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COMMITTEE OF THE WHOLE

RECORD OF THE FIFTH MEETING

Held at the Austria Center Vienna
on Thursday, 22 September 1994, at 11.00 a.m.

Chairman: Mr. GOESELE (Germany)

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[*] GC(XXXVIII)/25.

The composition of delegations attending the session is given in document GC(XXXVIII)/INF/11/Rev.2.

94-03952 (VIII)

Abbreviations used in this record

NPT

Treaty on the Non-Proliferation of Nuclear Weapons

PERSONNEL QUESTIONS (GC(XXXVIII)/12) (continued)

(a) STAFFING OF THE AGENCY'S SECRETARIAT (GC(XXXVIII)/COM.5/5)
(continued)

1. Mr. WOJCIK (Poland), presenting a revised version of the draft resolution contained in document GC(XXXVIII)/COM.5/5, said it was the result of consultations within the working group set up to consider the draft.

2. After a discussion involving Mr. WALKER (Australia), Mr. JAMEEL (Pakistan) and Mr. MOHAN (India), the CHAIRMAN took it that the Committee wished to recommend to the General Conference that it adopt the revised version of the draft resolution in document GC(XXXVIII)/COM.5/5 with "lower level" replaced by "staff at junior levels" in paragraph (d).

3. It was so decided.¹

(b) WOMEN IN THE SECRETARIAT (GC(XXXVIII)/COM.5/10 and Add.1 to 4)

4. Mr. STRATFORD (United States of America), introducing the draft resolution contained in document GC(XXXVIII)/COM.5/10, said that it was designed to encourage the Secretariat and Member States to take appropriate steps to rectify the existing imbalance in the representation of women in the Secretariat, particularly in positions of responsibility. At its previous session, the General Conference had adopted a resolution recommending the Director General to take steps to overcome obstacles in that respect. In the present draft resolution, the Director General was requested to continue his efforts, while Member States were called upon to assist him by taking steps to facilitate the recruitment of qualified women by the Secretariat. He felt that many women in the Secretariat appreciated the importance attached by the Board of Governors and the General Conference to the issue and had been encouraged by the adoption of the resolution at the previous session. He therefore hoped that the present draft resolution would receive general support.

¹ The recommended draft resolution was submitted to the Conference in document GC(XXXVIII)/38.

5. Ms. BATACLAN (Philippines), Mr. TREMEAU (France), Mr. OKONKWO (Nigeria) and Mr. TABET (Algeria) expressed support for the draft resolution in document GC(XXXVIII)/COM.5/10.

6. Ms. JØRGENSEN (Denmark), Ms. TISCHLER (Germany), Mr. WESELKA (Austria) and Mr. WALKER (Australia) expressed the hope that the draft resolution, which they would like to co-sponsor, would be unanimously approved.

7. Mr. ARIZAGA (Ecuador), Mr. FITZGERALD (Ireland), Mr. ALCANTARA de MELO (Portugal), Mr. BUFFINGA (Netherlands), Mr. DRDAKOVA (Czech Republic), Ms. KARRAN (New Zealand), Mr. PAPADIMITROPOULOS (Greece) and Ms. NEE-WHANG (Ghana) expressed support for the draft resolution and said that they would like to be included among the co-sponsors.

8. Mr. ELYSEU FILHO (Brazil) said that his country continued to support the ideas underlying the draft resolution but that he would like to make some comments on the subject. First of all, he suggested inserting ", particularly from developing countries," before "in the Secretariat" in preambular paragraph (b). Then, he requested clarification regarding the possible "obstacles" mentioned in operative paragraph 2. Finally, recalling that operative paragraph 4 of resolution GC(XXXVII)/RES/622 adopted by the General Conference at its previous session spoke of "additional voluntary resources for further development of the action plan", he asked why, as the draft resolution under consideration referred to the action plan, it made no mention of voluntary resources.

9. Mr. STRATFORD (United States of America) said he saw no problem about adding the phrase suggested by the representative of Brazil to preambular paragraph (b); the Secretariat was already doing its best to recruit women from developing countries.

10. The "obstacles" mentioned at the end of operative paragraph 2 could be very varied, and the aim had been simply to indicate to Member States that, if they discovered any obstacles preventing a woman from accepting employment, it would be extremely helpful if they would endeavour to eliminate those obstacles. For example, the endorsement process in some countries had been found by a number of applicants to be too complicated. In such instances, governments might do something about removing the difficulties.

11. With regard to the "additional voluntary resources" mentioned in operative paragraph 4 of resolution GC(XXXVII)/RES/622, he recalled that Ms. O'Leary, Secretary for Energy of the United States, had offered to provide the services of a cost-free expert to help draft the action plan. That offer had been accepted and the drafting was well under way. At a recent staff meeting where Ms. O'Leary had been present, a member of the staff had asked whether she was prepared to arrange for the continuation of that assistance in order that preparation of the action plan might be completed. She had replied that she was prepared to consider it. Thus, if there was a need for further additional resources, they could be provided even if there was no mention of them in the draft resolution.

12. Mr. ELYSEU FILHO (Brazil) said that he was concerned at the mention of "obstacles" in operative paragraph 2 of the draft resolution; it might be taken to imply discrimination within the Secretariat, and he wondered whether the word should be used. Be that as it may, Brazil fully supported the principle of increased representation of women in the Secretariat

13. Mr. CAMPUZANO PIÑA (Mexico), having indicated that his country would like to co-sponsor the draft resolution, said he considered it important that the measures recommended in paragraph 3 of resolution GC(XXXVII)/RES/622 - and particularly in subparagraph (e) - be implemented.

14. The CHAIRMAN took it that the Committee approved the amendment to preambular paragraph (b) of draft resolution GC(XXXVIII)/COM.5/10 proposed by the representative of Brazil and that it wished to recommend to the General Conference that it adopted the draft resolution as amended.

15. It was so agreed.

DESIGNATION OF MEMBERS OF THE BOARD OF GOVERNORS (GC(XXXVIII)/16 and Add.1)

16. The CHAIRMAN drew the Committee's attention to document GC(XXXVIII)/16, Attachment 2 to which contained a draft resolution, and to document GC(XXXVIII)/16/Add.1, which contained the record of the discussion in the Board of Governors.

17. Mr. ARCILLA (Philippines), introducing the two documents submitted to the Committee, said that delegations had received them some time earlier and had had time to examine them at their leisure. The draft resolution was accompanied by an explanatory memorandum. He was ready to answer any questions which might be put.

18. Ms. TISCHLER (Germany) wondered whether the General Conference was really competent to submit the request formulated in the operative part of the draft resolution to the Board; it was the responsibility of the Board to designate members, in accordance with Article VI.A.1 of the Statute and Rule 47 of its Provisional Rules of Procedure. At its June session, the Board had agreed that the Informal Working Group considering the question of revising Article VI as a whole should pay special attention to the designation issue.

19. Mr. RUIZ (Spain) said he understood and shared the concern for greater transparency in the designation of Board members which had prompted the Philippines to submit the draft resolution. However, the problem had wider and deeper implications, which were connected with the Board's obsolete structure and were to be examined under another agenda item. It might appear at first sight that the action proposed by the Philippine delegation would contribute to greater transparency, but in reality there was a risk of upsetting the present balance in the Board, which was not desirable. Consequently, although the Philippine proposal was undoubtedly interesting, changes regarding other aspects of Article VI should be considered. Furthermore, the way in which Article VI.A.1 was currently being applied was not inefficient and had never given rise to controversy, even if it was not very transparent.

20. The ideas proposed by the Philippine delegation deserved thorough consideration by the Informal Working Group on Article VI as a whole and should be reflected in any comprehensive revision of that article.

21. Mr. ISASHIKI (Japan) said he appreciated the efforts made by the Philippines to resolve an extremely important but very complex and sensitive issue. It was of course essential to maintain the efficiency of the Board in a changing world, but the issue should be examined first by the Informal Working Group on Article VI as a whole and then by the

Board itself. He did not think it wise in the present situation for the General Conference to adopt a draft resolution on the matter.

22. Mr. CHUN (Republic of Korea) said that, while compliance and transparency were hallmarks of the Agency, especially with regard to safeguards, it had not put the same effort into ensuring compliance and transparency in the implementation of its own statutory provisions. The designation of Board members was the most prominent case in point. The current practice of designating Board members without specifying the categories to which they belonged was wrong, and it might be contrary to Article VI.A.1 of the Statute. Such laxity, if left unchecked, could affect the representative nature of the policy-making organ of the Agency and the relevance of the decisions taken by it.

23. He found it hard to understand why it was so difficult for the Chairman of the Board to make clear the distinction between the ten Member States most advanced in the technology of atomic energy and the three most advanced in that respect in the regions where none of the ten was located. The Agency would certainly enjoy greater moral authority if it respected not only the letter but also the spirit of Article VI.A.1 of its Statute by ensuring transparency in the designation of Board members.

24. Strict compliance with Article VI was a priority issue which did not require revision of the article itself. Member States had the right to know how and on what grounds some members of the Board were designated as being the most advanced in the technology of atomic energy while others were not. Several Member States considered themselves just as advanced as those designated to sit on the Board and were entitled to know why they were being left out of the Agency's decision-making organ.

25. Part of the problem was the lack of clarity in the designation criteria. The only explicit criterion in Article VI.A.1 was that, in order to be designated, members should be "most advanced in the technology of atomic energy including the production of source materials"; that should be spelled out more clearly. Objective criteria could be arrived at through interpretation without Article VI being revised. For that reason, his delegation fully supported the initiative taken by the delegation of the Philippines. It hoped that the initiative would receive wide support and that, at its current session, the General Conference would

take reasonable and constructive steps to help the Board of Governors to rationalize the designation process at an early date.

26. Mr. OUVRY (Belgium), responding to the point raised by the representative of the Republic of Korea about the difficulty of resolving a matter apparently as simple as the designation of members of the Board, said that the reason for the difficulty was above all the need to agree on and apply certain criteria - namely, nuclear power generation and the related industrial capacity, fuel cycle completeness, nuclear safety and radiation protection competence, nuclear research capability, contribution to international co-operation, and uranium production. Of course, those criteria did not all carry the same weight. However interesting an attempt to resolve the matter might be, in the light of experience he doubted whether it would be conducive to maintaining the consensus which had prevailed for such a long time. The present informal approach had functioned in a manner acceptable to all Member States.

27. His delegation was willing to discuss the possibility of changing the current procedures, but the difficulties of the task should not be underestimated. Recalling what the representative of Germany had said about the conclusion reached in the Board in June, he said that calling on the Informal Working Group on Article VI to look into the matter and report at an early date on ways of resolving it was not without merit. He thought the draft resolution a little premature and doubted whether the Committee would be able to agree on its wording.

28. Mr. HELLER (Mexico) said that at a time when transparency in the nuclear activities of Member States and the work of the Agency was being advocated, the initiative of the Philippine delegation at least had the merit of drawing attention to a problem, for many Member States were calling for more clarity and transparency in the designation of members of the Board of Governors. The current procedure was clearly unsatisfactory for countries in some regions, even if the problem was more complicated in certain regions than in others owing to the political changes which had taken place in them.

29. For progress to be made, the criteria for designating Board members would have to be precisely defined. The list of criteria might be very long and include not only technical

or nuclear criteria but also political ones, such as the contribution of a country to non-proliferation, to technical co-operation, etc. It was not a question of revising Article VI but one of procedure - specifically the procedure for designation, which some believed to be no longer satisfactory. The initiative of the Philippines was thus a timely one: it was important that the General Conference look into the matter, which should not be examined solely by the Informal Working Group on Article VI.

30. Mr. TREMEAU (France), associating himself with the comments made by the representatives of Germany and Belgium, said he was well aware that the problem of designating members of the Board of Governors was important to many and that everyone's feelings had to be taken into account. On the other hand, a piecemeal approach was certainly not the best. There were many criteria, and concentration on just one or two was bound to go against the wishes or interests of one country or another. In fact, there were certain criteria which, if they were taken into account, might cause unpleasant surprises for those in favour of the type of transparency envisaged. However useful transparency might be, one should consider the extent to which it served the general good, individual interests and the interests of the Agency. France, which was very concerned about the interests of the Agency, believed that one should be wary of an approach which would ultimately be detrimental to the general good. It believed that the Informal Working Group on Article VI was the most appropriate body to examine - if not settle - all the problems. The problem of criteria was not the only one, and in that respect the present procedure - whatever its faults from certain points of view - had advantages and the merit of efficiency.

31. The matter needed to be considered in its entirety. However, the draft resolution submitted by the Philippines, interesting as it might be, did not address that concern; it was even quite dangerous for some countries. With such a sensitive subject, haste was very inadvisable. The draft resolution was useful only as part of the overall examination of Article VI. The matter should be left to the Informal Working Group, whose mandate should be extended. Lastly, the representative of Germany had made a valid point when she had expressed doubts as to whether the General Conference could submit requests to the Board in the matter.

32. Mr. ARCILLA (Philippines), responding to various comments that had been made, said that the General Conference was undoubtedly competent to address to the Board requests of the kind envisaged in the draft resolution. The General Conference was the Agency's supreme policy-making body and had already, in 1976, intervened on the subject of designation, which some regarded as a prerogative of the Board - namely, with regard to South Africa.

33. Some speakers not in favour of the draft resolution had referred to the Informal Working Group on Article VI. That would be dealt with under another agenda item, but he would avail himself of the present occasion to say that in his delegation's opinion the Group had been stillborn; in the course of its long existence, it had never yielded any tangible results. His delegation had, moreover, expressed grave misgivings when the Board had decided to refer the designation question to the Informal Working Group, whose mandate was confined to the question of revising Article VI. As already observed by the representatives of the Republic of Korea and Mexico, the question now under consideration was not that of amending the Statute, but of ensuring that one of its provisions was properly applied.

34. Some speakers had referred to the efficiency of the present method of designating members of the Board. It might well be efficient, but the question remained whether it was transparent and in conformity with the provisions of the Statute. The problem was indeed complex and sensitive, which was why his delegation had been raising it since 1988. The draft resolution could not be considered premature. Neither was it accurate to say that the present method was acceptable to all the Member States. The task would certainly be difficult, but it needed to be tackled, and the problem could not be resolved by being referred to the Informal Working Group. His delegation was well aware that there would be no consensus on the draft resolution which it had submitted, but felt it would nevertheless be a good idea to inform the General Conference of the situation in the report to be made to it on the Committee's deliberations.

35. Mr. TITKOV (Russian Federation) said that the question was complex and sensitive and that it warranted comprehensive and more detailed study, possibly within the Informal Working Group. At the present stage, therefore, his delegation was unfortunately unable to support the draft resolution submitted by the Philippines.

36. The CHAIRMAN said that advice had been sought from the Legal Division of the Secretariat regarding the General Conference's authority with regard to the designation of members of the Board of Governors.

37. Ms. ROCKWOOD (Legal Division) said that the Secretariat had been asked to provide the Committee with legal advice on the General Conference's authority to request the Board "to identify, when designating - in 1995 and subsequent years - its members pursuant to Article VI.A.1 of the Statute, which are the ten most advanced in the technology of atomic energy including the production of source materials and which are the members most advanced in the technology of atomic energy including the production of source materials representing the areas in which none of the aforementioned ten is located" (see Attachment 2 to GC(XXXVIII)/16).

38. Pursuant to Article V.D of the Statute, the General Conference might "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 [...] make recommendations to the membership of the Agency or to the Board of Governors or to both on any such questions or matters." Article V.F.2 of the Statute authorized the General Conference to "propose matters for consideration by the Board and request from the Board reports on any matter relating to the functions of the Agency."

39. Pursuant to Article VI.F of the Statute, the Board had "authority to carry out the functions of the Agency in accordance with this Statute, subject to its responsibilities to the General Conference as provided in this Statute." The qualification in the second half of that article could not be interpreted as generally subordinating the Board to the Conference; it merely constituted a reminder of some specific limitations contained in other parts of the Statute.

40. Neither the Statute nor the Rules of Procedure of the General Conference nor the Provisional Rules of Procedure of the Board of Governors required the Board to report to the General Conference on its designation of Board members or indicated in detail how such information was to be presented to the General Conference. Accordingly, it was up to the Board to decide how such information should be conveyed to the Conference.

41. Insofar as the designation of Board members by the Board under Article VI.A.1 constituted a matter relating to the powers and functions of an organ provided for in the Statute, the General Conference could clearly exercise its authority under Article V.D to discuss that matter and to make recommendations regarding it to the Board. It was then for the Board to determine how it would respond to such recommendations.

42. The authority of the General Conference under Article V.F.2 to propose matters for the Board's consideration or to request that the Board report to it was limited to matters relating to the functions of the Agency, those functions being defined in Article III of the Statute. While it might be argued that the term "functions" could be interpreted broadly, so as to include the powers and functions of the statutory organs (for example, the authority of the Board under Article V.A.1 to designate members), the better interpretation of that provision was that, if the drafters of the Statute had intended that Article V.F.2 should have that meaning, they would have included language to that effect, as they had done in Article V.D.

43. It followed from what she had said that, while the General Conference had the authority to make recommendations to the Board with regard to Article VI.A.1, it was for the Board to decide on its procedures for designating Board members pursuant to that article. Consequently, the draft resolution, if adopted, could not be regarded as anything more than a non-binding recommendation to the Board, which was entitled to decide how it would respond.

44. There had nevertheless been one occasion - recalled by the representative of the Philippines - when the General Conference had requested action by the Board in connection with the designation of Board members in accordance with Article VI.A.1. In 1976, the General Conference had adopted, without debate, a resolution requesting the Board to review its annual designation of South Africa and to report on the matter to the General Conference at its next session (GC(XX)/RES/336). The question of whether the General Conference had the authority under Article V.F.2 to request a report on such a matter had not been discussed by either the General Conference or the Board, although in the summing-up made by the Chairman of the Board in June 1977 regarding the Board's designations it had been stated that the document by which the Conference was to be informed of the designations would

include a paragraph indicating that, in making those designations, the Board had taken account of the General Conference resolution, the paragraph in question constituting the report on the subject requested by the Conference (GOV/OR.501, para. 98). In the Note by the Board of Governors to the General Conference informing it of the designations (GC(XXI)/579), it had been stated that the Board had "carefully considered" the General Conference resolution and had "taken account of" the resolution in the designations which it had made.

45. In the light of what she had said, it should be noted that, under Rule 64 of the Rules of Procedure of the General Conference, it was for the General Conference to decide on matters relating to its competence to adopt proposals submitted to it.

46. The CHAIRMAN, noting that there appeared to be no representatives wishing to take the floor, said he would inform the General Conference that the Committee had been unable to reach a consensus on the matter and was therefore unable to recommend that it adopt the draft resolution contained in Attachment 2 to document GC(XXXVIII)/16.

47. It was so decided.

The meeting was suspended at 11.50 a.m. and resumed at 12.50 p.m.

STRENGTHENING OF THE AGENCY'S MAIN ACTIVITIES (GC(XXXVIII)/COM.5/3)
(resumed)

48. The CHAIRMAN said that the working group set up by the Committee to consider draft resolutions submitted under the agenda item "Strengthening of the Agency's main activities" had produced a revised version of the draft resolution contained in document GC(XXXVIII)/COM.5/3.

49. Mr. MOHAN (India), introducing the revised draft resolution, said that the working group had made a number of changes to the text contained in document GC(XXXVIII)/COM.5/3, the most important being the replacement of the word "radioisotope" by "isotope" so as not to exclude work involving the use of stable isotopes. The text had also been amended to reflect the views of those delegations which considered that it was not the purpose of the draft resolution to influence the elaboration of the programme and budget or the allocation of funds and that the draft resolution should confine

itself to stressing the importance of the subject and the necessity of focusing activities on specific projects.

50. The CHAIRMAN took it that the Committee wished to recommend to the General Conference that it adopt the revised draft resolution.

51. It was so decided.²

STRENGTHENING THE EFFECTIVENESS AND IMPROVING THE EFFICIENCY OF THE SAFEGUARDS SYSTEM (GC(XXXVIII)/COM.5/8 and Add.1 to 3) (resumed)

52. The CHAIRMAN recalled that under agenda item 17 the Committee still had before it the draft resolution contained in document GC(XXXVIII)/COM.5/8, to which various amendments had been proposed. The first proposal, made by the representative of Bangladesh, was to insert in preambular paragraph (c), after "resources available", the phrase "from the Regular Budget as well as extrabudgetary sources".

53. Mr. WOJCIK (Poland), supported by Mr. OUVRY (Belgium) and Mr. HULSE (United Kingdom), said that, while he was not opposed to the proposed addition, he did not feel it was necessary; the words "resources available" covered all resources, including even gifts in kind.

54. The CHAIRMAN took it that the Committee was in favour of retaining the wording of preambular paragraph (c) in its present form.

55. Mr. CAMPUZANO PIÑA (Mexico), supported by Mr. ARIZAGA (Ecuador), proposed that in preambular paragraph (d) the words "under Article III of the Treaty" be replaced by "in accordance with the relevant articles of the Treaty".

56. Mr. ELYSEU FILHO (Brazil), supported by Mr. PÉREZ MARTÍN (Cuba), recalled that his delegation had proposed that paragraph (d) be deleted in its entirety.

² The recommended draft resolution was submitted to the Conference in document GC(XXXVIII)/40.

57. Mr. FITZGERALD (Ireland) said that the fact that the NPT placed safeguards-related obligations on the Agency justified the retention of paragraph (d), possibly with the amendment proposed by Mexico.

58. Mr. POSTA (Hungary) said that he was in favour of retaining paragraph (d), which was purely factual. However, he was not opposed to the amendment proposed by the representative of Mexico.

59. The CHAIRMAN, summing up the discussion, said that the delegations in favour of deleting paragraph (d) based their position on the fact that not all Member States of the Agency were parties to the NPT. Those in favour of retaining the paragraph, on the other hand, took the view that it was merely a factual statement. He proposed that the summary record of the meeting reflect the reservations of States not parties to the NPT and that preambular paragraph (d) be retained as amended by the representative of Mexico.

60. Mr. ELYSEU FILHO (Brazil) said that, regrettably, he could not endorse the Chairman's proposal.

The meeting rose at 1.10 p.m.

