



International Atomic Energy Agency

GENERAL CONFERENCE

GC(XXXV)/965
31 July 1991

GENERAL Distr.
Original: ENGLISH

Thirty-fifth regular session
Item 20 of the provisional agenda
(GC(XXXV)/952)

RULE AND POLICY ON THE APPOINTMENT OF THE DIRECTOR GENERAL

Report by the Chairman of the Board of Governors

1. In 1990, the General Conference, in resolution GC(XXXIV)/RES/544, requested the Board of Governors "to adopt appropriate policy and procedures to govern the appointment of the Director General, to consider -- inter alia -- establishing an open-ended working group for this purpose and to report on this matter to the General Conference at its thirty-fifth regular session."

2. In February 1991, there was a widely held view in the Board "that the Board's procedures should be such that the Agency would attract outstanding candidates, from among whom the best person should be chosen -- having regard, of course, to all the prevailing circumstances. For that purpose, a degree of flexibility combined with transparent procedures would be necessary."^{1/}

3. Considerable reservations were expressed about the creation of a working group, and the Board did not think it wise to be bound in advance to a rigid policy in the selection of the Agency's Director General.

^{1/} See para. 57 of the excerpt from GOV/OR.746 contained in Annex 1 to this report.

4. The Chairman outlined a sequence of steps which might be followed on the next occasion when the post of Director General had to be filled – and stated that any such sequence of steps should be sufficiently transparent and be announced sufficiently early. He was requested to continue the consultations which he had embarked upon before the Board's February session.

5. In June 1991, the Chairman informed the Board that he had held informal consultations with Governors on a sequence of steps very similar to the one which he had proposed in February and that broad support had been expressed for it.

6. At the end of its discussion of this agenda item, the Board decided to approve the sequence of steps and authorized the Chairman to submit, on its behalf, a report to the General Conference reflecting its decision, together with the summary records of its discussions in February and June.^{2/}

^{2/} The sequence of steps is contained in Annex 2 to this report. The summary record of the Board's discussion in June 1991 will be issued in an Addendum to the present document.

EXCERPT FROM THE RECORD OF THE 746TH MEETING
(held on 28 February 1991)

RULE AND POLICY ON THE APPOINTMENT OF THE DIRECTOR GENERAL (GC(XXXIV)/RES/554)

18. The CHAIRMAN recalled that the item had been placed on the agenda pursuant to a resolution (GC(XXXIV)/RES/544) which the General Conference had adopted in September 1990 requesting the Board to adopt appropriate policy and procedures to govern the appointment of the Director General, to consider – inter alia – establishing an open-ended working group for that purpose and to report on the matter to the General Conference at its session in September 1991. In adopting the resolution, the Conference had also decided that the summary records of the discussions on that item in the Conference's Committee of the Whole should be transmitted to the Board; accordingly, the relevant summary records had been circulated to Governors.

19. During his extensive consultations on the matter with all those Governors who had been available in Vienna, it had been repeatedly emphasized that, in formulating a policy and procedures, the primary objective of the exercise, namely to get the best available person as Director General, should be clearly borne in mind. The practice followed over many years in the past had resulted in the selection of excellent Directors General who had served the Agency with distinction, and any proposals for change should be judged from the standpoint of whether the proposed changes would facilitate or militate against the achievement of that objective.

20. With only a few exceptions, the Governors whom he had consulted were of the opinion that the Board's freedom to choose the best person for the job should not be restricted by imposing on it – long before the relevant time – a policy whose strict application might well prove counter-productive. Those Governors considered that the Board was representative of all the major political and regional groupings, and they had recalled that its choice was in any case subject to confirmation by the General Conference, in whose deliberations all Member States could participate. They assumed that the Board would take account of all circumstances at the relevant time, including

the prevailing compulsions, and were therefore against formulating a policy on the appointment of the Director General. In the opinion of many of them, if such a policy had to be formulated, it should be done by way of an amendment of the Statute.

21. At the same time, many felt the need for procedural arrangements designed to provide greater transparency and to ensure that all Member States had an opportunity to participate in the process of nominating suitable candidates at a sufficiently early date, so that the Board would have the widest possible choice of suitable candidates. Many also did not want to see the establishment of any more working groups of the Agency's policy-making organs and felt that the usual consultative procedure was a more appropriate way of dealing with the matter.

22. Given those views and the likely absence of a consensus on the substance of the General Conference resolution, he could only ask for the Board's guidance on how to proceed to deal with the matter.

23. Mr. LAVIÑA (Philippines), thanking the Chairman for what he had just said in introducing the item under consideration, said he hoped that the Chairman's consultations would not prejudge the Board's decision, which should be arrived at through discussion in the Board itself. He went on to recall that, when his delegation had presented its draft resolution to the 1990 session of the General Conference, he had been asked who his delegation's candidate was, he had replied Dr. Hans Blix. That, however, had been prior to the adoption of the resolution. Now that it had been adopted, it would be necessary to seek other candidates from the developing areas of the world and from other areas such as Eastern Europe. He could think of three persons from one African country, for instance, who were qualified and competent to head the Agency as Director General.

24. At the thirty-first regular session of the General Conference in 1987, Dr. Bertrand Goldschmidt of France had commented on the disappointment of members of the Group of 77 with the way in which the Statute had been framed and was operating, and had also made reference to the unusual formulation of Article VI.

25. It had not taken the Philippines long as a member of the Board to appreciate the meaning of those comments, namely that the Agency still operated what might be called a "policy of denial" in the organization and in the Board. That policy was strikingly evident in the appointment of the Director General. Since the founding of the Agency 36 years previously, all the Directors General had come from only two countries, and, as the Philippines had observed at the 1989 session of the General Conference when the Director General had last been re-elected, out of three Directors General, two had come from only one country.

26. The impression was that either there was no qualified candidate other than from those two countries, or the policy in the Board or in the organization was so complicated or unusual that it was unable to admit and appoint candidates other than from those two countries.

27. The first assumption was not correct: there were other qualified candidates from other regions, not only from the Western world. Thus, in his opinion and in that of the Group of 77, which had submitted resolution GC(XXXIV)/RES/544, the second assumption was the correct one.

28. The Agency was unique among the specialized agencies and international bodies in the United Nations system: it was the only body which appointed its head with total disregard for the generally accepted principles of the United Nations system, such as the unwritten rule of rotation which was implicit in the very structure of international organizations. Moreover, the very structure and composition of the Board, as one of the policy-making organs of the Agency, tended to perpetuate an anachronism, namely the arrangement involving the designation of members. As had been observed in the working group on Article VI, that arrangement had entrenched the so-called "political balance", or, more correctly, "political imbalance", which ensured a prospective veto on all substantial proposals adversely affecting the interests of the designated members. The system worked in such a way that those designated members were, in fact, permanent members of the Board. Nowhere in the entire United Nations system, except perhaps the Security Council, was that situation politically or administratively acceptable, and even in the Security Council it had been questioned, at least, in the Security Council, the Presidency rotated.

29. The entire issue had been discussed by the General Conference in September 1990. The Committee of the Whole had considered the Philippine proposal, consisting of an explanatory memorandum and a draft resolution contained in documents GC(XXXIV)/913 and Add.1, and respectively, after due consideration, the General Conference had adopted resolution GC(XXXIV)/RES/544, which had been the result of a consensus that had emerged from the discussion of the original Philippine proposal.

30. Under that proposal, the General Conference would have, firstly, adopted "the rule and policy on the appointment of the Director General of the Agency under Article VII.A of the Statute to be a maximum of two consecutive terms", and secondly, requested the Board of Governors to observe that rule and policy in the appointment of a Director General and to enact appropriate rules of procedure to govern such appointments.

31. The reasons for that proposal had been set forth in the explanatory memorandum which had accompanied the draft resolution. The main consideration had been the existence of three resolutions passed by the General Conference in 1981, 1985 and 1989, respectively, all of which recommended that the Board should pay due regard to the principle of equitable representation of the developing and other areas of the world and give particular consideration to candidates from developing areas who met the requirements of the high office of Director General after the expiry of the term of the current Director General.

32. Another important consideration had been that it was the lack of express policy on the maximum term of office of the Director General which had, in his country's view, made it possible for all the Directors General of the Agency to come from only two Western developed countries.

33. Lastly, a further consideration had been the need to bring the Agency in line with the rest of the United Nations system by establishing the principle of rotation for the selection of its head.

34. After due consultations, the Group of 77 had presented an amended text, which had eventually been approved as General Conference resolution GC(XXXIV)/RES/544, and which requested the Board to adopt appropriate policy and procedures to govern the appointment of the Director General.

35. Against that background, the Philippines wished once more to propose, first, that the Director General should remain in office for two consecutive terms at most, and second, that explicit rules of procedure should be adopted for making the appointment. In considering that proposal, it should be borne in mind that the three resolutions which had inspired it had been endorsed unanimously by the members of the Board and approved by the General Conference. The main consideration had been reiterated three times, in 1981, 1985 and 1989, and consequently it could be presumed that those who had approved and endorsed it had acted in good faith, sincerity and seriousness.

36. Accordingly, he assumed that everyone would appreciate the need for rules of procedure to govern the appointment of the Director General, regulating all procedural matters relevant to selection, such as announcement of vacancy, filing of candidatures, time limit, balloting and so forth. That would obviate the need for ad hoc rules. The announcement of the vacancy – which he believed had not taken place in the past – would encourage applications.

37. The adoption of an appropriate policy was of abiding concern to the Group of 77. Without it, there would be no chance of a Director General coming from developing countries and other areas or regions mentioned in Article VI of the Agency's Statute. The appointment of the Director General was currently governed by Article VII.A of the Statute, which merely provided that the Director General should be appointed for a term of four years by the Board with the approval of the General Conference. There was no mention of re-election, and the practice of the Board and General Conference, as policy-making organs, was to allow re-election or reappointment ad infinitum. While that unwritten policy might appear to sustain the interests of all the Member States of the Agency, it had fundamental flaws.

38. In the first place, despite the obvious benefit of management by a good head of the organization, that policy perpetuated the rule of one individual who, although technically an international civil servant, represented, politically, only one region. Secondly, the arrangement was patently undemocratic: since the Agency was an international organization, the position of Director General should rotate among the regions mentioned in

Article VI of the Statute. Lastly, there was the experience of other international organizations and specialized agencies. Even the post of Secretary-General of the United Nations rotated - whenever possible, bearing in mind the existence of the veto in the Security Council. There was no official veto in the Board of Governors, but the very structure of the Board, the so-called "political balance", prevented the adoption of major decisions without the approval of the designated members of the Board, most of whom came from developed areas.

39. Resolution GC(XXXIV)/RES/544 could not escape the political realities and legal constraints, and he appealed to all the members of the Board, particularly the designated ones, to view the resolution with sympathy and understanding, in accordance with the spirit of the unanimous decisions or resolutions of 1981, 1985 and 1989. The founders of the Agency had deemed it proper to open it to all States, even though the majority were non nuclear or non-installation States. The drafters of the Statute had not assumed that all those non-nuclear Member States would be asked merely to rubber-stamp the Board's decisions: they were expected to participate in the work of the Agency with a view to achieving its aims and objectives, as stated in Articles II and III of its Statute, to the common benefit.

40. The sharing of benefits implied the sharing of obligations: no one country or region should monopolize the privileges and duties of the post of Director General. The sharing or rotation - which was implicit in all universal international organizations - also recognized the fundamental principle of the sovereign equality of States, which implied equal opportunity to assume the duties and responsibilities, and equal opportunity to serve the organization in all capacities, not excepting that of Director General.

41. A further assumption was that any candidate, from any region, who possessed the high qualifications required for the head of the Agency could do the job efficiently, competently and impartially. As far as the developing countries or the Group of 77 were concerned, no one would deny that all Secretaries-General of the United Nations had been competent, to mention only U Thant from Asia and Pérez de Cuéllar from Latin America.

42. He supported the view that the appointment of the Director General should be left to the discretion of the members of the Board. They must, however, be given terms of reference, or guidelines – in other words, some policy which would take into account the interests of all Member States of the Agency and all its distinct areas or regions. Without such policy, no candidate other than those from the Western Europe and Others Group, no matter how competent or technically qualified, would ever dream of being able to head the Agency. As long as the members of the Board were humans, they were subject to human prejudice and bias. As long as they represented States and were appointed and directed by politicians, their decisions would be qualified by political interests. As long as the Agency was an international organization, regardless of its technical nature, it was largely a political entity. Even a technical body such as the International Court of Justice was a political organ of the United Nations. In the informal working group on the revision of Article VI of the Statute, proposals put forward by members of the Western Europe and Others Group were opposed by other members of the same Group. He wondered whether such opposition was motivated by the permanency of interests, the temporariness of alliances or simply stubborn refusal to be accommodating.

43. To sum up: after 36 years of existence, it was time the Board enacted appropriate policy and procedures for the appointment of the Director General; in the light of the points he had made, and in accordance with the experience of other international organizations, the Director General should be elected for a maximum of two consecutive terms – or a period of eight years; rules of procedure to regulate the appointment of the Director General would have to be elaborated and adopted; the Board should establish a working group to consider those issues for submission to the Board in accordance with General Conference resolution GC(XXXIV)/RES/544; and the policy and procedures should be adopted by the Board in time for recommendation to the General Conference at its thirty-fifth session, in accordance with the General Conference resolution.

44. Once the working group had been established, his delegation would be prepared to consider other ideas, provided they did not conflict with the instructions in General Conference resolution GC(XXXIV)/RES/544.

45. Mr. CORREA (Chile) said that the point of the item under discussion was not the right of certain groups, such as the developing countries, to put forward candidates for the post of Director General. A distinction had to be made between the legitimate aspirations of those groups and the simple facts of the situation. The main objective was to promote the taking of a viable decision. During his extensive consultations with Board members, the Chairman had not been able to establish a consensus on the setting up of a working group, or on the substance of the procedures and policies for appointment of a Director General. It was preferable to do without a debate on the issue during the current session of the Board if, by means of further consultations, a workable decision could be arrived at.

46. Mr. TALIANI (Italy) said that the issue, which was a complex one, was not ripe for debate in the Board – let alone for a decision. In view of the general lack of consensus, it seemed advisable that the Chairman should continue his consultations and report more fully to the Board in June.

47. Mr. KANIEWSKI (Poland) said that the starting point for discussion should be Article II of the Statute, which described the objectives of the Agency. Any decision on the rule and policy for appointment of the Director General should aim at promoting the efficiency and effectiveness with which the Agency performed its tasks and fulfilled those objectives. Resolution GC(XXXIV)/RES/544 referred to Article VII.A of the Statute, which provided that the Director General should be appointed by the Board of Governors with the approval of the General Conference. However, the whole of that Article should be taken into account in any discussion of the item and in particular its paragraph D, which stated that the paramount consideration should be to secure employees of the highest standards of efficiency, technical competence, and integrity. All candidates for the post of Director General should be judged in the light of that criterion, and appeals for more democratic representation of Member States in that area should be viewed in the same light. Moreover, there was no reason why a Director General should not serve for several terms. In other organizations similar to the Agency, the concept of geographical distribution was not generally applied to the highest posts. Rather than appointing a working group to deal with the issue, it seemed more sensible that the Chairman should continue his consultations on the matter and report back to the Board. .

48. Mr. CSERVENY (Hungary)[*] complimented the current Director General on his performance in the post, and said that the aim of any procedure for selecting a Director General was to find the best possible person for the job. The duties of a Director General involved more than simply management tasks; rather, a real sense of leadership was required. To press for a decision on so sensitive an issue during the current meeting seemed over-hasty, and it was preferable that the Chairman should continue his consultations with Board members in an attempt to reach a consensus which could serve as a basis for a formulation of policy on the matter. During those consultations account should be taken of the procedures which had been used in the past for selecting Directors General, and the highly successful results which those procedures had produced; though, of course, any improvements should be welcomed. He was against the setting up of a working group to deal with the matter, and felt that the escalation of the number of such groups was a bad reflection on the the Agency's problem-solving capacity. Working groups should only be set up when they could marshal additional knowledge, information, abilities or skills, and help to generate goals, strategies or plans.

49. Mr. AL-TAIFI (Saudi Arabia) commended the Directors General who had led the Agency up to the present. It was regrettable that the incumbents who had held the post and the mixture of nationalities they represented had been so small in number. Resolution GC(XXXIV)/RES/544 requested the Board to set up a working group to look into that problem. It was to be hoped that the developing countries would participate in such a group, and that the working group and the Board of Governors would take full account in their discussions of the various resolutions adopted by the General Conference pressing for more equitable representation of the various geographical regions.

50. Mr. TREMEAU (France) said that his Government would not support any attempts to limit the number of terms a Director General could serve, nor

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

the imposition of restrictions on the procedures for appointment of a Director General. Article VII of the Statute contained all the guidelines required for the appointment of a new Director General, and paragraph D of that Article specifically mentioned the importance of recruiting on as wide a geographical basis as possible. He therefore could not support the setting up of a working group, but did feel that consultations on the matter should be continued.

51. Mr. ATANGANA-ZANG (Cameroon) congratulated the Governor from the Philippines on the democratic emphasis of his statement. Cameroon would have been in favour of setting up a working group, but in view of the clear lack of consensus it seemed more advisable for the Chairman continue his consultations and report back to the June Board.

52. Ms. TALLAWY (Egypt) said that her delegation had previously urged the development of a procedure for the appointment of a Director General with a view to avoiding the problems caused in the past by the existing policy. During the June meetings of the Board in 1989 she had made certain specific proposals as to how the procedure could be improved, and had suggested that a draft amendment to the Provisional Rules of Procedure on the modalities for the appointment of the Director General be prepared by the Secretariat. There was still time to discuss the issue, and the most appropriate way forward seemed to be for the Chairman to continue his consultations. The situation should be avoided where an amendment would have to be made to the Statute, since it seemed unlikely that a consensus could be achieved on such a move.

53. Mr. ENDO (Japan) said he was in favour of the Chairman of the Board continuing his consultations with Board members in quest of an appropriate solution.

54. Mr. CHIKELU (Nigeria) said that Rule 48 of the Board's Provisional Rules of Procedure gave some guidance as to the procedure to be followed in appointing a Director General. It referred, in turn, to Article VII of the Statute, which provided further guidelines. There was thus no lack of policy on the issue in hand. The question was whether the current policy was adequate. If it was not, it might prove necessary to amend the Statute or the Rules of Procedure. That was a sensitive issue and careful deliberation would be required. The most important consideration was to appoint a competent

Director General. Personally, he hoped that a competent candidate could be found from the developing countries and one day, possibly, from Nigeria. He was against setting up a working group as those groups had not, in the past, solved problems expeditiously. He urged that a flexible approach be taken to the issue since rigid regulations in that area were undesirable. The path of further consultations seemed the most advisable.

55. Mr. SINAI (India) noted that there was clearly no consensus on the establishment of a working group as had been urged by the Group of 77. In view of the obvious need for more time to discuss the matter, it seemed appropriate that the Chairman should continue his consultations. Perhaps the Chairman, in his summing-up, could give his own opinion as to how the matter could be dealt with in a timely manner.

56. Mr. LAVIÑA (Philippines) said that, first of all, it was not the intention of his proposal to press for an amendment of the Statute. The Rules of Procedure stated that a Director General was appointed for a term of four years and yet, in practice, that period was often extended. That practice had not required an amendment of the Statute, and he saw no reason why a decision to limit the number of terms for which a Director General could hold the office to two consecutive terms should require such an amendment. Secondly, it was not his intention to press for the establishment of a working group, and he was open to other ideas and ways of solving the problem. Thirdly, though he was very sympathetic to the idea of continuing consultations, he felt that the positions of delegations should also be stated formally in the Board and that Board decisions as enunciated by the Chairman should be based on the formal statements of delegations, and not on what had transpired in the Chairman's consultations - which were not official.

57. The CHAIRMAN said that he had found the discussion both useful and constructive, and it had confirmed him in his initial assessment in the light of the informal consultations which he had held - namely, that there was a widely held view that the Board's procedures should be such that the Agency would attract outstanding candidates, from among whom the best person should be chosen - having regard, of course, to all the prevailing circumstances. For that purpose, a degree of flexibility combined with transparent procedures would be necessary.

58. In the discussion which had just taken place, considerable reservations had been expressed about the creation of a working group, and an appeal had been made for him to continue his consultations. He would be happy to attempt to formulate some basic procedures (or – more appropriately – a sequence of steps to be followed when the next vacancy arose) after thorough consultations in May, before and after the Administrative and Budgetary Committee's meetings, and in June, before the Board's meetings. He would be arriving in Vienna about two weeks before the June Board session and would invite all members of the Board for extensive consultations. He would report to the Board in writing – probably in June – with recommendations for action which could possibly be submitted to the General Conference.

59. Generally speaking, he thought that:

- the expiry of the term of office of the Director General should be announced about one year before the expiry date (for example, the Board should in December 1992, at the latest, send a letter to all Member States informing them that the present term of the Director General was expiring at the end of November 1993);
- in that letter it should be stated that the Board intended to make an appointment of a Director General in the following June for submission to the General Conference for approval in September;
- at the same time the Board should approach the present Director General and ask him whether he would or would not be available for a further term of office, and if he was available he should be deemed to be a candidate;
- also in the letter it should be stated that nominations by Member States (together with curricula vitae) should be submitted to the Chairman of the Board by a specific date (for example, by 1 February 1993);
- immediately after that date, the Chairman of the Board should circulate the nominations and curricula vitae to all Board members for consideration;

- the Chairman should also immediately initiate informal consultations on the nominations received, with a view to consideration of the whole matter at the June meetings of the Board (for example, in June 1993);
- if there was consensus on a single candidate, the Chairman should propose that candidate for appointment by the Board;
- if a consensus was not reached on a single candidate, the Bureau of the Board might be requested to propose a balloting or some other elimination procedure.

60. The sequence of steps should be sufficiently transparent and be announced sufficiently early.

61. Those ideas would be the basis of his consultations. After taking account of all the comments and proposals which would no doubt be made in the forthcoming months, he would formulate his report, and he hoped that the Board would then be able to adopt agreed procedures. If it was not able to do so, it should at least decide on what further action to take in the matter.

62. He asked whether that line of approach, involving extensive consultations, was acceptable to the Board.

63. It was so agreed.

64. Mr. LAVIÑA (Philippines) said that he was generally in support of the course of action proposed by the Chairman. However, during the consultations he wished to discuss further the issue of the number of terms for which a Director General might hold the office.

65. The CHAIRMAN said he had taken note of the comment made by the Governor from the Philippines.

Sequence of steps to be followed in the
appointment of the Director General
adopted by the Board of Governors on 14 June 1991

1. September of the year preceding the year when the appointment has to be made

The Board begins formal consideration of the question under an agenda item entitled "The appointment of the Director General" by authorizing the Chairman to inform Member States by circular letter that

 - (a) the term of office of the present Director General is expiring at the end of the following November
 - (b) the Board intends to make an appointment in the following June, for submission to the General Conference for approval
 - (c) the present Director General is or is not available for a further term of office. If he is available, he should be deemed to be a candidate.
 - (d) nominations – with curricula vitae – from Member State Governments should reach the Board Chairman by a specified date

2. Early in the year when the appointment has to be made
 - (i) The Chairman circulates nominations – with curricula vitae – to all Board members as he receives them
 - (ii) The Chairman initiates informal consultations on the nominations received soon after the closing date for submission of nominations.

3. June of the year when the appointment has to be made

If consensus has been reached on a candidate, the Chairman proposes him for appointment by the Board, which may – if it so wishes – appoint him without a ballot

If a consensus has not been reached on a candidate, an appropriate balloting procedure should be agreed upon. The Bureau of the Board might be requested to prepare a paper on the balloting procedure to be followed at the time.

