

General Conference

GC(62)/COM.5/OR.7

Issued: January 2019

General Distribution

Original: English

Sixty-second regular session

Committee of the Whole

Record of the Seventh Meeting

Held at Headquarters, Vienna, on Thursday, 20 September 2018, at 6.15 p.m.

Chair: Mr GLENDER RIVAS (Mexico)

Contents

Item of the agenda ¹	Paragraphs
16 Strengthening the effectiveness and improving the efficiency of Agency safeguards (<i>continued</i>)	1–65

¹ GC(62)/17.

Abbreviations used in this record

CSA	comprehensive safeguards agreement
Euratom	European Atomic Energy Community
SLA	State-level approach
SLC	State-level concept

16. Strengthening the effectiveness and improving the efficiency of Agency safeguards (continued)

(GC(62)/COM.5/L.2 and L.3; GC(61)/RES/12)

1. The VICE-CHAIR, reporting on the informal consultations held under his leadership, said that much progress had been made on what was an extremely sensitive subject. Fragile agreement had been reached on the wording of paragraph 30 of the two draft resolutions on safeguards but consensus was still not guaranteed.
2. The representative of AUSTRIA said that the sponsors of the draft resolution contained in document GC(62)/COM.5/L.3 would not insist on the inclusion of paragraphs 33, 36 and 37 or the wording of paragraph 38 of that text. As those paragraphs constituted the only substantive additions to or departures from the General Conference's previous resolution on safeguards (GC(61)/RES/12), and the two draft resolutions submitted were otherwise substantively the same apart from paragraph 30, discussions could therefore proceed on the basis of what was effectively the text of resolution GC(61)/RES/12, with the exception of one paragraph on which consensus had yet to be reached.
3. The CHAIR welcomed that suggestion and invited comments on the draft text of paragraph 30 produced during the informal consultations, which read: "Notes the Director General's report to the Board of Governors in September 2018 on the experience gained and lessons learned in the implementation of State-level safeguards approaches for States under integrated safeguards and requests the Director general, taking into account questions and issues raised by some Member States to keep the Board of Governors fully informed through additional timely reports as the Secretariat gains further experience with the implementation of State-level safeguards approaches particularly in States with integrated safeguards and also notes that further progressive development and implementation of SLAs for other States would require close coordination and consultation".
4. The representative of CANADA, commending the Vice-Chair for his efforts and expressing his support for the suggestion made by the representative of Austria, said that he could accept the wording of paragraph 30 as tentatively agreed during the informal consultations.
5. The representative of CHINA suggested that the words "without prejudice to bilateral safeguards agreements between Member States and the Agency" should be added to the end of paragraph 30.
6. The representative of the ISLAMIC REPUBLIC OF IRAN said that, while he did not seek to block consensus on the wording of paragraph 30, the general approach to the issue gave cause for concern, particularly with regard to the legal status of SLAs. If, as had frequently been stated, SLAs were a purely internal Secretariat tool, there was no call for the General Conference to discuss them, much less give specific instructions to the Secretariat regarding their implementation and development. On such a sensitive issue, Member States deserved answers to the many questions raised. Further discussion was needed, including within the Board of Governors.
7. It had also been suggested that failure to implement an SLA would constitute non-compliance with safeguards obligations; however, the sole safeguards-related obligation for Member States was the conclusion and implementation of CSAs. Additional protocols were only binding on those States that had signed them. He sought clear confirmation from the Secretariat that such was the case. If the purpose

of SLAs was to give the Secretariat more authority to implement safeguards, that was another matter, but they must not become a legal obligation per se.

8. The DIRECTOR OF THE DIVISION OF CONCEPTS AND PLANNING replied that safeguards agreements, and the subsidiary arrangements to those agreements, were the legal instruments governing the implementation of safeguards under CSAs. SLAs had not replaced them. They were described as “internal” to reflect the fact that they related to the way in which the Secretariat implemented safeguards for each State, in accordance with their respective CSAs and subsidiary arrangements. It was for the Secretariat to determine how best to do that — a process that was described in the Supplementary Document² to the Report on the Conceptualization and Development of Safeguards Implementation at the State Level.

9. The SLC did not, and would not, entail the introduction of any additional rights or obligations on the part of either States or the Agency, nor did it involve any modification to the interpretation of existing rights and obligations. In the implementation of safeguards the Agency continued to maintain fully technical and objective approaches. Safeguards were most effectively implemented when the Agency and the individual Member States could operate in an atmosphere of mutual trust and cooperation. The Agency would consult with the State or regional authority concerned as it developed safeguards approaches, especially with regard to the implementation of in-field safeguards measures and where necessary, would have joint procedures developed to spell out how it would implement those measures. Safeguards implementation was evolving, and it was important that States fully understood safeguards implementation issues, especially as they related to States themselves. The Agency would continue to engage in open, active dialogue on safeguards matters with Member States. As the Agency and Member States gained further implementation experience, the Secretariat planned to produce periodic reports.

10. The Agency was committed to continuing to engage with Member States on SLAs and other safeguards matters, including through bilateral consultations and technical meetings. As the Secretariat gained further experience in the coming years, it would continue to report in that regard.

11. The representative of the ISLAMIC REPUBLIC OF IRAN stressed that he had raised the concern not in relation to his own country, which implemented a very strong verification system, but as a matter of principle. In the light of the assurances given by the Secretariat, he was satisfied that any interpretation of SLAs as a legal obligation did not represent the official view of the Agency or its Policy-Making Organs.

12. The representative of MEXICO expressed appreciation for the efforts of the Vice-Chair and support for paragraph 30 as it stood.

13. The CHAIR appealed to the representative of China to agree to the revised version of paragraph 30.

14. The representative of CHINA said that he was bound to act in accordance with his instructions.

15. The CHAIR said that he would suspend the meeting for a brief consultation.

The meeting was suspended at 6.45 p.m. and resumed at 7 p.m.

16. The CHAIR proposed that, for editorial reasons, the additional wording suggested by the representative of China should be altered to “and should be done without prejudice to bilateral

² GOV/2014/41.

safeguards agreements between States and the Agency”. He sought the Committee’s views on adding the text in that form.

17. The representative of the RUSSIAN FEDERATION, while emphasizing that it was quite proper for any Member State to propose an amendment to a draft resolution and expressing no objection to the substance of the suggestion made by the representative of China, sought clarification as to how the additional wording improved the text as a whole.

18. The representative of SWEDEN asked whether any safeguards agreements were not bilateral.

19. The DIRECTOR OF THE DIVISION OF CONCEPTS AND PLANNING said that the Agency had some multilateral safeguards agreements, for example with the European Commission.

20. The representative of CHINA said that, in the hope of achieving consensus, he wished to amend the proposed addition to “within the scope of the States’ bilateral and other safeguards agreements”. The new text should be inserted after the words “for other States”.

21. The representative of the RUSSIAN FEDERATION expressed a preference for the original proposal made by the representative of China. The point raised by the representative of Sweden could be addressed merely by inserting the words “and other” between “bilateral” and “safeguards agreements” in that proposed additional text, rather than jeopardizing consensus on such a finely balanced paragraph.

22. The representative of the UNITED STATES OF AMERICA said that if either proposal were acceptable to the Committee, he would be willing to support it in the interests of consensus.

23. The representative of FRANCE said that, as worded, the proposed additional text inadvertently described bodies such as Euratom, which was party to a multilateral safeguards agreement with the Agency, as States. It might be more accurate to say “and should be done without prejudice to bilateral safeguards agreements between States and the Agency and other safeguards agreements”, but other solutions would be welcome.

24. The representative of the UNITED STATES OF AMERICA requested time to consider the alternative amendment suggested by the representative of France.

The meeting was suspended at 7.15 p.m. and resumed at 7.25 p.m.

25. The CHAIR said that concerns had been expressed during the suspension regarding the wording proposed by the representative of France.

26. The representative of FRANCE said that the proposal had been intended as a simple clarification; in the interests of consensus, he would withdraw it.

27. The representative of the ISLAMIC REPUBLIC OF IRAN, referring to his earlier comments, suggested that the words “and acknowledges that, due to differences of view on further steps in the process of development and implementation of SLAs, consideration of the issues around SLAs will be continued” should be added at the end of paragraph 30.

28. The representative of CHINA said that, for political reasons, the wording proposed and subsequently withdrawn by the representative of France was in fact preferable to his own proposal, as it meant that the concepts of bilateral agreements and other safeguards agreements were separated in the text.

29. The representative of the UNITED STATES OF AMERICA suggested the following wording as an alternative: “and should be done without prejudice to any safeguards agreements with the Agency”.

30. The representative of CHINA insisted on the inclusion of the word “bilateral”.
31. The representative of SWEDEN asked if the wording “bilateral or any other safeguards agreement” would be acceptable to the representative of China.
32. The representative of CHINA said that he was not in a position to be flexible.
33. The representative of CANADA suggested that the wording “and should be done without prejudice to bilateral safeguards agreements between States and the Agency and other relevant safeguards agreements” might meet China’s requirements.
34. The representatives of the UNITED KINGDOM, the UNITED STATES OF AMERICA and FRANCE expressed support for that suggestion.
35. The representative of the ISLAMIC REPUBLIC OF IRAN asked whether different categories of safeguards agreements existed other than those between States and the Agency, as implied by the amended wording suggested by the representative of Canada.
36. The HEAD OF THE NON-PROLIFERATION AND POLICY-MAKING SECTION OF THE OFFICE OF LEGAL AFFAIRS replied that the Agency had concluded tripartite agreements and regional agreements with, for example, Euratom.
37. The representative of the ISLAMIC REPUBLIC OF IRAN emphasized the need for the proposed additional text to refer unambiguously to the fact that safeguards agreements, whether bilateral or multilateral, were concluded between the Agency and other entities.
38. The representative of the UNITED KINGDOM, supported by the representatives of the UNITED STATES OF AMERICA and FRANCE, said that the delicate balance reached on paragraph 30 was becoming increasingly fragile. Amending the text further might culminate in a situation in which consensus could not be reached on the draft resolution. He urged the representative of Iran to withdraw his proposal. The Supplementary Document had been noted by the Board in 2014, and the General Conference should not seek to reinterpret the Board’s action.
39. The representative of SWEDEN, referring to the additional text proposed by the representative of Iran, said that the need for further consultation and reporting on SLAs was already reflected in paragraphs 24 and 28 of resolution GC(61)/RES/12, which formed the basis of the draft resolution, and in the current draft of paragraph 30.
40. The representative of AUSTRALIA, welcoming the suggestion for wording made by the representative of Canada, echoed appeals to the representative of Iran to withdraw his proposed amendment, as the ideas it introduced were adequately covered in other parts of the text.
41. The CHAIR asked the representative of Iran whether he would be prepared to withdraw his amendment, on the understanding that his concerns would be reflected in the Chair’s report to the General Conference.
42. The representative of the ISLAMIC REPUBLIC OF IRAN said that his delegation had shown the utmost flexibility and transparency during discussions on paragraph 30 and the draft resolution as a whole. His proposal had originally been made during informal consultations the previous day. While other issues raised during those consultations had been contentious, the proposal in question was constructive, simple and not motivated by any political agenda; moreover, it did not affect the substance of the draft resolution. It should at least be discussed.

43. Paragraph 28 of resolution GC(61)/RES/12 did not refer specifically to SLAs: rather, it covered matters within the general safeguards context. The reference to “open dialogue with States” in that paragraph suggested bilateral dialogue between States and the Agency, but, in the context of SLAs, multilateral discussions, for instance within the Board of Governors, were also needed. In the interest of consensus, he suggested that, instead of his original proposal, the words “further consultations within the Board of Governors and” should be inserted in paragraph 30 before “additional timely reports”. He urged others to display a similar degree of flexibility.
44. The CHAIR thanked the representative of Iran for his willingness to compromise.
45. The representative of CHINA said that, following further consultations with his Government, he had received instructions to revert to the wording “and should be done without prejudice to bilateral safeguards agreements between States and the Agency”.
46. The representative of CANADA, welcoming that sign of progress, expressed the view that it might open the way to agreement on the wording suggested by the representative of Iran and consensus on the draft resolution as a whole.
47. The representative of BRAZIL said that reverting to the wording originally proposed by the representative of China would not resolve the factual inaccuracy it introduced in referring only to bilateral safeguards agreements between States and the Agency. Bilateral and multilateral safeguards agreements between the Agency and other entities must also be covered.
48. The representative of the UNITED KINGDOM welcomed the flexibility shown by the representative of Iran but reiterated his call for the delicate balance reached on paragraph 30 in informal consultations not to be upset.
49. Further technical meetings, along with information provided by the Secretariat, on the implementation of the SLC through SLAs would be welcome; however, the introduction of new concepts that sought to challenge the Board of Governor’s acknowledgement of the SLC, as presented in document GOV/2014/41, had no place in the current discussions.
50. The representative of the UNITED STATES OF AMERICA expressed the view that the proposal put forward by the representative of Iran was redundant, given the existing reference in paragraph 30 to keeping the Board of Governors fully informed. Other paragraphs of the draft resolution detailed the various ways in which Member States would be kept informed by the Secretariat.
51. The CHAIR suggested suspending the meeting for consultations.

The meeting was suspended at 8.25 p.m. and resumed at 8.50 p.m.

52. The CHAIR suggested, following consultations, that the additional text proposed for inclusion at the end of paragraph 30 should be amended to read: “and should be done without prejudice to bilateral safeguards agreements between States and the Agency, as well as other safeguards agreements with the Agency”.
53. The representative of BRAZIL, thanking the Chair and the Secretariat for their efforts to find appropriate wording, said that he could accept the Chair’s suggestion, as the text was now legally accurate.
54. The CHAIR took it that the amendment he had suggested was acceptable to the Committee.
55. It was so agreed.

56. The CHAIR further suggested the insertion of the words “for discussion by Member States” after “additional timely reports” earlier in the paragraph. Informal consultations indicated that such an insertion would address the concerns expressed by the representative of Iran.
57. The representative of the NETHERLANDS thanked the delegation of Iran for his flexibility.
58. The representative of CANADA, also welcoming the flexibility shown, expressed support for the proposed addition.
59. The representative of NEW ZEALAND, expressing appreciation for the flexibility demonstrated, said that a comma should be inserted after the words “issues raised by some Member States”.
60. The representative of the ISLAMIC REPUBLIC OF IRAN agreed to that editorial change.
61. The CHAIR took it that paragraph 30, as amended, was acceptable to the Committee.
62. It was so decided.
63. The CHAIR further took it that the Committee agreed to recommend to the General Conference that it adopt the text of resolution GC(61)/RES/12, with the necessary technical updates and the amended version of paragraph 30 just agreed, as its resolution on safeguards for the current year.
64. It was so decided.
65. The CHAIR, noting that the Committee’s work was now complete, expressed appreciation to all those who had facilitated its deliberations, in particular his Vice-Chair, and commended the cooperative spirit shown.

The meeting rose at 8.55 p.m.