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Item 22(b) of the provisional agenda
(GC(XXXVII)1052)

ARTICLE VI OF THE STATUTE

(b) REVISION OF ARTICLE VI AS A WHOLE

1. On 22 September 1993, the Board of Governors agreed to the transmission to the General Conference of the appended report of the Informal Working Group to examine different proposals on the revision of Article VI of the Statute as a whole re-established by the Board on 28 September 1992 with the mandate set out in resolution GC(XXXV)/RES/566 (GC(XXXVI)/DEC/11). 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.
2. Pursuant to the suggestion made in paragraph 19 of the Informal Working Group's report, the Board recommends that the General Conference request it to re-establish the Informal Working Group on the revision of Article VI as a whole with a mandate to review all relevant aspects of the Article in question.

REVISION OF ARTICLE VI OF THE STATUTE AS A WHOLE**INFORMAL WORKING GROUP TO EXAMINE DIFFERENT PROPOSALS
REVISION OF ARTICLE VI OF THE STATUTE AS A WHOLE**Report of the Informal Working Group**INTRODUCTION**

1. In September last year, the General Conference in its decision GC(XXXVI)/DEC/11, inter-alia, requested the Board of Governors to establish a successor Informal Working Group on the revision of Article VI of the Statute as a whole with the mandate set out in resolution GC(XXXV)/RES/566. On 28 September 1992 the Board re-established the Informal Working Group and on 25 February agreed that Ambassador Aalto of Finland should serve as its Chairman.

2. On 28 and 29 June 1993, the Chairman held a series of informal consultations with representatives of all the "area groups" specified in Article VI of the Statute. During the consultations, there was a frank exchange of views on the various parameters of the subject.

3. The issue itself has been the subject of deliberations in Informal Working Groups since 1986 [see resolution GC(XXX)/RES/467]. The last general revision of Article VI took place in 1970 when the General Conference adopted resolution GC(XIV)/RES/272 which established Article VI in its present form. This amendment came into force on 1 June 1973 and increased the Board's membership from 25 to 34. The introductory part of paragraph A.1. of Article VI was further amended in 1984 when China became a designated member thereby increasing the number of globally advanced designated members from 9 to 10. The amendment came into force on 28 December 1989.*

*/ Even before the amendment came into force, the Board had decided that its decision to increase the number of designated seats from 12 to 13 should take immediate effect (See GOV/OR.620).

4. Since the adoption of the Agency's Statute, there have been only three amendments of the Statute in 1963, 1973 and 1989 respectively. During this period the number of Member States of the Agency vis a vis the Board of Governors were for 1963 (83/25), 1973 (104/34) and 1984 (112/35). The membership of the Agency - at present 114 - is expected to rise further when States whose admission has already been approved or will be approved at the forthcoming session of the General Conference deposit their instruments of acceptance of the Statute with the depository Government. There are nine such States.

5. During the meeting of the Informal Working Group the Chairman of the Group reported on the outcome of the informal consultations he had on the issue of the revision of Article VI under the following sub-headings:

I. THE IAEA SYSTEM OF REGIONAL GROUPS

6. The system of regional groups as laid down in Article VI is sui generis. It has been criticized for being partly artificial, for creating groups too divergent in size, and for not clearly indicating where each Member State belongs. The principle of equality was seen to require that each state can participate in a specific regional group. The question was raised whether the General Conference might decide on the composition of the groups and, in the case of admission of new members, on where such members should be included. It was noted that the ongoing discussions in New York on similar questions could give some guidance in this respect.

7. Attention was also drawn to the distribution of seats between the various area groups and to the under-representation of certain areas as measured by the number of seats in relation to the number of Member States. One aspect of this matter has been discussed for some years as a separate item (Amendment of Article VI.A.2) and the whole question of distribution of seats is being continuously affected by the influx of new members, which unequally alters the composition of various area groups. Any discussion of this problem must, however, take into account the IAEA system of designated and elected seats as well as considerations as to what constitutes an optimal size of the Board.

II. THE IAEA SYSTEM OF DESIGNATED AND ELECTED MEMBERS OF THE BOARD

8. Divergence of views continues to persist on the criteria for the "designated seats" on the Board. While some members felt that these seats as presently constituted should be retained, others called for a more transparent and objective set of criteria to be established for designating members for the Board. It was emphasized that transparency and the coherent application of criteria as well as ensuring the election of active members to the Board pre-suppose the efficient internal functioning of the area groups.

9. In addition to the criteria of advancement in the technology of atomic energy including the production of source material as currently stated in the Statute, other criteria suggested included, inter alia:

- (a) the existence of substantive nuclear programmes,
- (b) adherence to the Non-Proliferation Treaty (NPT) or a comparable multilateral nuclear non-proliferation regime,
- (c) contributions to the Agency's budget,
- (d) the share of nuclear power in energy production,
- (e) the political importance of a State in its region.

10. In the discussion on the system of elected seats some Member States called for an urgent review of the provision in Article VI.A.2(a), which prohibits immediate re-election for the so-called "area seats". The possibility of re-election would help active Member States to continue their activities on the Board.

III. THE SIZE AND FUNCTIONING OF THE BOARD

11. Arguments for and against an enlargement of the Board were advanced, such as on the one hand equality of areas and Member States, the need to involve as many active

members as possible in the work of the Board, and on the other hand the concern that an expansion of the Board might lead to a loss of efficiency and the fact that the Board as presently constituted is seen to be working well. While it was noted that the Board has not been expanded in line with the increase in membership in the last two decades, there was little agreement as to what would constitute an optimal size or whether the practice of other international institutions could provide any useful guidance for the Agency.

12. The position of non-members of the Board was discussed at some length. The view was generally expressed that the present functioning of the Board appears to be satisfactory in ensuring the participation of non-members in the deliberations of the Board and its Committees.

IV. GENERAL CONCLUSIONS OF THE CONSULTATIONS

13. The positions of various interested members on a revision of Article VI as a whole do not seem to have changed significantly. While the relevance of the issue is generally accepted, there are greatly divergent views as to what features of Article VI are in need of a revision in order to improve the functioning of the Agency.

14. As to the urgency of the issue, the prevailing feeling was that the time is not yet opportune for any major changes to Article VI. Reference was made *inter alia* to uncertainties prevailing on the international scene and to the satisfactory functioning of the Board under the Statute in its present form as reasons for further reflection of the issue rather than attempting an immediate and premature resolution.

V. FUTURE TREND

15. During discussion in the Working Group, there was general agreement that the Chairman's report reflects the different positions on the issue of the revision of Article VI. However, the Chairman raised the issue of what should happen in the future by posing two questions: (a) how to continue deliberations of the issue and (b) whether some concrete steps forward can be made at the present time.

16. On the first question, there was general agreement that work should continue on the matter through the re-establishment of the Working Group. In this context, a suggestion was made that the General Conference in requesting the Board to re-establish the Working Group should in addition, invite Member States to submit written comments on a possible review of the membership of the Board, as indeed the UN General Assembly has done on a possible review of the membership of the Security Council. It was stressed that such a request by the General Conference would give an added impetus to the work of the Working Group.

17. With regard to the second question on what concrete steps should be taken in the interim pending an overall review of Article VI, there were some suggestions that urgent steps should be taken to make immediate re-election to "area seats" possible as well as to make it clear to which area group each Member State belongs. On these, however, there was a divergence of views in the Working Group. While some members felt that some interim measures are essential and useful as step forward, others felt that a partial resolution of some of the issues was unnecessary as they would merely address some of the problem areas and not the others. They therefore emphasized that at an opportune time, an over-all and comprehensive review of Article VI should be undertaken rather than partial amendments.

18. In addition, the view was also expressed that any interim or partial solution of some of the issues relating to Article VI should not preclude a consideration of other pending matters such as the 'under-representation' of some area groups. In this context, it was noted that there is a considerable overlap in the mandate of the Working Group with that on the Amendment of Article VI.A.2. It was therefore suggested that it may be more prudent and efficient to suggest to the Board and through it to the General Conference that both issues, inter-related as they are, be taken up together.

RECOMMENDED ACTION BY THE BOARD

19. It is recommended that the Working Group on the revision of Article VI as a whole be re-established with a mandate to review all relevant aspects of the Article in question.

