Article VI as a whole.

68. For that purpose, it would be useful if the Secretariat could make a compilation as soon as possible of all the discussions on the topic at the most recent session of the General Conference, including the deliberations of the Committee of the Whole, to be reproduced in all the Agency's working languages.

69. Mr. VAN BARNEVELD KOOY (Netherlands) supported the proposal by the delegation of Malaysia.

70. Mr. LOPEZ RODRIGUEZ (Spain) said that circumstances had changed since Article VI had first been written: Spain recognized the need for it to be amended, on the understanding that it would be amended as a whole. Both the original version of the Article and the 1973 version took account of geographical distribution as well as advancement in nuclear technology. It would be illogical to apply only one of those criteria now; similarly, it would be wrong to amend only part of the Article.

71. In fact, a detailed study of Article VI.A.2 showed that the representation of the West European area on the Board in terms of elective seats was one of the lowest of all areas, since 19 countries were competing for four seats. On the other hand, Article VI.A.1 as it stood placed a limitation on the number of countries advanced in nuclear technology which could receive designated seats, and that also made representation on the Board inequitable. The Spanish delegation was therefore prepared to enter into discussions on that topic with all delegations, especially those which felt that they were under-represented on the Board.

72. Mr. MEYER-LONG (Uruguay) said that the resolutions mentioned in pre-ambular paragraph (a) of resolution GC(XXV)/RES/389 were not the only documents which needed to be studied with a view to the amendment of Article VI.A.2; he accordingly supported the request that the Secretariat compile, in a special document, the records of discussions on the subject in the Board and in the General Conference's Committee of the Whole.

73. His delegation likewise believed that Article VI should be amended as a whole.

74. Mr. THAM (Sweden) said that the enlargement of the Board should receive careful and positive consideration. Although the Board needed to be kept relatively small so that its decision-making capacity and efficiency were maintained, it was not large by comparison with the governing bodies of other comparable specialized agencies and international organizations. Since the Agency's membership had increased, it would not be unreasonable to consider a modest and balanced increase in the size of the Board. In his view, different alternatives could be devised which would safeguard the interests of States and groups of States.

75. Article VI of the Statute governed, among other things, the designation of Members which, by virtue of their advancement in nuclear technology, were singled out for continuous participation in the Board's work. Like Article VI.A.2, Article VI.A.1 needed to be treated in a flexible manner in order to take into account any developments that occurred and, more particularly, the relative strengths and involvements of States in nuclear energy. For example, Sweden was entitled to a designated seat under Article VI.A.1 in view of its advancement in terms of nuclear energy, and the Article should be applied as it stood, not in accordance with tradition. Thus, his delegation looked forward to the next Board meetings, by which time it hoped that, under the guidance of the Chairman, agreement would have been reached on an objective and legally satisfactory application of Article VI.

76. Mr. LEE (Republic of Korea), supporting the proposal by the Governor from Malaysia that informal consultations should be held by the Chairman, said that the Board should not merely repeat the arguments used previously with regard to the amendment of Article VI.A.2 but should proceed with serious negotiations so that an acceptable formula could be worked out and recommended to the General Conference at its next regular session.

77. Mr. CALDERÓN (Peru), speaking on behalf of the Latin American group, said that any amendment of Article VI.A.2 should take the views of that group into account. He supported the proposal that informal consultations should be held and the request that the records of discussions in the Board and General Conference on the topic should be compiled in a single document.

78. Mr. AL-KITAL (Iraq) supported the proposal by the Governor from Malaysia concerning informal consultations. In those consultations careful attention should be paid to the question of the under-representation of the regions of Africa and of the Middle East and South Asia. However, his delegation would keep an open mind on all points of view expressed with regard to the amendment of Article VI.A.2.

79. Mr. OTALORA (Colombia) said that the amendment of Article VI.A.2 was very important for the proper functioning of the Agency. It would facilitate matters if the Secretariat were to provide a document containing details of the discussions on that topic, not only at the last session of the General Conference but also in the Board. He suggested that one of the Vice-Chairmen

of the Board, possibly Mr. Nimpuno of Indonesia, might get in touch with representatives of the different geographical areas and then draw up a report on those consultations.

80. Mr. KENNEDY (United States of America) said that his Government had long regarded it as necessary that the Board should be large enough to reflect the views of Member States adequately and small enough to fulfil its tasks effectively. In fact, the Board was one of the largest governing bodies in the United Nations system when compared with the number of Member States in the organization. In that context, and since there were a number of factors to be examined, he supported the proposal that consultations should be held by the Chairman.

81. Mr. BUHOARA (Romania) said that so far, whenever the developing countries had requested more equitable representation on the Board, the position had remained the same. He therefore supported the holding of consultations by the Chairman and hoped that they would result in more progress than negotiations in the past.

82. Mr. AGIOBU-KEMMER (Nigeria), supporting the proposal that informal consultations should be organized by the Chairman, hoped that those discussions would lead to the formulation of concrete recommendations to the General Conference by the time the Board met in June, and that the vicious circle whereby the two bodies repeatedly referred the question of the amendment of Article VI.A.2 to each other for further examination would be broken.

83. In his view, whatever consultations were held should focus on the request in the operative paragraph of resolution GC(XXV)/RES/389. It would also be important to examine how the application of Article VI of the Statute could best contribute to the fulfilment of the Agency's objectives. Article VI as it stood did not meet the needs of the present, and the way in which seats were shared out on a geographical basis was not equitable. Africa, for example, was seriously under-represented, and its number of designated seats should be increased from one to four. It should not be forgotten that other African countries, such as Namibia, which was an important producer of source materials, were likely to join the Agency in the future. Board

Members frequently spoke not only on their own behalf but also for other countries in their geographical area, and it was right that African countries which were not Board Members should be given increased access to the Board through an enlarged membership. For similar reasons, his delegation believed that representation on the Technical Assistance and Co-operation Committee should be extended to Members not serving on the Board.

84. Finally, he pointed out that the Agency's Board was not the largest body of its type within the United Nations family, since UNESCO, ILO and FAO all had larger governing bodies. As a rule, approximately one third of the Member States of an organization were represented on its governing council, which was far from being the case in the Agency. In his view, the only alternative to an increase in the number of seats on the Board was redistribution of existing seats.

85. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that informal consultations should continue in the hope that the positions of delegations could gradually be reconciled. However, the delegations wishing to expand the Board should bear in mind the need to maintain its effectiveness and manageability, as well as the fact that the Agency occupied a special position within the United Nations system. It might in fact prove necessary to use the consultations to find other ways of enabling Member States to play a more influential role in decisions affecting the work of the Agency.

86. The CHAIRMAN said it would be less than honest if he did not state his view that the familiar pattern of the Board and the General Conference continuing to refer the issue under discussion to each other without perceptible progress being made was due not to an absence of goodwill or of effort but rather to the absence of an acceptable solution. It was important to base further work on that sober assessment.

87. He was prepared, together with the two Vice-Chairmen, to hold informal consultations as had been proposed by the Governor from Malaysia, with the time element - i.e. the June meetings of the Board - in mind.

88. While the first step might be to seek the views of the spokesmen for the various geographical areas, the discussion at the present meeting had shown that it would also be necessary to hear the views of individual Board Members.

The problem was a complex one and he doubted whether he himself together with the two Vice-Chairmen would be able to find a solution alone; the exercise would have to be a joint one involving all Members of the Board.

89. It was his intention to be in Vienna for approximately one week before the meetings of the Administrative and Budgetary Committee in May and of the Board in June, and he hoped that Governors would be able to give him their views then.

90. Finally, he asked whether the Secretariat would be able to make available a document of the kind requested by the Governor from Panama.

91. The DIRECTOR GENERAL said that the Secretariat would review the records of discussions in the Board and the General Conference Committee of the Whole and issue a document of the kind requested.

92. Mr. DALAL (India), noting that some Board Members were in favour of amending Article VI.A.2 while others were not, said it seemed to him that the Chairman should first consult those delegations which were not in favour of an amendment; if their views had not changed, there would be no need to consult those who were in favour.

93. The CHAIRMAN said that he would bear the suggestion of the Governor from India in mind; however, it was first necessary to know what the views of the various delegations were. He asked whether the Board wished him to proceed with informal consultations as proposed by the Governor from Malaysia in the sense in which he (the Chairman) had described it.

94. It was so agreed.

RECORD OF THE 596TH MEETING (held on 11 June 1982)

100.-109. (The text of the Chairman's statement is reproduced in Annex I.)

110. Mr. CAMPBELL (Australia), supported by Mr. VAN BARNEVELD KOOY (Netherlands) and Mr. KOREF (Panama), suggested that the Board's report should in some way reflect the conclusions which the Chairman had just presented.

111. The CHAIRMAN asked whether the Board could agree to submit to the General Conference a report consisting of the draft that had been circulated, amended to contain a reference to the oral report he had just made on the outcome of the consultations that had been held, together with a text of the oral report and the records of the Board's discussions on the issue since the 1981 session of the General Conference.

112. It was so agreed.

113. Mr. HAWAS (Egypt) thanked the Chairman and the two Vice-Chairmen for their sincere efforts in conducting consultations on the issue under discussion, that of the representation of certain areas on the Board. At the same time, he expressed regret that consensus on that important issue did not - so far - appear to be possible and hoped that consultations would continue. On behalf of the African Group he wished to emphasize that that Group continued to hold its views and position as reflected in, for example, the record of the Board's meeting of 17 September 1981^{*/} and other relevant documents.

114. Mr. SUAREZ de PUGA (Spain), thanking the Chairman for organizing consultations on the point at issue, made the following statement:

"(1) Under this same agenda item the Governor from Spain stated, at the Board's meetings in February, Spain's position on this subject. I now have the honour to reiterate and spell out that position.

"(2) In the Committee of the Whole, at the twenty-fifth regular session of the General Conference, Spain stated that:

- (a) It had been one of the first States in the West European area to recognize and declare that it was necessary to change the representation of Member States on the Board of Governors;

^{*/} 580th meeting, reproduced in document GC(XXV)/649/Add.1.

- (b) At the twenty-fourth regular session of the General Conference, it had joined in the consensus on resolution GC(XXIV)/RES/378 on the understanding that the Board was empowered, when studying the 'Amendment of Article VI.A.2 of the Statute', to take into account all the consequences of any modification of Article VI; that, in doing so, it would take into consideration all the interests involved; and that it would, therefore, study the amendment in the context of Article VI as a whole;
- (c) In any event, care had to be taken, in trying to render the Board more representative, not to impair its efficiency.

"(3) According to paragraph 103 of document GC(XXV)/OR.237, the delegation of Spain did not object to the adoption of resolution GC(XXV)/RES/389, on the understanding that the Board would take full account of the records of the discussions in the Committee of the Whole and that it would, therefore, study the modification of Article VI as a whole.

"(4) Article VI aims to achieve:

- (a) The presence in the Board of those Member States without which the Board would not be representative of the Agency's membership as a whole as regards advancement in the technology of atomic energy, including the production of source materials;
- (b) A regionally balanced and satisfactory frequency of participation in the Board of those Member States not designated on the basis of their advancement in the technology of atomic energy, including the production of source materials.

"(5) The number of designated Board seats, according to the present version of Article VI.A.1 and established practice relating to designation, does not permit an appropriate solution to the problem posed by the equal state of advancement of some Members from the area of Western Europe.

"(6) The numbers of elective Board seats for the different areas, in accordance with the present version of Article VI.A.2, make the frequency of Board membership of West European States not designated on the basis of Article VI.A.1 one of the lowest.

"(7) The General Conference, by its resolution GC(XXV)/RES/389, asks the Board of Governors to study the amendment of Article VI.A.2.

"(8) Spain, as a Member of the Board, and pursuant to the conditions of its support for the adoption of the above-mentioned resolution, believes that, in fulfilment of the request of the General Conference, it has a duty to contribute to the study by the Board of the amendment of Article VI, and has considered the consequences of several amended versions of that Article.

"(9) Accordingly, the delegation of Spain wishes now to submit for consideration by the Board one of those versions, as follows:

"A. The Board of Governors shall be composed as follows:

1. The outgoing Board of Governors shall designate for membership on the Board those members which, according to information available to and verified by the Agency, had the greatest nuclear power generating capacity at the end of the preceding year in each of the following areas:

- (1) North America;
- (2) Latin America;
- (3) Western Europe;
- (4) Eastern Europe;
- (5) Africa;
- (6) Middle East and South Asia;
- (7) South East Asia, the Pacific and the Far East.

The maximum number of members which may be so designated from each of the aforesaid areas shall be one plus a number calculated by dividing the number of members in the area by a factor, agreed upon by the Board and equal for all areas, which shall not be smaller than four; fractions of a seat equal to or greater than 0.5 shall be counted as one seat and fractions smaller than 0.5 shall be disregarded.

2. The General Conference shall elect to membership on the Board of Governors a number of members from among those not designated under sub-paragraph A.1. The number of members to be so elected for each of the areas mentioned in sub-paragraph A.1 shall be calculated by dividing by a factor, agreed upon by the Board and equal for all areas, the difference between the number of members in that area and the number of members in that area designated under sub-paragraph A.1. The agreed factor shall not be smaller than four. Fractions of seats for different areas may be added together by agreement among the members from those areas to constitute one seat to which a member from those areas shall be elected.

"'B. [Unchanged]

"'C. Members of the Board shall hold office from the end of the regular annual session of the General Conference that follows their designation by the Board or during which they have been elected by the General Conference until the end of the following regular annual session of the General Conference.

"'D. [Deleted]

"'E. Each member of the Board of Governors shall have one vote. Decisions shall be taken by a two-thirds majority of the members present and voting. Two thirds of the members of the Board shall constitute a quorum.

"'F, G, H, I and J. [Unchanged]'

"(10) According to this version, the number of members qualified for designation would probably be twenty in 1983 and twenty-three in 1987.

The number of elective seats would probably be twenty-three both in 1983 and in 1987 if the agreed factor referred to under Article VI.A.1 proves to be four.

"(11) Spain remains prepared, as always, to discuss the amendment of Article VI with all Member States.

"(12) I ask you, Mr. Chairman, that my statement be included verbatim in the records of the Board and that these records be transmitted in their entirety to the General Conference at its twenty-sixth regular session."

115. Mr. DI BIASE IRIGOIN (Uruguay), speaking on behalf of the Latin American Group, recalled that he was in favour of a review of Article VI as a whole but was prepared to consider other proposals which took into account the legitimate interests of the Latin American countries and did not prejudice their proportional representation on the Board.

116. Mr. MIHULECEA (Romania) said that his delegation supported the efforts being made by the developing countries to achieve equitable representation on the Board so that they might make their due contribution to the Agency's activities.

117. Mr. OYEGUN (Nigeria) fully supported the remarks made by the Governor from Egypt and stressed the urgent need for a solution to the problem. As no delicate political balance existed among the States Members of the Agency, there was no reason why attempts should be made to maintain such a balance in the Board.

118. Mr. AL-KITAL (Iraq) deplored the absence of a consensus on the amendment of Article VI.A.2 and hoped consultations would continue with a view to improving the existing situation.

119. Mr. DALAL (India), speaking on behalf of the Asian Group, stated the Group's understanding that the amendment of Article VI.A.2 implied an expansion of the Board, and that the absence of consensus related to the ways and means of achieving that object, not to the need for expansion.