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ARTICLE VI OF THE STATUTE

(b) Revision of Article VI as a whole

Document GC(XXXVIII)/23 contains a report of the Informal Working Group on the revision of Article VI as a whole. The Board discussed this subject on 13 September, and the summary record of its discussion is attached.

EXCERPTS FROM THE RECORD OF THE BOARD'S 849th MEETING

ARTICLE VI OF THE STATUTE

(b) REVISION OF ARTICLE VI AS A WHOLE (GOV/2745)

The CHAIRMAN recalled that, pursuant to General Conference decision GC(XXXVII)/DEC/12, the Board had on 4 October 1993 established a successor informal working group on the revision of Article VI as a whole and had gratefully accepted the kind offer of Ambassador Aalto of Finland to continue to serve as its Chairman.

Following a series of informal consultations held by its Chairman, the working group had met twice, on 20 June and 26 July 1994. Its report was contained in the Annex to document GOV/2745.

Mr. AALTO (Finland), introducing the report of the informal working group, said that genuine progress had been made in the course of the year, with some useful written submissions from Member States providing a clear picture of the main trends of thought currently emerging on the subject of the revision of Article VI as a whole. Less clear, however, was the degree of support existing for the various proposals.

In order to tackle the fundamental questions of designation to the Board and its overall size it was necessary to update the system of regional groups. The working group had discussed whether the Agency-specific system could be adapted more closely to current geopolitical realities or whether the Agency would be better served by the United Nations system of regional groups. It appeared that little guidance would be forthcoming from New York in the shortterm, unless that lack of guidance was regarded as meaningful in itself. His own feeling was that the Agency should in any case endeavour to ensure that each Member State belonged to a particular group in order to ensure equal rights for all Member States under the Statute.

With regard to designation, it was an important development that the Board had drawn attention to the need to review the designation system and to do so within a certain timeframe. The question whether the present-day realities of the nuclear scene were adequately reflected by the criteria used in designating seats, the manner in which those

criteria were applied by the Board, and the actual number of designated seats was political rather than legal and was hardly amenable to purely mathematical solution.

Ultimately, the Member States would have to decide whether an increase in the size of the Board was desirable and, if so, how far that should be achieved by expanding the semi-permanent component, i.e. the number of designated members. The working group had not discussed numbers but had confined itself to a discussion of the relative merits or demerits of preserving the status quo or enlarging the Board in proportion to the growth in the Agency's overall membership. Numbers were being floated around, however, and it might well be that the working group should turn its attention to more specific proposals. In that regard, he hoped that clear guidance would be forthcoming from the Board and the General Conference.

Mr. RASHED (Egypt) said he was in favour of urgently enlarging the Board as a means of facilitating the process of taking important decisions, gaining greater acceptance of those decisions among the different groups, and rectifying the current under-representation of the African group, which accounted for the largest number of members of both the Agency and the United Nations. Concerning the distribution of seats on the Board, it was essential to take account not only of the relative commitment of countries to nuclear power, but also of their political endeavours to promote the Agency's goals in the sphere of nuclear energy and to contribute to the maintenance of peace and security and of the non-proliferation regime.

Accordingly, it was desirable to review the working group's methods and mandate so that it might produce some positive results as soon as possible.

Mr. VIGASSY (Hungary) welcomed the working group's excellent report, which gave a comprehensive picture of the diverse views expressed during its sessions and during bilateral consultations. He supported the group's main conclusions as outlined in the report and the action recommended in its paragraph 20.

The issue of the revision of Article VI as a whole was a complex one regarding which Member States' views were influenced by professional and organizational considerations and

by divergent political interests. While the Agency's growing membership and the increasing number of countries with significant peaceful nuclear activities were indeed arguments in favour of enlarging the Board, its present - relatively broad - composition, the existing relationship between the number of designated members and that of elected members, and the current provisions for the participation of non-Board members in its work were all factors that argued against handling the issue with undue urgency. While his delegation was keen to maintain the Board's present and repeatedly proven ability to deal with difficult political and professional issues, it was none the less open to discussing any proposals from the various regional groups on the possible future enlargement of the Board.

Concerning the question of regional representation, he noted that any changes in the Board's composition should take account of the influx of new members into particular regional groups, especially his own, as a result of political changes.

His delegation was not in favour of lifting the prohibition of re-election to area seats, which might disturb the established balance between elected and designated members and reduce the eligibility of small countries for membership of the Board.

With these comments, his delegation supported the recommendation to re-establish the informal working group with the mandate proposed in paragraph 20 of the report annexed to document GOV/2745.

Ms. BATACLAN (Philippines) expressed her concern - and indeed embarrassment on behalf of all those involved - at the failure of the Board and General Conference, for all their efforts in the course of the years, to make genuine progress on what were extremely serious matters. She had serious reservations about the usefulness of re-establishing the informal working group and felt that it was time for the Board and General Conference to install a more effective mechanism with a negotiating mandate to consider all relevant aspects of the revision of Article VI of the Statute.

Mr. BAKSHI (India) said that perusal of the working group's report and scrutiny of Article VI itself suggested that several distinct elements could be identified with a view to further discussion, namely: (i) the optimum size of the Board and the need for

efficiency and effectiveness on the one hand and adequate representation on the other; (ii) the eight regional groups currently specified in Article VI and the question whether a different, more rational grouping might be devised; (iii) the complicated issue of how to determine which country belonged to which group, particularly in the case of a new Member State; (iv) the limitation placed on re-election of a Member State; (v) the seats allocated for different regional groups and the adequacy or inadequacy of their representation; and (vi) the practice and process of designating members to the Board under Article VI.A.1.

It was clear from reading the views expressed by many Member States that there was a wide variety of divergent viewpoints both on those elements, his enumeration of which was possibly not exhaustive, and on Article VI as a whole. Broadly speaking, some countries assigned priority to the question of the allocation of a member to a regional group, some to the question of re-election, and others to that of the size of the Board as a whole.

For its part, his delegation fully endorsed the opinion expressed by the working group in paragraph 19 of its report, namely that all the issues involved were interrelated and should be considered as an integrated whole. He therefore agreed that the working group should be re-established, as recommended in paragraph 20. However, emphasis should be given to the clear mandate stated in the first part of that paragraph, namely that the group should review all relevant aspects of the Article in question, whereas the second part of the paragraph, recommending that the group give particular attention to examining the present Board procedure for designating members and the area group classification system outlined in Article VI.A.1, should be deleted since those matters were not of immediate relevance.

Mr. LIU (China) said he sympathized with the views expressed by countries in favour of revising Article VI to reflect the changing global situation and to improve their representation on the Board. Any move to enlarge the Board's membership should, however, take due account of the need for equitable geographical distribution and adequate representation of developing countries.

With regard to the question of designation, he noted that since the vastly divergent views on whether or how to amend the criteria for designating members of the Board seemed difficult to reconcile, his delegation would prefer to leave those criteria unaltered.

At a time of tremendous change throughout the world, the complex issue of determining which regional group a country belonged to could only be resolved through consultations between the country and the groups concerned.

Finally, his delegation supported re-establishing the working group so that it might continue consultations and discussions on the relevant aspects of Article VI with a view to reaching a satisfactory solution at an early date.

Mr. RIANOM (Indonesia) said that since the Agency's establishment, the number of its members had increased steadily. From 1973 to 1994, 20 more States had joined the Agency, but the membership of the Board had only been increased by one. Clearly, the size of the Board should be expanded to reflect the increase in the number of Agency members. Doing so by a reasonable number would enhance the Board's capability to carry out its responsibilities on a broader consensual basis, without affecting its efficiency.

On the other hand, a balance must be maintained between representation of Member States that were most advanced in the nuclear field on a global level, and involvement of new regional powers that had demonstrated their support for the peaceful use of nuclear energy. From that standpoint, the present number of countries represented on the Board, namely 35, seemed appropriate. However, the provision in Article VI under which elected members were not eligible for re-election must not be deleted.

The issue of membership of the Board should continue to be discussed within the current forum of the informal working group, and so his delegation could go along with the action recommended in paragraphs 4 of document GOV/2745 and 20 of the Annex thereto.

Mr. OKONKWO (Nigeria) said his delegation strongly believed that the time had come for an expansion of the Board to reflect the Agency's significantly increased membership and to ensure greater participation in and acceptance of the Board's decisions by Member States. The continuing lack of progress in amending Article VI of the Statute was therefore a matter for deep concern. The recent changes in the nuclear industry, including the emergence of new supplier States, constituted a factor that must be reckoned with. Article VI as currently worded perpetuated, with little regard to recent developments,

the balance of interests at the end of the Second World War. Only a deliberate policy of including more countries in the Board would enable the Agency to address the implications of the latest developments. Increased membership of countries from Eastern Europe, the expected integration of South Africa and other factors now confronted the Agency with new significant nuclear players that deserved to be accommodated on the Board. A mere mathematical increase would only perpetuate current inequities, so a new formulation should be devised to correct them. With those remarks, his delegation endorsed the report presented in document GOV/2745.

Mr. SHTEINBERG (Ukraine) said his country believed that the Board's effectiveness must be preserved in future and that unnecessary complications must be avoided. In view of the emergence of newly independent States in the territory of the former Soviet Union and of the need to reflect existing geopolitical realities, a review of Article VI as a whole and of Article VI.A.2 should be carried out bearing in mind a variety of factors. The solution should be based on the principles of geographical balance and equitable representation. The degree of nuclear development achieved by States should also be taken into account. Ukraine now had 14 nuclear power plants in operation in its territory, with 6 under construction. It was second in nuclear power generation among the former Soviet Republics and seventh or eighth in the world in the number of nuclear facilities and in total nuclear power generated. Recent world developments must be reflected in the Agency's Statute, but any changes must be carried out in such a way as not to reduce the Board's effectiveness. For all those reasons, his delegation supported the proposal that the informal working group should pursue its activities.

Mr. PRETTRE (France) noted that his delegation's views on the subject under consideration were set out in the attachment to the report in document GOV/2745. France endorsed that report and recommended its submission to the General Conference. The report faithfully reflected the diversity of views prevailing with regard to the composition of the Board. It was becoming increasingly obvious that that difficult issue could not be resolved through partial amendment of the Statute. An overview of all the problems involved was necessary in order to win consensus and preserve the effectiveness of the Board's activities.

The informal working group's mandate should therefore be extended to deal with the whole range of issues involved.

Some countries believed Article VI.A.1 should be entirely reformulated and questioned the procedures applied by the Board for over 30 years. Yet the current arrangements enabled any Member State to raise objections against any proposed designation. Technological advancement could not be assessed purely in mathematical terms, on the basis of installed megawatts for example. It was much more complex and had already given rise to extensive discussions. Attempts to pin the concept down might yield unexpected results, or disputed results, and that would be counter-productive. The issue could only be resolved, if such resolution were possible at all, on the basis of thoroughgoing consultations: undue haste would yield unwanted results. Accordingly his delegation was prepared to take an active part in further discussion on those delicate issues within a working group to be re-established for that purpose.

Ms. MACHADO QUINTELLA (Brazil), speaking on behalf of Argentina as well as her own country, said that while the two delegations did not oppose the recommendation in paragraph 20 of the group's report, they believed that all matters relating to Article VI must be considered and resolved as a whole and would therefore prefer the wording proposed by the Governor from India for the mandate of the informal working group.

Mr. BAER (Switzerland) said the report indicated that the revision of Article VI as a whole was an extremely delicate issue and that further long discussions lay ahead. The simplest approach might even be to abandon attempts to improve that Article. Yet the world of the 1990s was quite different from that of the 1970s, and Article VI had become obsolete. His delegation therefore believed it should be modified - thoroughly redesigned, not just amended in part. Until that was done, his delegation preferred to live with the existing Article.

Five aspects needed to be re-examined. First, the size of the Board, which he saw no reason to modify. A larger Board would present no real advantages: efficiency did not necessarily increase with size. If the addition of one or two seats would ameliorate the

mathematical distribution, however, his delegation would not object. The second aspect was geographical distribution. Switzerland was not particularly happy with the existing regions and believed that improvement was possible, along the lines of the approach followed by the United Nations. A third aspect was the method for determining the Board's composition, involving designation by the outgoing Board and election by the General Conference. That combined mechanism seemed a good one: it would be even better if it was not so complicated. Article VI could surely be redrafted such that the procedure was comprehensible at first reading. Non-eligibility for re-election was another important aspect. Although that rule created some difficulties, it guaranteed a rotation in Board membership. Without it, there would be a danger that some countries might become semi-permanent Board members. His delegation therefore believed that the rule should not be modified. Finally, the expression "most advanced in the technology of atomic energy" would probably be quite acceptable if the criteria used to identify countries matching that definition were clearly explained.

With those remarks, he recommended that the Director General should submit the informal working group's report to the General Conference and that the working group should continue its efforts.

Mr. HAMADA (Tunisia) said the report in document GOV/2745 showed that many Member States saw a need to re-examine and revise Article VI of the Statute because the Board's current composition did not take into account the spectacular changes that had occurred in the past few years on the world political scene and in the field of nuclear energy. The Agency should respond to that situation by developing a set of objective criteria for designations and making the designation process more open to scrutiny. In addition, the system of regional groups must be changed so as to enable Member States that had made significant progress in the peaceful use of nuclear energy over the past two decades to participate in the Board's work.

Mr. INOMATA (Japan) endorsed the recommendations made in the reports contained in documents GOV/2760 and 2745, which reflected the issue now before the Board fairly well. Efficiency in the Board's work was essential for the Agency, and any changes

should be made with utmost care, in order not to affect adversely the Board's current good functioning. Any problem raised concerning the composition and operation of the Board should, however, be addressed. Japan would agree to the idea of eliminating, as an interim measure, the provision that prohibited re-election.

Mr. WEBB (Canada) said his delegation continued to advocate a cautious approach to suggestions on changing the size and composition of the Board. It would, however, support a consensus that the informal working group be directed to look into that matter, as long as its review included a full and detailed examination of all possible options, together with a complete analysis of their implications. Canada supported the group's recommendation that its efforts be focused on reviewing all relevant aspects of the current designation process and of the area group classification.

Mr. EID (Lebanon) noted that the informal working group had not yet arrived at a consensus on the expansion of the Board. It should therefore pursue its efforts, taking into account recent political changes, with a view to improving representation on the Board while preserving that body's efficiency. He endorsed the recommendations set out in paragraph 20 of the report in document GOV/2745.

Mr. TALIANI (Italy) said his delegation could go along with the action recommended in paragraph 20 of that report, but would prefer that paragraph to refer to "some relevant aspects" rather than "all relevant aspects" of Article VI. An unsuccessful effort had already been made to effect a moderate expansion of the Board. Many years had elapsed since then, and a moderate revision of Article VI would now be difficult to achieve. Most Member States took the view that a concern for efficiency should be foremost, and that any expansion of the Board should therefore be limited. Yet almost all Member States wished to have a seat on the Board. There was thus a dichotomy that was hard to resolve.

He believed the composition of the Board should be entirely reconsidered and the question raised whether Article VI was still relevant in today's world. It might for instance be possible to use the approach to membership devised for the body recently established to deal with chemical weapons.

Mr. TITKOV (Russian Federation) said the issue of amendment of Article VI was a very important one and was closely linked to the efficiency and efficacy, not only of the Board, but of the Agency as a whole. As currently constructed, the Board performed its functions most adequately. There was no justification for assuming that it could resolve the problems facing the Agency any better if it was larger or composed differently. On the contrary, the possibility could not be ruled out that changes might prove counter-productive.

In considering the revision of Article VI, one must not lose sight of the Agency's specific vocation to promote international co-operation in the peaceful use of nuclear energy and ensure effective monitoring of such activities. The idea of balanced representation in the Agency's governing body, both of countries most advanced in the nuclear field and of countries receiving technical assistance, taking into account geographical factors, remained valid, despite the far-reaching political changes in the world. His delegation was convinced that that important principle, which had been enshrined in the Agency's Statute by its founders, should be preserved. A Board membership of 35 represented the optimum in relation to the overall membership of the Agency and was justified by considerations of practicality and effectiveness in the Agency's functioning. It would be wrong to expand the Board automatically in proportion to the increase in the number of Agency Member States. At the same time, the political and geographical realities of the contemporary world could not be ignored. That was why further thoroughgoing and balanced consideration should be given to the matter in informal consultations, and without undue haste. His delegation accordingly supported the action recommended in paragraph 4 of document GOV/2745.

Mr. LEE (Republic of Korea)* noted that the discussion on revising Article VI had gained momentum in recent years. The time had come for the Agency to resolve that matter. It was true that the Board, in its current composition, had performed well, but that did not guarantee that it would continue to do so in future. His country believed the Board would operate even better with an appropriate expansion of its membership.

* Member States not members of the Board of Governors are indicated by an asterisk.

Article VI of the Statute was obsolete: it did not reflect the far-reaching geopolitical changes and the new nuclear realities that had emerged in the past two decades. Undue delay of institutional reform of the Agency's policy-making body might diminish the organization's relevance precisely when it was facing daunting new challenges.

The idea of expanding the Board was ripe for concrete action, particularly in view of the significant increase in the Agency's membership since 1973. As due consideration must be given to operational efficiency, it would be necessary not only to amend Article VI, but also to end the controversy surrounding the designation of Board members by setting clear criteria and ensuring that the process was open to scrutiny.

The re-establishment of the informal working group was a convenient approach, but unless clear guidelines were set, the group would not be able to arrive at agreed recommendations in good time. Continuing to talk was a way of avoiding decisions, but the amendment of Article VI was too important a matter to be left unresolved. He hoped the Board would exercise collective wisdom and foresight and use the momentum gathered to undertake the reforms required to make the Agency a truly relevant institution.

Mr. JAMEEL (Pakistan)* noted that there had been a considerable increase in the membership of the Agency since the last revision of Article VI, as well as a substantial development in the nuclear programmes of several Member States, and that therefore it had become urgent to review the composition of the Board with a view to increasing its numbers and ensuring equitable representation. In particular, there was a need to reconsider the number of designated members, and of elected members from the under-represented areas, namely the Middle East and South Asia, and Africa.

While appreciating the efforts made by the informal working group, he could not but note the continuing lack of progress in finding an amendment that would command consensus. Indeed, failure to find a consensus had tended to perpetrate the status quo. The time had come to consider some more effective mechanism, such as endowing a contact group with a negotiating mandate.

Mr. CAMPUZANO (Mexico)* agreed with earlier speakers that the changes which had taken place on the international political scene, as well as advances in Member States, were such as to justify a fundamental revision of Article VI. Mexico believed that the effectiveness and efficiency of the Board would be enhanced if it could be expanded in order to allow better representation of Member States and of their interests, and hoped to be able to contribute constructively to the search for a consensus solution.

Ms. KSENTINI (Algeria)*, noting that her Government's views were set out in the Attachment to the group's report, recalled that the General Conference had regularly emphasized the need to implement its resolution GC(XXV)/RES/389. She therefore hoped that renewed efforts would be made to correct the current imbalance in the representation of developing countries in general on the Board. The African region in particular was under-represented, not only in terms of designated members, but also in terms of elected members. In rectifying that imbalance, the Agency would be recognizing the changed situation, and would also be bringing itself into line with the practice of other United Nations bodies. In her view, the Board should represent at least one third of the Agency's Member States.

Since the amendment of Article VI as a whole could well be a lengthy process, the General Conference should lose no time in looking into the possibility of partially amending Article VI.A.2, to permit the immediate re-election of elected Member States.

The CHAIRMAN said he took it that Board wished to thank Ambassador Aalto for his efforts and that it agreed that the report of the informal working group be transmitted to the General Conference, while noting the range of views on the question of the mandate of the working group.

It was so decided.