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ARTICLE VI OF THE STATUTE

(b) COMPOSITION OF REGIONAL GROUPS

Report by the Board of Governors

The summary record of the discussion in the Board of Governors on 13 June 1996 on "Composition of regional groups" is reproduced in the Annex.

ANNEX

EXCERPT FROM THE SUMMARY RECORD OF THE BOARD'S 897TH MEETING

COMPOSITION OF REGIONAL GROUPS (GOV/2864 and Corr.1)

99. The CHAIRMAN recalled that in 1995 the Committee of the Whole of the General Conference had considered a draft resolution submitted by Israel in document GC(39)/COM.5/10[1] to which had been attached a "list specifying the Member States belonging to the eight areas listed in Article VI of the Agency's Statute". The Committee had been requested to recommend to the General Conference the adoption of the list attached to the draft resolution.

100. After an extensive discussion, the General Conference had adopted resolution GC(39)/RES/22, in which - inter alia - it had requested the Director General "to study all the implications of the proposal contained in document GC(39)/COM.5/10 and submit a report to the Board of Governors", specifying that the report should "take into account the general debate undertaken in this regard, especially the view that the primary responsibility for deciding upon the composition of regional groups lies with the respective groups themselves and the view that every State has the right to participate in a regional group".

101. In operative paragraph 2 of the resolution, the Conference had requested the Board "to consider this matter and report to the General Conference at its fortieth session".

102. The report now before the Board addressed itself to "the implications of the proposal contained in document GC(39)/COM.5/10", but it contained no recommendation for future action.

103. Mr. BENATTALLAH (Algeria) said that his delegation, while appreciating the effort which had gone into the preparation of the report in document GOV/2864, felt that the report was in some ways incomplete, not covering all the implications of the proposal

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[1] Reproduced in Annex I to document GOV/2864.

contained in document GC(39)/COM.5/10 and not giving equal emphasis to the two views mentioned in operative paragraph 1 of General Conference resolution GC(39)/RES/22.

104. In his delegation's opinion, insufficient attention had been paid to the first view ("that the primary responsibility for deciding upon the composition of regional groups lies with the respective groups themselves"), despite the statement in paragraph 17 of the report that "According to information provided by the United Nations Office of Legal Affairs, the composition of the various groups is entirely in the hands of the groups themselves". A country could not be forced onto a regional group, as was clear from the examples relating to various organizations which were given in the report.

105. A State did not belong to a particular region simply because of some list - and in any case, for internal purposes the Secretariat used several lists with Member States grouped in various ways on the basis of different criteria.

106. A number of points still needed to be clarified, and so his delegation regarded the report contained in document GOV/2864 merely as an interim report which it would like the Secretariat to refine, incorporating the arguments in favour of the first view mentioned in resolution GC(39)/RES/22. Meanwhile, his delegation would reserve its position in the matter.

107. Mr. BENMOUSSA (Morocco) said that the informative report before the Board could be amplified along the lines indicated by the Governor from Algeria, but he did not think the Board itself should seek to amend it.

108. Among the arguments put forward in support of the right of every Member State to belong to a regional group of its own choosing was the importance of each Member State's being able to participate in the regional co-operation taking place in the region where it was situated. In response to that argument he would note that a Member State could participate in such regional co-operation without belonging to the regional group in question; for example, regional technical co-operation projects of the Agency were feasible without direct consultations among the participating countries of the region.

109. Another argument put forward was the need for political co-ordination among the countries of a given region, achieved through consultations at regional group meetings. In response to that argument he would note that, if a Member State was forced on a regional group by a vote of the General Conference, any consultations involving that State at subsequent regional group meetings were unlikely to be very fruitful.

110. Yet another argument was the right of every Member State to be a candidate for a seat on the Board. In response to that argument he would note that, according to a legal opinion offered by the Secretariat, a Member State did not need the blessing of any regional group in order to stand as a candidate.

111. The problem under discussion was not an Arab-Israeli problem. The list headed "VI. MIDDLE EAST AND SOUTH ASIA" in the Attachment to Annex I to document GOV/2864 implied an increase of two (Kazakhstan and Uzbekistan) in the membership of the Middle East and South Asia (MESA) group, which was already recognized as being underrepresented in the Board, even before Article VI was amended in such a way as to increase the number of Board seats available for the MESA area.

112. In other words the problem of the composition of regional groups and the long-standing question of amending Article VI were linked, and he did not think that the Board should spend any more time on that problem for the present.

113. Mr. de YTURRIAGA (Spain) said that his delegation was in agreement with the conclusions presented in document GOV/2864, if not with some of the arguments put forward there.

114. His delegation believed that, by virtue of the sovereign equality of the Agency's Member States, each Member State had the right to belong to one of the regional groups within the Agency. It also believed that the decision as to whether a particular Member State belonged to a particular regional group was not exclusively a matter for the members of that group; where differences of opinion existed, the decision should be taken by the General Conference.

115. On the question of the regional group to which Israel should belong, there was no denying the fact that geographically Israel belonged to the Asian continent. The question would not be resolved, however, until a just, comprehensive and lasting solution had been found to the Middle East problem. In that connection, he expressed the hope that Israel and the other countries involved would abide completely by the commitments assumed by them as part of the peace process.

116. The question of the regional group to which Israel belonged was related to the ongoing discussion about amending Article VI of the Statute. Although the distribution of the Agency's Member States among eight regional groups was supposed to be based on purely geographical criteria, those criteria had been "contaminated" by political considerations in many cases, as was clear from the report contained in document GOV/2864. That was not so in the case of Latin America, however, which could in no way be regarded as an "ethnic-linguistic" - rather than a geographical - unit, being a territory where, besides Spanish and Portuguese, English, French and Dutch were spoken, not to mention aboriginal languages like Guaraní and Quechua.

117. The distribution of the Agency's Member States among eight groups was artificial and unjustified, and the distribution of the Member States belonging to the Asia-Pacific region among three groups was quite arbitrary. What justification was there for the creation of groups with two, seven and eight members when most of the other groups had over 20 members? Why did Myanmar, Thailand, Indonesia, Malaysia and Singapore belong to the South East Asia and the Pacific group while their neighbours Cambodia, Viet Nam and the Philippines belonged to the Far East group?

118. In the consultations on amending Article VI, his delegation had advocated the Agency's adopting the practice followed in the United Nations and most of the specialized agencies - the distribution of countries among the five traditional regional groups. That would also help resolve the legitimate problem posed by Israel.

119. Mr. AL-GHAIS (Kuwait), having expressed reservations about the inclusion in the list headed "VI. MIDDLE EAST AND SOUTH ASIA" in the Attachment to Annex I to document GOV/2864 of three of the countries listed there, said that the membership of

a particular country in a particular regional group should not be based solely on geographical considerations; account should also be taken of considerations such as homogeneity and ease of consultations, in line with the view that "the primary responsibility for deciding upon the composition of regional groups lies with the respective groups themselves".

120. MESA was underrepresented in the Board, and any increase in its membership before Article VI was amended would only aggravate the underrepresentation. For that reason his delegation believed that it was too early to take a decision on the question of the composition of regional groups.

121. Mr. DOSHI (India), speaking on behalf of the MESA group, said that the Board would be well advised to concentrate its energies on long-standing issues like that of amending Article VI; resolution of that issue would - inter alia - determine the future size of the Board and the future distribution of Board seats among the regional groups.

122. The MESA group believed that, in line with past practice, the responsibility for the composition of the regional groups rested mainly with the members of the respective groups, and it trusted that the Secretariat would not take any steps in that connection without prior consultation with the groups concerned.

123. Mr. ALTER (Israel)*, expressing appreciation for the report before the Board, said that in it the Director General established unequivocally that every Member State was within one of the eight areas listed in Article VI.A.1 of the Statute and was entitled to serve on the Board of Governors, the rationale (stated in paragraph 7 of the report) being that "If this were not the case, a Member State that was not within an area would be ineligible to serve as a member of the Board. Such ineligibility would be contrary to the principle of the sovereign equality of all of [the Agency's] Member States, upon which the Agency is based and which is enshrined in Article IV.C of the Statute." Israel was not a member of any of the eight regional groups of Member States, and its eligibility to be designated or elected as a Board member had been infringed, which was contrary to the principle of the equality of all Member States.

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

124. In the report, the Director General also established unequivocally (in paragraph 25) that the determination that a State belonged - or did not belong - to a particular area "is not the exclusive prerogative of the Member States who are acknowledged as being within that area". Israel, although within the MESA area, was excluded from the meetings of the MESA group, which had thus been undermining the ability of Israel to participate effectively and on an equal footing in the Agency's activities, including its ability to consult and be consulted and to elect and be elected to various posts.

125. Regarding the question of who should decide on the composition of regional groups, paragraph 25 of the report contained a very straightforward conclusion: "Hence, under the Statute of the Agency, it is for the Board and the General Conference to act on the premise that each Member State belongs to some area." In the light of that conclusion and of each Member State's right to serve on the Board, his delegation hoped that the Board would decide, in accordance with the statutory principle of sovereign equality, that Israel was part of the MESA area and should be allowed to participate in the work of the MESA group. By doing so, the Board would be fulfilling its duty to act and put an end to a violation of the Statute.

126. Mr. JAMEEL (Pakistan), associating himself with the statements made by the Governors from India, Algeria, Morocco and Kuwait, said that within the United Nations system geography alone did not determine the composition of groups; for example, WEOG spanned four continents.

127. As for Israel, which had raised the subject now under discussion, given its alignment it would belong more naturally to a group other than the MESA group.

128. Mr. SNYDER (United States of America), advocating the transmittal to the General Conference of the Director General's report in its entirety, said that the report contained much helpful information on the composition of regional groups and that his delegation agreed with the conclusion (in paragraph 7) that "Article VI is premised upon the assumption that every Member State of the Agency is within one of [...] [the] areas" [listed in Article VI.A.1]. In that connection, his delegation believed that Israel belonged to the MESA area and shared the views just expressed by the representative of Israel.

129. His delegation also believed that, as stated in paragraph 25 of the report, "The drawing of the conclusion that a State belongs - or does not belong - to a particular area is not the exclusive prerogative of the Member States who are acknowledged as being within that area, although account should be taken of the preference of the Members concerned. The full Board and the General Conference plenary is free to depart from such conclusion."

130. Mr. BENMOUSSA (Morocco) said that the discussions on the question of each Member State's right to serve on the Board had perhaps created the impression that only one Member State had been prevented from exercising that right. He would note in that connection that 36 Member States had never served on the Board and that, in his view, there was no question of discrimination based on an international conspiracy.

131. Perhaps the matter could be resolved through the creation of an additional elective seat on the Board reserved for Member States which - for whatever reason - did not belong to any of the regional groups. With the creation of such a seat, regional groups should no longer be under pressure to take in new members against their will.

132. Mr. MOHAMEDAIN (Sudan)*, having associated himself with the statements made by the Governors from India and Algeria, said that regional groups should not have new members imposed upon them. Membership in a regional group depended not only on geography; political and cultural factors also had to be taken into account.

133. Mr. BENATTALLAH (Algeria), *referring to the statement made by the* representative of Spain, said that the Board should not attempt to decide on the region to which Israel belonged; such a decision should be left to the General Conference.

134. Mr. P. WALKER (Canada) said that the extremely useful report before the Board was quite unambiguous in concluding (in paragraph 25) that "The principle of sovereign equality of Member States requires that each Member State be eligible for election to the Board. Hence, under the Statute of the Agency, it is for the Board and the General Conference to act on the premise that each Member State belongs to some area."

135. His delegation agreed with that conclusion, not least because it believed that in the search for a lasting peace in the Middle East the real interests of no countries - and

particularly of no MESA countries - would be served by the exclusion of Member States situated in the Middle East and participating in the peace process from full involvement in all activities and responsibilities of the Agency.

136. Mr. AL-NOWAISER (Saudi Arabia), recalling that the Director General had consulted the Board on the provisional agenda for the General Conference's forthcoming session and that the provisional agenda (GOV/2862) contained a sub-item entitled "Composition of regional groups", said that if the report contained in document GOV/2864 was to be transmitted to the Conference for consideration under that sub-item he would have to enter a reservation about the report, including the list headed "VI. MIDDLE EAST AND SOUTH ASIA" in the Attachment to Annex I.

137. Mr. EID (Lebanon)*, having endorsed the statement made by the Governor from India on behalf of the MESA group, said that the Board should determine its position on the question of amending Article VI before trying to resolve the problem of the composition of regional groups.

138. His delegation, which would like Article VI to be amended in the interests of greater democracy within the Agency through consensus in the General Conference rather than a vote, felt that draft resolutions of the kind submitted by Israel at the Conference's 1995 session in document GC(39)/COM.5/10 were likely to result in polarization rather than consensus.

139. Mr. OTHMAN (Syrian Arab Republic)*, having endorsed the statements made by the delegations of India, Algeria, Morocco and Pakistan, said that one of the regional groups had in the past expelled a member which it had readmitted only after many years; that being so, other regional groups could hardly be denied the right to refuse to accept new members.

140. Most members of the MESA group were Arab countries, several of which were involved in the peace process. Unfortunately, however, the other country involved was not displaying any interest in a just, comprehensive and lasting peace in the Middle East. For

the time being, therefore, there seemed little point in discussing the problem of the composition of regional groups in the Board and the General Conference.

141. Mr. KHUDAIR (Iraq)* said that a new member could be accepted into a regional group only if all present members of the group were prepared to accept it and that Israel had received Agency technical assistance despite the fact that it did not belong to any regional group.

142. Mr. AYATOLLAHI (Islamic Republic of Iran)*, having endorsed the statement made by the Governor from India on behalf of the MESA group, said that the underrepresentation of Africa and MESA on the Board was the issue which - many years before - had triggered efforts to amend Article VI in the interests of a fairer allocation of Board seats. If the MESA group had to accept further members before an amendment of the kind which it desired was agreed upon, its underrepresentation would become even more pronounced. His delegation therefore believed that further discussion of the problem of the composition of regional groups should be postponed until the time was ripe.

143. Referring to the report before the Board, he said that every Member State might well have the right to belong to a regional group, but it was questionable whether an individual Member State had the right to impose itself on a particular regional group.

144. The CHAIRMAN took it that, pursuant to the request contained in operative paragraph 2 of resolution GC(39)/RES/22, the Board wished to transmit the Director General's report contained in document GOV/2864 and its Corrigendum, together with the summary record of the discussion, to the General Conference.

145. It was so decided.