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GENERAL CONFERENCE

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**REQUEST FOR THE INCLUSION OF AN ITEM ENTITLED
"REPRESENTATION OF IAEA MEMBER STATES NOT MEMBERS OF THE
BOARD AT MEETINGS OF THE BOARD AS OBSERVERS"
IN THE PROVISIONAL AGENDA FOR THE THIRTY-SECOND
REGULAR SESSION OF THE GENERAL CONFERENCE**

Explanatory memorandum submitted by the Philippines

1. Pursuant to Rule 12(c) of the Rules of Procedures of the General Conference, the Philippines has requested that an item entitled "Representation of IAEA Member States not members of the Board at meetings of the Board as observers" be included in the agenda for the thirty-second regular session of the General Conference.

2. It will be recalled that, at the closing meeting of the thirty-first regular session of the Agency's General Conference, the Philippine delegation, in a statement^{1/} on the proposed 1988 budget of the Agency, called upon the General Conference and the Board of Governors to review and remedy existing administrative procedures and arrangements in the Board of Governors so as to ensure the representation of all Agency Member States not members of the Board of Governors at meetings of the Board as observers.

^{1/} See paras 133-136 of GC(XXXI)/OR.302.

3. The proposal for discussion of this subject was amplified in a letter dated 19 October 1987 to the Director General from the Philippine Mission.
4. The agenda for the February 1988 session of the Board of Governors included an item entitled "Representation of IAEA Member States not members of the Board at meetings of the Board as observers" which had been requested by the Philippines, whose Explanatory Memorandum was issued in document GOV/2328.
5. On 25 February 1988, the Philippine delegation made a statement^{2/} in support of a proposal contained in a draft resolution submitted in document GOV/2333. The following points, made in that statement, are re-stated below for the consideration of the General Conference:

- (a) Firstly, participation by all Member States as observers in the deliberations of the Board should be permitted as a matter of right. This is in accordance with the basic tenet in Article IV.C of the Statute: "The Agency is based on the principle of the sovereign equality" of all Member States. The principle of State equality is so fundamental that it is enshrined in the United Nations Charter itself (see Article 1(2) and Article 2(1)). From this emanates the concomitant principle of universality of membership of international organizations having – like the IAEA – universal character. To be more specific, the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations identifies the Agency, together with the United Nations and its specialized agencies, as an organization "of universal character".
- (b) Decisions of the Board arrived at without the participation of all Member States even as observers run counter to a basic democratic process: the right to a hearing. A glaring example of denial of the

^{2/} See paras 7–18 of GOV/OR.690.

right to a hearing is the matter of the budget. Without their participation and without a hearing -- much less consent -- Member States not members of the Board are assessed contributions and required to pay. The following questions asked by the Philippines at the last session of the General Conference are very pertinent:

"... Are we not expecting too much of non-Board members to just receive a notice in the formulation of which they did not have a hand or any say? Do we, for the sake of consensus, expect them to be silent spectators, even if the assessment is well beyond a country's capacity to pay or is in total disregard of its inherent right to be heard?"

Some may point out that there are consultations on the budget before the matter is submitted for decision in the Board. However, while this is true, non-Board members are merely notified of these consultations -- the committee is not open-ended. Lately, there was an attempt to improve on this process. However, the meeting was still very informal and not designed to arrive at any decision.

- (c) Consultations on other matters, like safety and safeguards, are less accommodating; they likewise are not open-ended. Again, however, even granted that Member States which are not Board members could attend the committees or consultations in question, officially and technically, under the procedures, they could not attend unless invited to do so. And even if they were invited, not all developing countries have the means or facilities to be always present at all discussions at the committee level. Hence, committee recommendations are transmitted to the Board, and then to the General Conference, without the participation of these Member States. In the General Conference, where all Member States can participate, there is simply no time to scrutinize and have meaningful debates on important items of the agenda.

- (d) Everything therefore hinges on the participation of such States in the deliberations of the policy- or decision-making body of the Agency, which is the Board. Attendance at meetings of working groups, consultation groups and other bodies or committees is not like attendance at meetings of the Board itself - with all that such attendance entails.
- (e) The rules and practice in the Board, whereby non-Board members are not allowed to participate in its deliberations, are rather unique in the history and operation of international organizations and bodies. As stated by the Philippines at the last session of the General Conference,

"It is indeed ironic that a Board like ours, committed to the principle of universality, has become restrictive. If one pauses and compares the Board of the Agency with those of other international organizations, one realizes how undemocratic our system is, for other international organizations even invite - in writing - non-Board members to attend as observers."

A cursory examination of the United Nations system reveals that, on the whole, international organizations and specialized agencies having universal character adopt the principle and practice of allowing - as a matter of right - States not members of the Board or Governing Council to attend as observers entitled to all rights of participation except the right to vote. These international organizations and specialized agencies include WHO, ILO, FAO, UNIDO, WIPO, WMO and such smaller bodies as the International Civil Defence Organization; even commissions like UNHCR and UNCITRAL honour this principle.

(f) Lastly, in resolution 42/42B the United Nations General Assembly reiterated once more "the right of all States not members of the Conference on Disarmament to participate in the work of the plenary sessions of the Conference on substantive questions" and urged States members of the Conference "not to misuse the rules of procedure of the Conference so as to prevent non-members from exercising their right to participate in the work of the Conference."

It is abundantly clear that in almost all, if not all, fora of international organizations or bodies of universal character – whether political, social, legal, economic or technical – the rights of an observer may not be abridged. In the aforementioned resolution of the General Assembly, the matters involved are of fundamental importance and sensitive – perhaps more than those being discussed in the Agency's Board.

6. As envisaged in the Explanatory Memorandum issued in document GOV/2328 and explained in the Philippine statement before the Board last February, the word "observer" as currently – and correctly – understood means one who participates in the debates and is provided facilities (like appropriate seating, a microphone and a country nameplate) to exercise his rights, subject to one fundamental restriction: he does not have the right to vote. If the Philippine proposal is approved by the General Conference, it goes without saying that the Board committees will have to be open-ended.

7. The discussions in the Board on 25 February did not resolve the issue. As was to be expected, most members of the Board wanted to preserve the status quo in the Board and denied the request that non-Board members be allowed to attend the deliberations of the Board as observers with all the rights of participation except the right to vote, as in other United Nations bodies and other international fora.

8. The summing-up of the Chairman is contained in document GOV/OR.690. While recognizing the reasons which had prompted the initiative of the Philippines, the Chairman rightly stated that "no proposals had been made for amending the Board's Provisional Rules of Procedures". At the same time, he invited attention to a resolution - adopted by the Board in October 1957 and amended in 1958 - on "Arrangements to enable all Members of the Agency to follow the work of the Board". However, the arrangements in question are merely a reiteration of Rule 50 of the Board's Provisional Rules of Procedure and do not address the problems raised in the proposal of the Philippines.

9. Having exhausted all available remedies before the Board, the Philippine delegation now brings the matter to the attention of the General Conference for consideration under Article V of the Statute, dealing with the powers of the General Conference. Paragraph D of Article V provides that

"The General Conference may discuss any questions or any matters within the scope of this Statute or relating to the powers and functions of any organs provided for in this Statute, and may make recommendations to the membership of the Agency or to the Board of Governors or to both on any such questions or matters". (emphasis supplied)

10. The reasons presented above should be cogent enough to warrant approval by the General Conference of the proposal that Member States of the Agency which are not members of the Board be allowed to attend the meetings of the Board as observers, with all necessary facilities (like appropriate seating, microphones, country nameplates) and with all rights of participation except the right to vote.

11. The Philippine delegation, together with like-minded delegations, intends to elaborate on this issue in the debates on this item in the General Conference.