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(GC(XXXVII)/1052)

ARTICLE VI OF THE STATUTE

- (a) Amendment of Article VI.A.2
- (b) Revision of Article VI as a whole

Document GC(XXXVII)/1081 contains a report by the Board of Governors regarding "Amendment of Article VI.A.2" and document GC(XXXVII)/1082 contains a Board report regarding "Revision of Article VI as a whole". The Board discussed these two subjects on 22 September, and the summary records of its discussions are attached.

EXCERPTS FROM THE RECORD OF THE BOARD'S 823rd MEETING

ARTICLE VI OF THE STATUTE

- (a) AMENDMENT OF ARTICLE VI.A.2 (GC(XXXVI)/RES/600)
- (b) REVISION OF ARTICLE VI AS A WHOLE (GC(XXXVI)/OR.352, paras 40 and 41; GOV/2686)

The CHAIRMAN noted that, for the first sub-item, a draft report had been prepared by the Secretariat for initial consultations. That draft had been amended in the light of comments received, and the revised draft had been distributed. In the light of the draft, the Board could decide on the nature of its report to the General Conference pursuant to resolution GC(XXXVI)/RES/600.

Turning to the second sub-item, he recalled that in September 1992, pursuant to General Conference decision GC(XXXVI)/DEC/11, the Board had established a successor informal working group on the revision of Article VI of the Statute as a whole, and that in February 1993 it had agreed that Mr. Aalto of Finland should serve as its chairman.

Following a series of informal consultations held by its chairman, the informal working group had met on 7 September 1993. Its report was before the Board in document GOV/2686.

Mr. AALTO (Finland), speaking as chairman of the informal working group, said that in its report, the group pointed to a general awareness of problems inherent in the Agency-specific system of appointing members to the Board, but also to the wide choice of approaches to a possible revision of Article VI as a whole. There was a mathematical aspect: the relationships between the overall membership of the Agency and the number of seats on the Board and between the size of each regional group and the number of seats available to it. There was also a nuclear policy aspect: the need to involve countries with important nuclear activities in the work of the Board, importance being measured by certain criteria laid down in the Statute. Those aspects raised a variety of issues: under-representation, equality, transparency, the relevance of criteria for designation, etc.

Such issues should not obscure the fact that the Board was generally seen to be working well and that a great deal had been done to improve the position of non-members. That, together with the ongoing changes in the international environment, had led to a widely held view that a revision of Article VI as a whole was important, but perhaps not opportune.

The deliberations of the informal working group had helped to clarify some issues. He thanked delegations for making the deliberations stimulating and productive and the Secretariat for its valuable support. While there seemed to be general agreement that the work should continue, there was no consensus as to whether it should move towards an overall revision of Article VI or concentrate on certain issues that were seen to be of immediate concern. That lack of consensus was highlighted by the draft report on the consultations which the Chairman of the Board had held on the closely related issue of amending Article VI.A.2.

He felt it would be useful if the Board and the General Conference, should they choose to re-establish the informal working group, could give some guidance as to what their expectations were. In that connection, he noted the proposal to ask for written inputs from Member States and also the fact that the work on revision of Article VI as a whole and on amendment of the same Article overlapped.

Mr. VAJDA (Hungary) thanked the chairman of the informal working group for the useful consultations he had organized and for his excellent report. The Hungarian delegation endorsed the basic ideas contained in document GOV/2686 and considered the ongoing exchange of views in the Board and in other Agency forums to be part of a necessary and important process aimed at improving the functioning of the Agency's policy-making organs. The issue was a complex one, involving various professional and organizational problems and without doubt the political interests of Member States and accordingly required careful consideration.

The arguments expressed in favour of enlarging the Board's membership - the growing number of Member States of the Agency and the increasing number of countries having significant peaceful nuclear activities - were relevant ones. However, the membership

of the Board had already been extended once, and any further expansion could take place only with a careful review and adjustment of the Board's working methods to ensure that its efficiency was maintained. Otherwise the decision-making process would suffer. In order to handle the issue properly, further efforts, innovative ideas and time were required. Given that the current functioning of the Board seemed satisfactory, no changes to it should be made without very careful preparation.

Concerning the representation of the various regional groups, the membership of his own country's group had grown significantly as a consequence of the recent political changes. For the time being, the possible implications of that new situation were by no means clear. The influx of new Members into the Agency, and in many cases presumably into his country's regional group, was continuing. His Government therefore did not favour any action that would result in hasty changes in the existing representation of the regional groups. It did not support the proposal to make immediate re-election to "area seats" possible.

While Hungary acknowledged the importance of the issues related to Article VI, the circumstances he had just described made it reluctant to take decisions at the present stage. Member States should therefore continue the dialogue on the issue and the consideration of the complex matter of reformulation of Article VI as a whole. In his delegation's view, continuation of the working group's discussions, as envisaged by its chairman, would be an appropriate means to that end, and in the medium term, circumstances might allow detailed proposals to be formulated.

With those comments, his delegation supported the action recommended in paragraph 3 of document GOV/2686.

Mr. TABET (Algeria) said that revision of Article VI and amendment of Article VI.A.2 had been on the Board's agenda for many years without the views expressed having evolved in any significant way. Major trends had emerged, however, as could be seen from the revised draft of the Board's report which had been prepared by the Secretariat.

His delegation had participated in the consultations on the issue and was thus aware of the advantages and constraints involved in revision of Article VI as a whole. While not opposing such a course, it agreed that the present time was not favourable for envisaging major amendments to that Article. It would therefore be best to renew the informal working group mandate and let it continue to work at a measured pace, with perhaps more specific objectives in mind.

A more urgent problem, however, was the legitimate desire of some regions for optimal representation, and the wish of a number of countries that had made major efforts to develop their civilian nuclear programmes over the past 20 years to contribute actively to the work of the Board. The proposed amendment of subparagraph (a) of Article VI.A.2 to facilitate immediate re-election to "area seats" seemed to be the best approach at the present stage.

Mr. DE YTURRIAGA (Spain) said that his delegation's position on revision of Article VI was well known, for Spain had been one of the sponsors of the so-called "Italian proposal". Owing to the opposition of a number of countries, most of which were permanent members of the Board, that proposal had never been given proper consideration, although it offered a satisfactory solution to the legitimate demands of regional groups that regarded themselves as under-represented on the Board. The absence of progress in the implementation of resolution GC(XXV)/RES/389 was attributable to the fact that it merely offered a partial remedy to the obsolescence of Article VI, which had remained unchanged despite political and technological transformations over the past 25 years. While the total membership of the Agency had increased from 83 to 114, with 9 additional members poised to join in 1993, the membership of the Board had grown only from 25 to 35. Moreover, the change had been not only quantitative but also qualitative, since a considerable increase had taken place in the number of States which possessed nuclear installations and thus had a special interest in joining the Board.

The draft report proposed to the Board dealt only with amendment of subparagraph (a) of Article VI.A.2. His delegation believed, however, that making minor

adjustments to the Article was not the best approach. Although many delegations agreed that Article VI was outdated, it nevertheless provided a certain balance. If it was to be revised, the revision should be a total one for a partial revision was likely to result in an undesirable imbalance.

With regard to the text of the proposed report, his delegation felt that paragraphs 8 to 10 did not accurately reflect the consultations on the matter. Paragraph 9 should be deleted, and paragraph 10 joined to paragraph 8. A new paragraph, to be numbered 9, should be added to reflect the opinion of those States which opposed partial amendment of Article VI. Such a paragraph might read:

"Moreover, a global and all-encompassing modification of Article VI was deemed to be advisable and, consequently, the partial and fragmented amendment of that Article was considered to be unacceptable".

If that proposal was accepted, his delegation would be able to endorse the draft report.

Mr. ARIZAGA (Ecuador) thanked the Secretariat for document GOV/2686 and the chairman of the informal working group for the consultations he had held. The process of revision of Article VI would clearly take some time: while some believed that a partial revision was possible, others - including his own delegation - considered that the article should be dealt with as a whole; yet when that approach was attempted, it was argued that the time was not appropriate.

Believing as it did that there should be the broadest possible representation of countries on the Board, with rotation of countries elected from the regional groups, his delegation did not feel that amendment of Article VI.A.2 to permit re-election to "area seats" would be the best approach, at least at the present time. Ecuador would not go against a consensus on the matter, however. It fully endorsed the conclusions in paragraph 14 of the report annexed to document GOV/2686, to the effect that the time was not yet opportune for any major changes to Article VI.

Mr. LEE (Republic of Korea) commended the chairman of the informal working group on his efforts. The group's report attested to the widely felt need to review and revise Article VI as a whole. That Article, which had last been amended 20 years earlier, did not reflect in the composition of the Board the drastic changes of recent years in the world's political situation and in the atomic energy field. Membership of the Agency would have increased from 104 in 1973 to about 123 by the end of 1993. In 1973, nuclear power plants had been operative in only 16 countries, while at present, 29 countries were operating them.

His country, which had had no nuclear facilities 20 years ago, was now ranked tenth in the world in terms of nuclear power generation and sixth in the percentage of total electricity supply accounted for by nuclear power. His Government believed that if the Agency wanted to remain relevant and productive, it should fully reflect the current situation within and without the Agency, and that that justified revision of Article VI as soon as possible.

A more objective and clear-cut set of criteria for designated seats on the Board should be established, and the designation process should be more transparent. The Agency's current system of regional grouping, which many regarded as artificial and impractical, should be revised, preferably by adopting the same grouping as was used in the United Nations and other international organizations. With regard to the optimum size of the Board, there was a need to reflect the increase in the Agency's membership and to involve in the work of the Board those Member States that had achieved significant progress in the peaceful use of nuclear energy over the past two decades - without, of course, jeopardizing the efficiency of the Board. The Board's size could be increased to around 40, in his delegation's view.

Considering that discussions on revision of Article VI had not resulted in any concrete action for quite some time, his delegation supported the suggestion that, as an interim measure pending an overall revision of Article VI, steps be taken to make immediate re-election to regional seats possible by amending the relevant provision in Article VI.

As a procedural step aimed at giving renewed impetus to the work of the informal working group, the Director General should be asked by the General Conference to invite Member States to submit written comments on a review of Article VI as a whole, in line with the steps taken in 1991 by the United Nations General Assembly in connection with the possible review of membership of the Security Council.

With those comments, his delegation supported the transmission of the report of the informal working group to the General Conference.

Mr. AHMAD (Pakistan), recalling that the Agency's policy-making organs had been discussing revision of Article VI for nearly a decade and a half, said that the inadequate representation of certain regions on the Board was widely recognized. With the emergence of new independent States, however, the view had been expressed that it would be prudent to wait until the state of flux had settled down. While such a waiting period could well be advocated for revision of Article VI as a whole, he felt the imbalance in regional representation should be tackled on an urgent basis.

Some delegations had also introduced another element into the discussions, namely a proposal to permit re-election to an "area seat". Such an amendment would enable Member States that had relatively advanced nuclear programmes and participated actively in the work of the Agency to serve on the Board for extended periods. As such, it would be a positive development, and his delegation would endorse it.

That being said, he wished to reiterate the need to consider expanding the Board as well - not only in order to keep pace with the increasing membership of the Agency, but also to ensure equitable regional representation, and in particular to redress the under-representation of the regions of Africa and the Middle East and South Asia.

His delegation concurred with the viewpoint that there should be greater transparency in the designation of members to the Board and that the criteria should be formulated to take account of the overall status of a country's peaceful nuclear programme. The considerable progress made by several Member States in peaceful nuclear activities in recent years merited

recognition through designation of additional members, following an appropriate expansion of the Board.

Mr. MENDEN (Germany) said the terms of Article VI as it stood at present were the result of long and often difficult negotiations. They had been designed in such a way as to achieve a careful balance between continuity and change in the composition of the Board. One of the elements ensuring that balance was the provision, in the final sentence of subparagraph (a) of Article VI.A.2, barring immediate re-election to "area seats". Caution should be used when considering any changes which, while accommodating the interests of certain Member States, were also likely to create problems in certain regional groups and for the General Conference. The entire issue of Article VI should be dealt with on the basis of an overall and comprehensive assessment, rather than by partial changes that might affect the balance of the article.

Mr. HOGBERG (Sweden) supported the recommendations in document GOV/2686 that the Board should submit to the General Conference the report annexed to that document and that the informal working group should be re-established with a mandate to review all relevant aspects of Article VI.

Mr. MOHAN (India) said his delegation appreciated the work done by the chairman of the informal working group. His report clearly brought out the complexities and wide divergences of opinion on the issue. To find the right balance in a governing body of any international organization was in itself a challenging task, which was compounded by the rapid and major changes taking place in the world today. The United Nations too was attempting a process of reform and restructuring. The difficult issues of reflecting contemporary realities, providing for more equitable representation and ensuring the efficiency of the organs concerned were all being addressed at the United Nations and were, naturally, of interest to the Agency.

There were other areas, however, wherein the Agency's Statute and working methods might be unique. Where they were concerned, his delegation agreed with what seemed to be the prevailing view, namely that the wide range of opinions on the issues involved made

it difficult to initiate any decisive steps at the present stage, but that the matter should be kept under review through the working group. Accordingly, India endorsed the recommendation in paragraph 19 of the report annexed to document GOV/2686 that the working group's mandate should be reviewed.

With regard to the specific proposal for the interim revision of Article VI.A.2, it was his understanding that there had been no consensus on that matter in the informal working group. On the other hand, there was a legitimate feeling that there might be merit in approaching the entire issue in an integrated fashion: in other words, reviewing Article VI as a whole at an appropriate time. His delegation would therefore suggest that paragraphs 8 and 9 of the draft report be revised suitably.

Mr. ISASHIKI (Japan), after expressing appreciation to the chairmen of the Board and of the informal working group for their efforts to promote deliberation on a very important and difficult matter, said that his delegation's basic position was that the Board should represent members of the Agency in the most fair and effective manner possible. The situation was obviously evolving, and efforts to make the Board reflect reality better should continue. The Board in its present form was functioning extremely well, however, and any amendment or revision of Article VI should not be allowed to jeopardize the Board's effectiveness - as expansion of the Board would run a serious risk of doing.

Referring to the report annexed to document GOV/2686, he expressed support for the proposal in paragraph 16 that work on the issue should continue through re-establishment of the working group and endorsed the idea of inviting Member States to submit written comments. He also concurred with the view, reflected in paragraph 18, that the issues of amendment of Article VI.A.2 and revision of Article VI as a whole were inter-related and should be taken up together.

Turning to the draft report on Article VI.A.2 circulated by the Chairman of the Board, he said his delegation was prepared to join a consensus, if one emerged, on taking steps to make immediate re-election to "area seats" possible, as an interim measure, without prejudice to the further consideration of other matters. He could accordingly associate

himself with paragraph 8 of the draft report. There were a number of divergent views on that question, however. He therefore favoured the suggestion that the Board should, as a practical step, recommend to the General Conference that it re-establish the working group with a mandate to review all relevant aspects of Article VI: in other words, to consider the comments and suggestions contained in the report by the chairman of the working group - including the proposed interim measure relating to re-election - with a view to reaching agreement before the next regular session of the General Conference.

Concerning the wording of the draft report by the Board, he would suggest that the phrase "on the wider issue of expansion of the Board" in paragraph 10 be deleted, because the working group's mandate was to deal not only with the issue of expansion but with a whole range of issues.

Mr. FARAHAT (Egypt), while thanking Mr. Aalto for his report on the working group's deliberations, noted that the report did not deal substantially with the matter of geographical representation of certain regions such as Africa and the Middle East and South Asia; that, however, was what had originally motivated the General Conference to set up the working group. Paragraphs 2, 3 and 4 of the report reflected a freeze in the number of Member States represented on the Board, with the percentage of the Agency membership having seats dropping from 32% in 1973 to a projected 28% in 1994. Given that ten further States were likely to join the Agency in the near future, a rapid review of the situation was needed to ensure fair representation, which in turn would enhance the efficiency and effectiveness of the Board. Accordingly, his delegation was in agreement with paragraphs 16-18 of the report, in particular endorsing the suggestion that the mandate of the working group should be extended, and with those comments, his country could support transmission of the report to the General Conference.

Where the amendment of Article VI.A.2 was concerned, Egypt had no objections if there were a consensus among Member States. All the same, it would be wise for the two items to be examined together in future to avoid contradictions.

Ms. BECKER (United States of America), complimenting Mr. Aalto on his efforts, said her delegation supported continuation of the working group. Regarding amendment of Article VI.A.2, the United States felt it should not be done in isolation but as part of a general revision of Article VI. In that respect some useful suggestions had been put forward by Spain for amending the draft document now before the Board.

Mr. LIU (China), thanking the working group's chairman for his efforts in compiling the report annexed to document GOV/2686, declared that the working group should continue consultations with Member States with a view to establishing the most rational system of regional grouping and the most rational distribution of seats within that grouping, as well as deciding on the thorny question of re-election to the Board versus involvement of more Member States in the work of the Board. At all events China agreed that the document should be submitted to the General Conference for consideration.

Mr. de LA FORTELLE (France), commending Mr. Aalto's report and supporting the continuation of the working group's mandate said his country had no objection to the document's being transmitted to the General Conference, although it maintained the view that any substantial change in the size and balance of the Board could have a negative effect. France's constant concern was to preserve and if possible enhance the efficiency of the Board's work. In that connection, it could be that re-electability to area seats would give each geographical group more flexibility in making its most active members available to the Board. It would then behove each group to ensure that the Board did not become a closed shop, which would be contrary to the spirit and letter of the Statute. His delegation was prepared to join a consensus on that issue. All the same, it would venture to suggest not an amendment but a "temporary suspension" of the last sentence of Article VI.A.2(a) for a limited trial period.

Mr. PAVLINOV (Russian Federation) said that the world was at present undergoing vast changes, to which the Agency was bound to respond - even to the extent of altering its Statute, if need be.

In that regard the Russian delegation supported the efforts of the Chairman of the Board and the chairman of the working group in their respective consultations relating to Article VI. However, that process needed to be linked with the same phenomenon occurring in the United Nations, and the Agency should not pre-empt any decisions that might be taken there.

At the same time his delegation firmly believed that the present composition of the Board and the mode of designation and election of its members took care of the different interests of the regions and Member States and made for efficient management of the Agency.

Russia did not support the proposal to delete the last sentence of Article VI.A.2(a), as it ensured rotation of members of the regional groups on the Board. Such deletion would result in the active members of those groups monopolizing seats on the Board to the exclusion of others.

Mr. SUAREZ (Mexico) joined others in commending the report in document GOV/2686 and expressed support for the comments made by the Governor from the Republic of Korea. Mexico was in favour of reforming Article VI to ensure balanced geographical distribution, but felt there was also a need to consider other matters closely linked to that issue, namely updating of the method for quantifying the nuclear development of Member States and the criteria for designation to the Board.

With regard to the revised draft report by the Board of Governors on the amendment of Article VI.A.2, his delegation fully approved the amendment proposed in paragraph 8 and endorsed transmission of that report to the General Conference.

Ms. MACHADO QUINTELLA (Brazil), speaking also for Argentina, noted that no consensus had been achieved in the working group on revision of Article VI as a whole despite the wise counsels of its chairman, and likewise none had been achieved in the consultations on amendment of Article VI.A.2, as reflected in the draft report before the Board. Consensus did exist on one point, however. The review should continue. Every

avenue should be explored, including possible changes in the number and composition of the regional groups.

Mr. ALTER (Israel)*, complimenting Mr. Aalto on the comprehensiveness of his report, said he wished to comment on its paragraph 6, which concerned regional groups. According to Article IV.C of the Statute the Agency was "based on the principle of the sovereign equality of all its members ..." and it was in that spirit that Article VI had been formulated. Sub-paragraph A.1 of Article VI defined eight regional groups but failed to assign Member States to those eight groups, which had the effect that not all Member States could function in their geographical group for political reasons - thus undermining the principle of sovereign equality of Member States of the Agency.

Israel maintained that membership of a State in a regional group should be determined strictly on a geographical basis, free from political considerations and without any room for debate.

Mr. VILAIN XIII (Belgium)* said that were the proposal contained in paragraph 8 of the Chairman's draft report to delete subparagraph (a) of Article VI.A.2 to come before the General Conference, Belgium would oppose it. All the same, his country was in favour of revision of Article VI as a whole to take account of the changing world and to ensure that as many Member States as possible had an opportunity to sit on the Board, rather than "freezing" its membership, which was the effect the present proposal would have.

The CHAIRMAN announced that a revised version of the draft report on amendment of Article VI.A.2 had just been circulated - in English only - with paragraphs 8-10 modified so as to take account of the differing views expressed in the course of the present debate. Should it meet with Governors' approval, he thought it would be a good idea to transmit it to the General Conference, together with the summary record of the present discussion, to provide the fullest possible picture of the situation.

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

Mr. DE YTURRIAGA (Spain), thanking the Chairman for the consideration accorded to his proposal, welcomed the new draft, which - though still not translated - appeared to reflect the concerns expressed by Governors. However, he wished to suggest a regrouping of paragraphs which would help to delineate more clearly the differing views put forward.

The CHAIRMAN said that the revised draft now before the Board, incorporating the suggestions just made by Spain, involved the following changes to the earlier draft: deletion of the paragraph number and of the word "therefore" in the first line of paragraph 8, so as to make it run on from paragraph 7; renumbering of old paragraphs 9 and 10 as new paragraphs 8 and 9; replacement of "(and in accordance with)" by "the" and deletion of the words "on the wider issue of expansion of the Board" in the new paragraph 9; and addition of a new paragraph 10 reading: "The summary record of the Board's discussion on 22 September 1993 relating to this item will be issued as an Addendum to the present document." He took it that the Board wished to adopt the revised draft, thus newly amended, as its report to the General Conference pursuant to resolution GC(XXXVI)/RES/600 and to request the Director General to transmit it to the Conference with the relevant summary record attached as an Addendum.

It was so decided.

The CHAIRMAN, noting that that concluded discussion on sub-item 11(a), asked whether there were any further speakers on sub-item 11(b).

Mr. DE YTURRIAGA (Spain), while commending the informal working group's chairman on his efforts, reiterated his delegation's regret that those efforts had not led to any progress in the task of reforming Article VI. In general the report in document GOV/2686 accurately reflected the present situation and the divergent views existing. However, paragraph 12 contained a certain imbalance in that it reflected only the views of those satisfied with the present arrangements for participation of non-members in the work of the Board. The text ought perhaps to be amended to take into account the real situation,

namely that many States were dissatisfied with the status and facilities accorded to non-members.

The CHAIRMAN observed that it was not usual procedure to amend a report adopted by a separate working group. Only the Board's own reports could be amended.

Mr. DE YTURRIAGA (Spain) said he would not press that point. All the same, it was to be noted that the working group had not approved the report, as it had never been submitted to members for approval.

Mr. AALTO (Finland) said he believed that after thorough discussion he had the agreement of the working group to submit the report in the group's name. Regarding Section III of the report, concerned with the size and functioning of the Board, that was his own review of the consultations held, which had been presented to the working group and endorsed by it for inclusion in the report.

The CHAIRMAN took it that the Board was ready to approve the report in document GOV/2686 for transmission to the General Conference accompanied by the summary record of the Board's discussion on the item, which would reflect all the differing views expressed.

It was so decided.

Before taking up the following item on the agenda, the CHAIRMAN said he wished to thank Ambassador Aalto on behalf of the Board for his able and efficient work in leading the group and producing the report, and hoped he would remain available to continue the discussions on that important issue.

