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IRAQ'S NON-COMPLIANCE WITH ITS SAFEGUARDS OBLIGATIONS

The summary record of the discussion in the Board of Governors on 12 September 1991 under the item "Iraq's non-compliance with its safeguards obligations" is reproduced in the Attachment.

EXCERPT FROM THE RECORD OF THE BOARD'S 763rd MEETING

IRAQ'S NON-COMPLIANCE WITH ITS SAFEGUARDS OBLIGATIONS (GOV/2530/Add.1, GOV/INF/621, 622, 624, 625, 626)

1. The CHAIRMAN recalled that the question of Iraq's non-compliance with its safeguards obligations had been placed on the agenda pursuant to a decision taken by the Board on 18 July 1991. He assumed the Board would wish to have its discussion of that question transmitted to the General Conference, which had an item entitled "Iraq's non-compliance with its safeguards obligations" on its provisional agenda.
2. Mr. WILSON (Australia) said that, prior to its special meeting on 18 July, the Board had been given clear and incontrovertible evidence of Iraq's extensive deception in respect of its obligations under its safeguards agreement. Through the resolution which the Board had adopted at that meeting it had registered its views on Iraq's deliberate and calculated violation of that agreement, the first and only such case in the history of NPT. In the findings of the fourth inspection team the Board had before it evidence of further Iraqi violations of that agreement. The team's report and the Director General's report, as contained in document GOV/2530/Add.1, showed that Iraq's nuclear activities extended to the undeclared production and separation of plutonium in safeguarded facilities. The involvement of a safeguarded facility was cause for special concern.
3. Iraq had attempted to explain away its latest violation on the grounds that the amount was insignificant and operations were on an experimental scale. The Director General, in his opening remarks to the Board, had clearly set out Iraq's obligations and rejected Iraq's arguments. He (Mr. Wilson) endorsed that position. There was no justification for Iraq's failure to report such activities. As the Director General had pointed out, under the terms of Iraq's agreement with the Agency they should have been declared.
4. He shared the Director General's view that it was not yet possible to determine whether Iraq had, even at the present time, made a full declaration. The history of the affair suggested caution. He called upon Iraq to co-operate fully with the Agency in the implementation of Security Council resolution 687, and to take all necessary steps to restore compliance with the obligations set out in its safeguards agreement.

5. In conclusion, he congratulated the Director General and his staff for the excellent work they had done in uncovering Iraq's clandestine activities thus demonstrating that, given the appropriate tools, the Agency could respond effectively to undeclared activity.

6. Mr. LOOSCH (Germany) associated himself with the comments made by the Governor from Australia. He too was very concerned that further evidence of non-compliance had been uncovered. That in itself was bad enough, but everything which had been said during the special session of the Board in July seemed to apply equally to the new cases of non-compliance which had been uncovered; yet Iraq continued to try to belittle what had been done, claiming that the quantity, three grams of plutonium, was insignificant. Indeed, if the activity had been reported the Agency might have been willing to exempt that quantity, but the point was that it had not been reported and the excuse was therefore invalid. Thus Iraq continued to attempt to explain away its violations of the agreement, and that attitude in itself was very worrying.

7. In conclusion, he recommended that the Board transmit to the General Conference all the relevant material, including the resolution which the Board had passed in July, together with a short cover note from the Board.

8. Mr. WALKER (United Kingdom of Great Britain and Northern Ireland) thanked the Director General for his report on the latest inspections of Iraqi nuclear facilities, and expressed his gratitude to the teams of inspectors who had carried out their tasks in Iraq with dedication and thoroughness under highly difficult conditions. The United Kingdom had been glad to be of assistance to the Agency in its work.

9. The report revealed that Iraq had clearly been engaged extensively, and over a considerable period of time, in pursuing a military nuclear programme in clear breach of its obligations under NPT and its safeguards agreement with the IAEA. Iraq had compounded those serious breaches by attempting to conceal its activities from the IAEA, the Special Commission and the Security Council. United Nations Security Council resolution 687 required Iraq to make a declaration of the locations, types and amounts of all its nuclear-weapons-usable material or any subsystems or components, or any related research, development, support or manufacturing facilities. It was clear that, at the very least, Iraq's first two declarations pursuant to that resolution had been

seriously deficient. The Iraqi authorities had mounted a concerted campaign to mislead the IAEA as to the scope of their programme. The United Kingdom looked forward to receiving a report from the Agency at some point in the future confirming that Iraq was finally complying strictly with its obligations and noted that it was vital that dual-use and weaponization activities be covered. Iraq was indisputably in breach of its NPT obligations. It was for that reason that, in accordance with Article XII.C of the Statute, a report had been submitted to the United Nations Security Council and the General Assembly.

10. In conclusion, he endorsed the suggestion made by the Governor from Germany that the resolution which the Board had passed on 18 July 1991 should be transmitted to the General Conference.

11. Mr. KENNEDY (United States of America) said that the heinous conduct which had been uncovered should be fully reported to the General Conference. There should, at least, be full reporting to the General Conference of all activities which the Agency had conducted pursuant to Security Council resolutions 687 and 707, all the violations which had been detected prior to the passing of the resolution in July and since that time, and most especially of the findings of the fourth inspection team. He endorsed strongly the view that had been expressed by the Governors from Germany and the United Kingdom that the resolution itself should be transmitted to the General Conference, and suggested that the Conference should also receive a copy of the letter which the Director General had sent to the Security Council reporting the violations, and the record of the Security Council's discussion of the matter so as to ensure that the Conference had a full picture of the nature of Iraq's conduct and of the way in which NPT had been besmirched and the Agency, together with civilized people everywhere, hoodwinked. All those things should be reported fully and frankly. The Board should also attach a cover note to the documents. By approving the forwarding of the resolution to the Conference, the Board would be confirming that it stood by the resolution. In that way, the General Conference would be fully informed both of the events and of the Board's view of them.

12. Mr. CHIKELU (Nigeria) commended the Director General and the staff of the Agency for the way in which they had performed their delicate task of determining the extent of the Iraqi enrichment programme under most exceptional circumstances. Those activities had reinforced the credibility of the Agency. The plan which had been submitted by the Secretariat for future monitoring and verification of Iraq's compliance with its obligations pursuant to United Nations Security Council resolution 687 was well-conceived. In particular, the plan had benefited substantially from the results of the three inspection missions carried out by the Agency. He hoped that the experience which had been gained during the exercise, and the lessons which had been learned would strengthen the emerging consensus in favour of the creation of a nuclear-weapons-free zone in the Middle East. It was essential that full advantage be taken of the current desire to establish lasting peace by permanently ridding the region of biological, chemical and nuclear weapons.

13. Mr. PLUG (Netherlands), speaking on behalf of the twelve member states of the European Community, said that the report on the fourth inspection mission to Iraq pursuant to Security Council resolution 687 was cause for grave concern. It had brought to light more clandestine activities and nuclear material that should have been declared. The findings of the team unfortunately confirmed those of previous missions and, once again, justified the conclusions which the Board had come to on 18 July 1991. The Twelve condemned the failure of the Government of Iraq to comply with its safeguards agreement concluded pursuant to NPT, and called upon it unconditionally to remedy that situation. They endorsed the work the Director General had done so far at the request of the Security Council and insisted that there was an urgent need to implement Security Council resolution 687.

14. Mr. de la FORTELLE (France) said that, during its meeting on 18 July 1991, the Board had condemned Iraq's failure to comply with the safeguards agreement it had concluded with the Agency in 1972. Iraq had been accused of hiding from the Agency approximately 100 tons of natural uranium in the form of uranium dioxide, two and a half tons of natural uranium in the form of uranium tetrachloride, and approximately 500 grams of uranium hexafluoride with an average enrichment of 4%. Since that time, as was reported in document GOV/2530/Add.1, new violations had been uncovered by the

inspectors. They had discovered that 3 grammes of plutonium had been produced by irradiating 46 pins containing approximately 11 kilograms of uranium in the form of uranium dioxide in a safeguarded facility. Moreover, 8 kilograms of uranium in two fuel elements had been irradiated and the operation had not been declared to the Agency; another 11 kilograms of uranium had been turned into fuel elements for the purposes of irradiation and subsequent reprocessing. The violations were serious and the Board had to condemn them.

15. Attempts had been made to explain away the facts as minor violations in view of the small quantities involved; however, where non-proliferation obligations entered into by a country were concerned, the only important point was that the international community had to be able to have confidence in a State's determination to respect its pledged word. In the case under discussion, there had been a clear intent to conceal an enrichment programme. Iraq had contravened the provisions of Security Council resolution 687 in that it had not declared to the Agency the facilities where the calutrons had been built and operationalized, nor the facilities where the centrifuges were being manufactured. The inspectors had uncovered those facilities themselves. The attempts to hide from the inspectors a vast uranium enrichment programme, the multiplicity of techniques used, and the use of procedures which could not be justified economically demonstrated that the Iraqi programme could not have been purely peaceful in nature.

16. In view of the way in which those clandestine facilities had been discovered, there seemed to be good reason to fear that other parts of the Iraqi programme had not yet been uncovered, and he therefore requested that the Secretariat continue its inspection missions in collaboration with the Special Commission of the United Nations until they could be sure that all nuclear materials which had been clandestinely produced had been found. As far as the materials, equipment and facilities which had already been found by the inspection missions were concerned, it was a matter of urgent need that they be either removed from Iraq, rendered harmless or destroyed, in accordance with the terms of resolution 687, as quickly as possible.

17. He thanked the Secretariat for its work, and in particular Mr. Zifferero, Mr. Kay and Mr. Perricos who had carried out the delicate on-site inspection mission, under very difficult conditions, with courage and

determination. In conclusion, he stressed the seriousness of Iraq's actions and of the consequences which those actions might have had if they had been allowed to continue for a few more years. For that reason, his delegation renewed its condemnation of Iraq's failure to comply with its obligations and urged Iraq to comply forthwith with the provisions of Security Council resolutions 687 and 707.

18. Mr. AL-KITAL (Iraq) said that he had listened carefully to the preceding interventions and to the comments which the Director General had made in his opening statement. He regretted to note that most of the interventions were unfair and not even objective, and that they did not take into account the factual conditions surrounding the inspection missions in Iraq, and conditions following the attack upon Iraq.

19. The Governor from the United States had spoken about the behaviour and conduct of Iraq and Iraq's violation of agreements with the Agency. If that Governor viewed the actions of Iraq as uncivilized, how did he view the bombing of civilians in Iraq, and the efforts which were being deployed to find excuses to prolong the collective banishment of Iraq under the embargo and to deny the Iraqi people the right to life?

20. He had also listened, during the preceding meeting, to the long discussion of the safeguards agreement with South Africa. Perhaps the most salient point of that discussion had been the untrue statements made by certain Governors as to how much they cared about the efficiency and effectiveness of safeguards. Yet they had rejected the draft resolution on South Africa because it mentioned special inspections. The implication seemed to be that South Africa, with its well-known apartheid policy, should not be treated like other States but should receive special treatment.

21. In February 1991, when the Americans had bombed nuclear facilities in Iraq, nobody had questioned whether that was a civilized action or whether it was in contravention of the safeguards regime. And that action had been committed by a State which claimed to respect law and order in the world.

22. It would seem, from the statements that had been made at various points during the current series of meetings, that some people were allowing their imaginations to run riot and were talking about things that did not appear in

the report and were neither factual nor real. Someone had accused Iraq of using safeguarded nuclear material for non-peaceful purposes. That statement appeared nowhere in the report. Someone had talked about the production of an explosive device, yet the report stated that there was no evidence of such activities. It was easy to bandy words, but such claims were figments of the imagination and yet they were spoken of as truths.

23. Iraq had expressed its opinion clearly in documents GOV/INF/625 and 626. Everything Iraq knew about the matter was contained in those documents, including Iraq's interpretation of the safeguards agreement. Iraq had submitted all the information required of it before the meeting on 18 July. Some additional information had been provided after that meeting, and thus Iraq had complied with Security Council resolution 687 and the resolution passed by the Board of Governors. That fact in itself demonstrated Iraq's wish to respect the resolutions of international organizations fully and absolutely. All the information requested had been submitted in full. Everything which was being said, both in the inspectors' reports and by some Governors, was pure guesswork and speculation.

24. According to the latest information he had received from Baghdad, the fourth inspection mission had repeated exactly the same visits and asked exactly the same questions as the third inspection mission. The only difference between those two missions had been a difference of opinion among inspectors resulting from differences in their individual points of view.

25. The provisions of Security Council resolution 687 were not clear with respect to the nature of the Agency's tasks. The Agency was called upon to inspect sites declared by Iraq and locations designated by the Special Commission in New York. All those sites had been opened for inspection. If there were any others, the Agency was welcome to come and visit them at any time. Nobody had mentioned the full co-operation which the missions had met with from the Iraqi authorities. Speakers had chosen rather to concentrate on certain negative events in June. Every effort had been made to rectify those problems, and nobody could at present claim that access to sites in Iraq was being denied.

26. In conclusion, he did not object to the transmission of the relevant documents to the General Conference, including the record of the discussion during the present meeting, but he stressed that the full texts of all the documents should be transmitted to the Conference without exception.

27. Mr. GUTIERREZ LEYTON (Chile) said the Board was becoming embroiled in a political argument. It was not a political forum, however, and such a discussion could set an unfortunate precedent for future meetings. His delegation wished to reiterate its view that strict compliance with treaty obligations was the very basis of relations among States. Failure to observe the principle of *pacta sunt servanda*, or that agreements were sacred obligations, would undermine the very foundation of international institutions and of the United Nations itself.

28. Mr. OKAMURA (Japan) said his delegation greatly appreciated the strenuous efforts made by the Secretariat, and especially by the inspectors in the joint team, to monitor implementation of Security Council resolution 687. The Director General's report indicated that Iraq had failed to declare that it possessed nuclear material of a composition and purity such that the safeguards agreement would have required a declaration. Japan wished to express its profound regret in that regard and to urge the Iraqi Government to take all necessary corrective actions as soon as possible.

29. Mr. LEE (Canada) said the Director General's report (GOV/2530/Add.1) revealed the difficult problems faced by the Agency in determining the true story of Iraq's nuclear deception. The report on the fourth inspection mission (GOV/INF/624), while noting some progress and a fair degree of co-operation by Iraqi officials, also identified some disturbing problems, namely lack of frankness and accuracy and difficulties in obtaining procurement data on some equipment and material. After hearing the statement by the representative of Iraq, he wished to recall that it was none other than Iraq that had caused the devastation of its immediate neighbour; the Board should not stand for any whitewashing of the situation. It should, however, commend the inspectors whose diligent work under trying conditions had detailed the dimensions of Iraq's non-compliance with its safeguards obligations.

30. The task before the Agency now was to ensure support for the nuclear tasks still assigned to it under Security Council resolution 687 and to use the lessons derived from the experience with that resolution to good effect in meeting the challenges to the safeguards regime posed by non-compliance.

31. The concepts and practices set out in - or derived from - document INFCIRC/153 had not been to blame for Iraq's non-compliance. What had occurred had been a deliberate effort to circumvent the spirit and purpose of commitments undertaken in the context of the consensus reflected in document INFCIRC/153 and of NPT. As the Agency prepared for the future, it must bear in mind that the international community's ability to deal with Iraq's non-compliance, and the emergence of consensus within the Security Council, had resulted essentially from the role Iraq had played as the aggressor in the Gulf war. Iraq's defeat had made it possible to marshal a greater degree of authority in favour of the resolution's implementation. Such a situation might not prevail in any future violation of safeguards obligations.

32. Mr. KANIEWSKI (Poland) said that Iraq's proven non-compliance with its safeguards obligations constituted a violation of the nuclear non-proliferation regime established by NPT. The strong reaction of the international community, and particularly of the parties to NPT, had been fully justified.

33. In the light of the findings of the fourth inspection mission to Iraq, his delegation fully supported further action by the Agency to put all Iraq's nuclear activities under Agency safeguards, as envisaged in NPT and as required by Security Council resolution 687. Poland endorsed the findings and recommendations set out in the resolution adopted by the Board on 18 July 1991 (GOV/2532). The case of Iraq had provided a lesson from which conclusions should be drawn for the future - conclusions about, among other things, how to make the Agency's safeguards stronger.

34. In carrying out its fourth inspection mission in Iraq, the Agency had successfully passed a very difficult test of its performance: Poland welcomed that effective action.

35. Mr. KUTSINOV (Union of Soviet Socialist Republics) said that at the Board's meetings on 18 July 1991, his delegation, together with other

Permanent Members of the Security Council and members of the Agency's Board of Governors, had submitted a draft resolution condemning Iraq's violation of its safeguards obligations. That resolution had formed the basis for the finding, in operative paragraph 2 of Security Council resolution 707, that the violation of the safeguards agreement constituted a breach by Iraq of its obligations as a party to NPT.

36. In its statement to the Board in July, his delegation had called on Iraq to draw the lessons of the past and to take corrective measures regarding the violation of its international obligations. Unfortunately, as the report on the fourth inspection showed, that advice had not been heeded. Iraq's behaviour had forced the Security Council, on the basis of the fourth inspection, to adopt resolution 707 subjecting Iraq to even stricter controls concerning the use of nuclear energy for peaceful purposes. The course of action chosen by the Iraqi Government was deplorable.

37. The Soviet Union had the highest regard for the Director General's efforts to discharge the tasks conferred upon him by the Security Council resolutions. The considerations he had set out at the Board's session in February 1991, concerning possible ways of improving the operations of the safeguards system, had again proved to be prescient. The Soviet Union was prepared to continue to co-operate with the Secretariat and members of the Board as well as with all interested parties in an effort to improve the Agency's inspection activities. The Agency's inspectors in Iraq, and particularly the group led by Mr. Zifferero, had demonstrated a high degree of professionalism in performing their tasks, and his delegation gratefully acknowledged their competence. He called on all members of the Board to endorse the activities carried out by the Director General and to urge him to keep the Board informed about the steps he was taking and the results of the inspections carried out in Iraq.

38. Mr. AL-SAEID (Kuwait)[*] said he had expected the representative of Iraq to reaffirm his country's commitment to the Security Council

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

resolutions, not to try to explain them away. The Iraqi régime had never fully complied with those resolutions: it had never made a full declaration of its nuclear activities, nor had it subjected them entirely to Agency safeguards. Such duplicity was the daily lot of the 3000 Kuwaiti prisoners of war in Iraq, who were still suffering constant violations of their human rights.

39. The Agency should take a firm stand on the repeated infringements by Iraq of the safeguards system. The Iraqi representative had used the term "aggression", but the word had another meaning for Kuwait, which had been the first victim of aggression as Iraq understood it. He commended the teams of inspectors, especially the one headed by Professor Zifferero, and welcomed the efforts made by the Director General in the service of the international community.

40. Mr. AL-KITAL (Iraq) said he did not usually choose to reply to statements made by the observer from Kuwait, whose motives were well known. That observer had, however, raised an extraneous issue, namely that of Kuwaiti prisoners of war. The rulers of Kuwait were trying to condemn the Iraqi people by compiling false claims and propagating lies. Iraq had already submitted the names of over 3000 Kuwaitis to the International Committee of the Red Cross, but the Kuwaiti authorities had accepted only 170 of those names to date, on the pretext that they needed to check to make sure that they were not mere inventions.

41. Mr. AL-SAEID (Kuwait) said that Iraq's contentions were extraneous issues irrelevant to the work of the Agency and merely confirmed the régime's intention to make light of its responsibilities.

42. Mr. AL-KITAL (Iraq) replied that it was not he who had raised the question of prisoners of war. It was especially inappropriate for observers to interject such extraneous considerations in the work of the Board.

43. Mr. LOOSCH (Germany) said it was a matter of particular concern to his delegation that Iraq was making so many attempts to play down its failure to comply with its obligations under the safeguards agreement. The resolution adopted by the Board on 18 July 1991 (GOV/2532) showed that the Board expected full corrective action by the Iraqi authorities. Instead, it had been treated to yet another attempt by Iraq to deny and dissimulate. In document GOV/INF/625,

the Resident Representative of Iraq claimed that the Agency and the Department of Safeguards had been "fully aware" of the specifications of the IRT-5000 research reactor in Iraq. He insinuated that it was the fault of the Agency, and not of Iraq, that uranium irradiation in the reactor had not been reported. According to him, the Department of Safeguards should have "requested the reactor personnel ... to enter the data on irradiation in the operating records". Yet, if Iraq truly wished to comply with its obligations, it would have recorded that information without waiting for a request.

44. Mr. KENNEDY (United States of America) said he fully endorsed the views expressed by the Governor from Germany, which corroborated the ideas he had outlined earlier about the full complement of documentation the Board should submit to the General Conference.

45. Mr. AL-KITAL (Iraq) said he failed to comprehend what more the Governor from Germany thought the Iraqi authorities should do. They had already opened up their facilities for inspections and furnished the operating records of their nuclear installations. Was that not sufficient corrective action?

46. The CHAIRMAN, summing up the discussion, noted that all comments by Governors would be reflected in the summary record.

47. He assumed that the Board wished to take note of Iraq's further non-compliance with its obligations under the safeguards agreement concluded with the Agency, and to request the Director General to report that fact as required by Article XII of the Statute. He also assumed that the Board wished to take note of the Director General's report in document GOV/2530/Add.1, which supplemented information submitted to the Board in July, and to request the Director General to transmit to the General Conference the contents of documents GOV/2530 and GOV/2530/Add.1, together with the summary records of the Board's discussions of the matter on 18 July 1991 and at the present meeting, the resolution adopted by the Board on 18 July 1991 (GOV/2532), the letter from the Director General to the Secretary-General of the United Nations, and all other documents containing correspondence between Iraq and the United Nations. Those documents would be introduced by a covering note,

to be prepared by the Secretariat and approved by the Board before the end of its present session.

48. Mr. AL-KITAL (Iraq) said he could not accept the first portion of the Chairman's summing up. It was incorrect to refer to Iraq's "further non-compliance", since nothing in relation to its compliance had changed since the Board's session in June 1991. Moreover, the summing up made no reference to the corrective measures taken by Iraq.

49. Mr. KENNEDY (United States of America) said he believed the Chairman's summing up was admirable. He would simply suggest that, in forwarding the resolution adopted on 18 July, the Board should reiterate the strong requests it had made of Iraq in that resolution. It was clear that Iraq had in no way responded to those appeals.

50. Mr. AL-KITAL (Iraq) said he formally rejected the final comment made by the Governor from the United States. Iraq had made a constructive response to the Board's resolution and to Security Council resolution 687.

51. The CHAIRMAN said that the objections of the Governor from Iraq would be duly noted.

52. Pending the approval of the covering note which remained to be drafted, he said he would assume, in the absence of any objection, that the Board wished to approve his summing up.

53. It was so decided.

