

GC

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International Atomic Energy Agency

GENERAL CONFERENCE

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Item 19(b) of the provisional agenda
GC(40)/1

ARTICLE VI OF THE STATUTE

(b) COMPOSITION OF REGIONAL GROUPS

Report by the Board of Governors

1. In September 1995, the General Conference adopted resolution GC(39)/RES/22, in which it requested the Director General "to study all the implications of the proposal contained in document GC(39)/COM.5/10 and submit a report to the Board of Governors." It further requested the Board "to consider this matter and report to the General Conference at its fortieth session."
2. On 13 June 1996, the Board of Governors considered the matter of the composition of regional groups and decided to submit to the General Conference as its report, pursuant to the request made of it in resolution GC(39)/RES/22, the attached report by the Director General, together with the summary record of its discussion.
3. The summary record of the Board's discussion will be distributed in an Addendum to the present document.

COMPOSITION OF REGIONAL GROUPS

Report by the Director General on the implications of draft resolution GC(39)/COM.5/10

I. INTRODUCTION

1. At the thirty-ninth regular session of the General Conference, a draft resolution was submitted by Israel to the Committee of the Whole, under the agenda item "Amendment of Article VI of the Statute", which, in operative paragraph 2 thereof, calls for the adoption of an attached "list"^{1/} specifying the Member States belonging to the eight areas listed in Article VI of the Agency's Statute" (a copy of the draft resolution, GC(39)/COM.5/10, is set out in Annex I to this report).

2. In GC(39)/RES/22 (see Annex II to this report), the General Conference requested the Director General "to study all the implications of the proposal contained in document GC(39)/COM.5/10 and to submit a report to the Board of Governors"^{2/}. The General Conference further requested that the Director General's report:

take into account the general debate undertaken in this regard, especially the view that the primary responsibility for deciding upon the composition of regional groups lies with the respective groups themselves and the view that every State has the right to participate in a regional group...

3. Annex III to this report consists of the records of the Committee of the Whole reflecting its discussion on this matter. For the convenience of Member States, the texts of communications received after the General Conference from the Permanent Missions of Israel, the Syrian Arab Republic and Turkey are reproduced in Annex IV.

^{1/} The list referred to in the draft resolution is an unofficial list prepared by the Secretariat for internal purposes which was attached as such in Annex 2 of document GOV/2814, "Report by the Chairperson of the Open-ended Consultative Group on Article VI of the Statute". GOV/2814 was revised subsequently and issued as GOV/2814/Rev.1, in which the unofficial list was not included.

^{2/} This report does not address operative paragraph 1 of the draft resolution set out in GC(39)/COM.5/10, which would request "the Board of Governors to continue consultations with Member States through an effective mechanism and to submit its recommendations on proposed amendments to Article VI for approval by the General Conference at its fortieth session".

II. THE AGENCY STATUTE AND THE PRACTICES OF THE AGENCY

4. Article VI.A.1 of the Agency's Statute requires the outgoing Board of Governors to designate for membership of the Board

- (a) the ten members most advanced in the technology of atomic energy including the production of source materials; and
- (b) the member most advanced in the technology of atomic energy including the production of source materials in each of the following areas in which none of the ten members designated as described in sub-paragraph (a) above is located:
 - (1) North America
 - (2) Latin America
 - (3) Western Europe
 - (4) Eastern Europe
 - (5) Africa
 - (6) Middle East and South Asia
 - (7) South East Asia and the Pacific
 - (8) Far East.

5. While the ten States referred to in paragraph 4(a) above are to be designated without reference to the areas in which they are located, each of the ten must be associated with a listed area in order for the outgoing Board to ascertain whether any further member needs to be designated pursuant to paragraph 4(b) above (e.g., no further member would need to be designated if, by operation of the provisions described in paragraph 4(a) above, one member from each of six of the areas were designated and two members from each of the two remaining areas were designated). The long-standing practice of the Board, when announcing the members it has designated, is to list those members in alphabetical order without stating the area to which any of them belongs.

6. Article VI.A. 2 of the Statute requires the General Conference to elect to membership of the Board twenty-two members, as follows:

- (a) twenty members, with due regard to equitable representation on the Board as a whole of the members in the eight listed areas, so that the elected members of the Board shall at all times include:
 - five representatives of Latin America;
 - four representatives of Western Europe;
 - three representatives of Eastern Europe;
 - four representatives of Africa;

- two representatives of the Middle East and South Asia;
 - one representative of South East Asia and the Pacific;
 - one representative of the Far East;
- (b) one further member from among the members in the following areas: Middle East and South Asia; South East Asia and the Pacific; Far East;
- (c) one further member from among the members in the following areas: Africa; Middle East and South Asia; South East Asia and the Pacific.

7. It is evident that Article VI is premised upon the assumption that every Member State of the Agency is within one of those areas. If this were not the case, a Member State that was not within an area would be ineligible to serve as a member of the Board. Such ineligibility would be contrary to the principle of the sovereign equality of all of its Member States, upon which the Agency is based and which is enshrined in Article IV.C of the Statute.

8. Article VI.A.1 of the Statute does not speak of "geographical groups", but rather refers to "areas", not all of which are necessarily geographical. Thus, "Latin America" appears to be an ethnic-linguistic, rather than a geographical, description. Two apparently geographical areas, "Western Europe" and "Eastern Europe", have obvious political connotations. At the Working Level Meeting on the draft Statute in February 1956, the representative of the USSR officially recorded his understanding that "Eastern Europe" was composed of twelve States which included Greece and Yugoslavia. The United States and the United Kingdom representatives reserved their positions on that understanding. In fact, Greece, which is geographically located to the east of several acknowledged Eastern European countries, has been elected to a Western European seat on the Board, as has Turkey, which is located even further to the east. Further, even with respect to areas that appear to be purely geographical (e.g., "Middle East and South Asia", "South East Asia and the Pacific", "Far East" and "Africa"), the Statute gives no guidance as to the boundaries of, or the Member States that are within, these (or, indeed, any other) areas. Nor has the Board or the General Conference developed any criteria or other guidance to determine whether a Member State is within one of the areas specified in Article VI of the Statute.

9. Where a doubt exists as to whether a Member State is within a particular area, it is clear that the decision on that issue cannot be taken solely by the Member States who are acknowledged as being within that area. The taking of a decision by such States could result in the State in question being excluded from all areas. This is not to say that account should not be taken of the views of the Member States in the area concerned. Thus, the following consensus opinion was reached in the Preparatory Commission which negotiated the

Agency's Statute: "In the separate elections of members of the Board of Governors representing the geographical areas listed in paragraph A.1 of Article VI, the General Conference should take account of the preference of the members concerned" (IAEA/PC/OR.61, quoted in GC.1/OR.2, para. 3). It is evident from that language that the views of the members of the area concerned are not decisive. Thus, at the fifth General Conference, the Conference elected Viet Nam to a Far East seat even though China and the Philippines, two of the (at that time) four acknowledged members of that area (the other two being Japan and Korea), stated that Viet Nam did not belong to the Far East area (GC(V)/OR.59, paras. 1-9, 17-18). Since then, Viet Nam has been elected more than once to the Board as representing the area of the Far East.

10. In these circumstances, the determination of whether a State falls within a particular area referred to in Article VI, or the development of a list of States that fall within each of the areas referred to in Article VI, is a matter that falls within the co-responsibility of the Board and the General Conference. This is evident from the fact that both organs have a role to play in the composition of the Board. The eight areas referred to in Article VI are relevant to the action that each organ is to take under Article VI. In composing the Board, problems would arise if the actions of the two organs were to be based on different views of the States that fell within each area in Article VI.

11. Differences of view as to which area a Member State belongs have also been manifest in the voting in elections to the Board at the General Conference. Thus, in the past, Israel has received votes at the General Conference for election to the former area of "Africa and the Middle East" and to the current area of "Middle East and South Asia". But from such individual votes, no generalized conclusions can be drawn. In such elections, a vote cast for the election of a State to a particular area implies that the State casting the vote considers that the State for whom it has cast its vote is within the area in question. For some States votes have been cast for different areas (sometimes for two areas at the same meeting of the Plenary - see, e.g., the vote cast for the Democratic People's Republic of Korea for the area "South East Asia and the Pacific" at the same election at which that State was elected to a seat for the "Far East" area (GC(XXIII)/OR.217, paras. 19-21)). Although, in accordance with Rule 85(d) of the Rules of Procedure of the General Conference (which provides that a vote is invalid if cast for a State that is not in the area in respect of which the election is being held), tellers are instructed to report as invalid any votes cast for States that are "manifestly" not in the area in question, in no case has any vote been challenged on this ground.

12. It bears noting that, for purposes other than determination of Board membership, the grouping of States may vary depending on the purpose for which it is done. For example, while the annual report to the General Conference on the staffing of the Secretariat basically follows the lines of Article VI, a different grouping is used for the administrative division of responsibilities within the Department of Technical Co-operation.

13. It is within the authority of the Policy-making Organs of the Agency to adopt a list identifying which States belong in the areas identified in Article VI of the Statute, as proposed in the draft resolution set out in GC(39)/COM.5/10. This would manifest the right of a Member State to be eligible for election to the Board in respect of the area indicated on such a list. However, actual election to the Board is not guaranteed by the Statute.

14. The above background indicates that the attribution of a State to a particular area is one in which factors other than geographical considerations play a role. It also confirms the absence of any complete indication among Member States of the States in each of the areas set out in Article VI.

III. PRACTICE OF THE UNITED NATIONS AND OTHER ORGANIZATIONS

15. With respect to the United Nations, the only explicit provisions of the Charter on geographical distribution concern the election of the ten non-permanent members of the Security Council (Article 23(1) - "equitable geographical distribution") and the recruitment of the staff of the Organization (Article 101(3) - "on as wide a geographical basis as possible"). In this context, since 1963, the General Assembly has adopted geographical distribution patterns for electing officers and members of various organs. While there is no classification based upon formal membership in a geographical group, Member States are generally categorized into African States, Asian States, Eastern European States, Latin American States, and Western European and Other States.

16. Regional groupings of Member States corresponding to the afore-mentioned geographical patterns have evolved in practice as an informal arrangement mainly for consultation and election purposes. It is an arrangement based on the agreement of the States concerned. Since groupings of Member States by geographical region have evolved as an informal arrangement for a number of practical purposes, different groupings are sometimes used for different purposes, or in the context of different United Nations bodies. In some cases, for example, as regards Turkey, a State can belong to one regional group for election purposes (Western European and Other Group) and to another group for other purposes (Asian States).

17. According to information provided by the United Nations Office of Legal Affairs, the composition of the various groups is entirely in the hands of the groups themselves; the current chairman of a specific group informs the Secretariat about changes in the composition of the groups, but this information does not appear in any official document. The Division for General Assembly Affairs prepares a list for General Assembly election purposes which, however, is only an internal document with no circulation. In reporting to the General Assembly on the composition of the Secretariat, the Secretary-General divides Member States in "groupings by major geographical regions" for statistical purposes, including seven regional groupings and one group for "other nationalities". Member States are listed in yet another manner for purposes of election to the Committee on Food Aid Policies and Programme of the World Food Programme.

18. A review of the practices of other organizations in the United Nations system reveals that, while the use of regional or geographical groupings of States is prevalent, there is no uniformity in the practical details.

19. For some organizations, specific groups are defined either in the constituent instrument or by decisions of the plenary body of the organization. In the case of UNIDO, Article 9 of its Constitution provides for the classification of Member States into specific groups. With respect to the ITU, it was a decision of the Plenary Conference in 1959 which adopted the principle of division of Member States into a specified number of regions.

20. The number of such groups also varies among the organizations (for example, while in the ITU and UNESCO there are five groups, the Constitution of UNIDO provides for four groups).

21. As regards the criteria for composition of the groups, some organizations have adopted specific criteria, while for other organizations no formal indication is given. For instance, pursuant to resolution 28(c)/20.4 (1995) of the General Conference of UNESCO, "geographical situation and cultural identity" were laid down as criteria to be applied in the assignment of new Member States to electoral groups. In the ILO, the criterion of "geographical position" is used, while in the ITU, the areas are grouped strictly on "geographic basis". In addition, even where the names of the groups are the same among different UN-system organizations, and the criteria would appear to be similar, the composition of those groups may vary from organization to organization.

22. The practices of the UN organizations with respect to the procedure for determining which States constitute the groups also vary considerably. In UNIDO, UNESCO and the ITU, the plenary conferences make that determination, and decide as well on changes of a State from one group to another. In the case of the ILO, a recent amendment to the standing orders of the ILO Conference will, when it enters into force, institutionalize the geographical distribution of its Member States, for the purpose of distribution of the seats on its governing board; the delimitation of the regions will be adjusted, if necessary, by mutual agreement among all the governments concerned. As regards ILO regional conferences, as opposed to meetings of its Governing body, there are no rules which define the criteria determining to which group a country belongs, or which establish the procedure to be followed in the event of a modification. All of these questions are dealt with by the Governing Body of the ILO on a consensus basis.

23. In most UN-system organizations, the grouping of States is used for purposes of election to the executive body or other subsidiary organs. That is true, for instance, of the ITU, UPU, WHO and UNESCO. Groupings may also be used for other purposes. In UNESCO, for example, geographical groups are also used in respect of the execution of regional activities; in the ILO, for the purposes of regional conferences. The Constitution of the WHO uses the criterion of "geographical areas" in respect of the establishment of regional organizations which are integral parts of WHO. In most of these cases, there is no symmetry in the composition of the groups for electoral and other purposes.

IV. CONCLUDING REMARKS

24. The survey conducted of the practices of other UN organizations reveals no common approach either to the procedures for assigning States to particular areas, to the criterion for making such a determination or to the establishment of fixed lists of area Members. Moreover, the composition of the various lists in such organizations appears to be fluid and depends on the purposes for which the respective lists are developed (at least some of which are only informal). Thus, these practices are not of direct relevance to interpretation of the provisions of the Statute of the Agency as regards "area" representation. Equally, the past practice of the Agency does not provide unequivocal guidance as to the interpretation of the provisions of the Statute as regards "area" representation. In that practice, reference has been had to a number of considerations, including political considerations, in relation to this issue.

25. The principle of sovereign equality of Member States requires that each Member State be eligible for election to the Board. Hence, under the Statute of the Agency, it is for the Board and the General Conference to act on the premise that each Member State belongs to

some area. The drawing of the conclusion that a State belongs - or does not belong - to a particular area is not the exclusive prerogative of the Member States who are acknowledged as being within that area, although account should be taken of the preference of the Members concerned. The full Board and the General Conference plenary is free to depart from such conclusion.



Attachment
Annex I

GC

GC(39)/COM.5/10
19 September 1995

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International Atomic Energy Agency

GENERAL CONFERENCE

Thirty-ninth regular session
Agenda item 22
(GC(39)/27)
COMMITTEE OF THE WHOLE

AMENDMENT OF ARTICLE VI OF THE STATUTE

Draft resolution submitted by Israel

The General Conference,

- (a) Taking into account the reports of the Board of Governors contained in documents GC(39)/21 and GC(39)/21/Add.1,
 - (b) Taking into account the interest of the concerned Member States in reconsidering Board membership in the light of present-day realities,
 - (c) Taking into account the fundamental and structural changes that have taken place in the past two decades in international realities, particularly in the world nuclear community, and the need to specify to which of the areas listed in Article VI the Agency's Member States belong, in order to facilitate continued deliberations related to the Article VI issue,
 - (d) Reiterating the urgent need to implement, inter alia, General Conference resolution GC(XXV)/RES/389 and all other General Conference resolutions and decisions, and
 - (e) Regretting the continuing lack of progress in resolving the urgent need for the implementation of resolution GC(XXV)/RES/389,
1. Requests the Board of Governors to continue consultations with Member States through an effective mechanism and to submit its recommendations on proposed amendments to Article VI for approval by the General Conference at its fortieth session; and
 2. Adopts the attached list specifying the Member States belonging to the eight areas listed in Article VI of the Agency's Statute.

**LIST OF STATES BY REGION
(ACCORDING TO ARTICLE VI OF THE IAEA STATUTE)**

I. NORTH AMERICA

Member States

1. Canada
2. United States of America

II. LATIN AMERICA

Member States

1. Argentina
2. Bolivia
3. Brazil
4. Chile
5. Colombia
6. Costa Rica
7. Cuba
8. Dominican Republic
9. Ecuador
10. El Salvador
11. Guatemala
12. Haiti
13. Jamaica
14. Mexico
15. Nicaragua
16. Panama
17. Paraguay
18. Peru
19. Uruguay
20. Venezuela

III. WESTERN EUROPE

Member States

1. Austria
2. Belgium
3. Cyprus
4. Denmark
5. Finland
6. France
7. Germany
8. Greece
9. Holy See
10. Iceland
11. Ireland
12. Italy
13. Liechtenstein
14. Luxembourg
15. Monaco
16. Netherlands
17. Norway
18. Portugal
19. Spain
20. Sweden
21. Switzerland
22. Turkey
23. United Kingdom of Great Britain
and Northern Ireland

IV. EASTERN EUROPE

Member States

1. Albania
2. Armenia
3. Belarus
4. Bulgaria
5. Croatia
6. Czech Republic
7. Hungary
8. Lithuania
9. Poland
10. Romania
11. Russian Federation
12. Slovakia
13. The former Yugoslav Republic of Macedonia
14. Ukraine
15. Yugoslavia

V. AFRICA

Member States

1. Algeria
2. Cameroon
3. Côte d'Ivoire
4. Egypt
5. Ethiopia
6. Gabon
7. Ghana
8. Kenya
9. Liberia
10. Libyan Arab Jamahiriya
11. Madagascar
12. Mali
13. Mauritius
14. Morocco
15. Namibia
16. Niger
17. Nigeria
18. Senegal
19. Sierra Leone
20. South Africa
21. Sudan
22. Tunisia
23. Uganda
24. U.R. of Tanzania
25. Zaire
26. Zambia
27. Zimbabwe

VI. MIDDLE EAST AND SOUTH ASIA

Member States

1. Afghanistan
2. Bangladesh
3. India
4. Iran, Islamic Rep. of
5. Iraq
6. Israel
7. Jordan
8. Kazakhstan
9. Kuwait
10. Lebanon
11. Pakistan
12. Qatar
13. Saudi Arabia
14. Sri Lanka
15. Syrian Arab Republic
16. United Arab Emirates
17. Uzbekistan
18. Yemen

VII. SOUTH EAST ASIA AND THE PACIFIC

Member States

1. Australia
2. Indonesia
3. Malaysia
4. Marshall Islands
5. Myanmar
6. New Zealand
7. Singapore
8. Thailand

VIII. FAR EAST

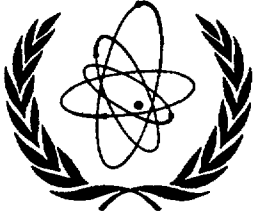
Member States

1. China
2. Cambodia
3. Japan
4. Korea, Rep. of
5. Mongolia
6. Philippines
7. Viet Nam

OTHERS^{*/}

Estonia
Slovenia

^{*/} The group membership of these Member States is yet to be determined, pending further discussions in New York.



Attachment
Annex II

GC

GC(39)/RES/22
September 1995

GENERAL Distr.
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International Atomic Energy Agency

GENERAL CONFERENCE

Thirty-ninth regular session
Agenda item 22
(GC(39)/27)

AMENDMENT OF ARTICLE VI OF THE STATUTE

Resolution adopted on 22 September 1995 during the ninth plenary meeting

AMENDMENT OF ARTICLE VI OF THE STATUTE

The General Conference,

- (a) Noting the draft resolution submitted by Israel (GC(39)/COM.5/10), and
- (b) Taking into account all the implications of the drafting of a list allocating the IAEA's Member States among the eight regional groups,

1. Requests the Director General to study all the implications of the proposal contained in document GC(39)/COM.5/10 and submit a report to the Board of Governors. This report should take into account the general debate undertaken in this regard, especially the view that the primary responsibility for deciding upon the composition of regional groups lies with the respective groups themselves and the view that every State has the right to participate in a regional group; and
2. Requests the Board of Governors to consider this matter and report to the General Conference at its fortieth session.

**EXCERPTS FROM SUMMARY RECORDS
OF THE GENERAL CONFERENCE'S
COMMITTEE OF THE WHOLE IN 1995**

GC(39)/COM.5/OR.5

AMENDMENT OF ARTICLE VI OF THE STATUTE (GC(39)/21, GC(39)/21/Add.1, GC(39)/COM.5/9, GC(39)/COM.5/10)

25. The CHAIRMAN proposed that the Committee begin by discussing the report of the Chairman of the Open-ended Consultative Group on Article VI of the Statute contained in the Attachment to document GC(39)/21 and then take up the Moroccan proposal for amending Article VI contained in Annex 8 to that report. Subsequently, the Committee could take up the draft resolutions contained in documents GC(39)/COM.5/9 and GC(39)/COM.5/10.

26. Mr. SNYDER (United States of America), supported by Mr. BENMOUSSA (Morocco) and Mr. LEDERMAN (Israel), requested that the meeting be suspended pending the conclusion of the informal consultations currently under way in connection with the Article VI issue.

27. It was so agreed.

GC(39)/COM.5/OR.6

AMENDMENT OF ARTICLE VI OF THE STATUTE (GC(39)/21, GC(39)/21/Add.1, GC(39)/COM.5/9, GC(39)/COM.5/10)

32. She [THE CHAIRMAN] then invited the representative of Israel to introduce the draft resolution contained in document GC(39)/COM.5/10.

33. Mr. LEDERMAN (Israel) said that Article VI of the Statute referred to eight areas but did not address the issue of the composition of those areas. For effective consideration of the question how many seats on the Board should be allocated to the different areas, however, it was necessary to know which Member States belonged to which area.

34. The list attached to the draft resolution submitted by Israel could be useful in that connection.

35. That having been said, his delegation would not press the draft resolution if its operative paragraph 2 could be incorporated into the amended version of the draft resolution submitted by Morocco.

36. Mr. POSTA (Hungary), noting that - as already pointed out by the representative of Ukraine - there had been a significant increase in the number of Member States located in Eastern Europe, said that his delegation was in favour of the adoption by the Conference of a list specifying which Member States belonged to which of the eight areas referred to in Article VI.

37. Given the scientific and technical character of the Agency, any expansion of the Board's membership should be such as to ensure - besides fair representation of the different areas - the adequate representation of Member States which had nuclear power programmes or were otherwise engaged in significant peaceful nuclear activities.

38. Mr. OTHMAN (Syrian Arab Republic), supported by Mr. AL-TAIFI (Saudi Arabia) and Mr. HAMADA (Tunisia), said that the geographical distribution of States was not identical with their political distribution and that the issue raised by the delegation of Israel should be dealt with in the United Nations General Assembly - not in the Agency's General Conference.

39. Mr. STRATFORD (United States of America), supported by Mr. MOLLINGER (Netherlands), said that any consensus eventually reached on an expansion of the Board's membership would have to be fair to all Member States. There would accordingly have to be a way of determining which Member States were in which areas and then allotting seats to the different areas. It would be most unfair if there were Member States regarded as not belonging to any of the eight areas referred to in Article VI.

40. Adoption of a list which assigned the Agency's Member States to the different areas would facilitate future consultations on the Article VI issue.

41. Mr. EID (Lebanon), expressing support for the comments made by the representative of the Syrian Arab Republic, said that consultations should continue with a view to amending Article VI and that, when they were completed, consideration could be given to the situation of certain States in order to determine to which area group(s) they belonged.

42. Mr. JAMEEL (Pakistan) said that the present forum was not a proper place to discuss the issue of which States belonged to which area groups. The issue was a difficult one, and it should be resolved primarily within the area groups themselves. Also, it was extraneous to the question of amending Article VI of the Statute.

43. Mr. BENMOUSSA (Morocco) said that the draft resolution submitted by his country could be considered without reference to the issue of the composition of area groups, which ought really to be dealt with under a separate agenda item.

44. Mr. BENATTALLAH (Algeria), supported by Mr. NAJADA (Jordan), associating himself with the views expressed by the representative of the Syrian Arab Republic, said he had the impression that Israel wished to be regarded as belonging to the Middle East and South Asia area group. In other contexts, however, Israel belonged to other area groups (to European area groups, for example), and he saw no reason why, in the Agency context, Israel should not be regarded as belonging to - say - Western Europe. A country should not be able to impose itself on an area group.

45. Mr. MACKINNON (Canada) said that it would be very difficult to explain to anyone not familiar with the workings of the Agency - the Canadian tax payer, for example - why the General Conference was not prepared to acknowledge that Israel belonged to the Middle East and South Asia area group.

46. Mr. AYATOLLAHI (Islamic Republic of Iran) said that, in his delegation's view, the issue of the list attached to the draft resolution contained in document GC(39)/COM.5/10 should be discussed elsewhere. The Agency's Statute was silent regarding the composition of area groups, and it would be wrong to recommend that the General Conference adopt that particular list.

47. The question really at stake was that of regional security, which was inseparable from the question of regional co-operation. For regional co-operation to work, the States of a given region had to decide among themselves what was politically acceptable and what constituted a normalization of relations.

48. It was regrettable that so little progress towards regional security had been made in the Middle East - for example, through the creation of an NWFZ. The lack of progress was reflected in the agendas of the General Conference, which for several years had contained an item on the nuclear capability of a particular Member State and the threat posed by that State. The item had now disappeared from the agenda, but the threat remained.

49. Mr. LEDERMAN (Israel) said that his country was not seeking to impose itself on any area group. Unfortunately, however, for political reasons some countries in the area of the Middle East and South Asia would not accept the logical consequences of Israel's geographical situation.

50. Mr. MOHAMEDAIN (Sudan) said that the Committee was not a suitable forum for discussing the composition of area groups; that was a matter for the countries in the individual groups.

51. Ms. OGNJANOVAC (Croatia), noting that part IV (Eastern Europe) of the list attached to the draft resolution submitted by Israel included "Yugoslavia", drew attention to document GC(39)/INF/22 containing a letter to the Director General about references to "Yugoslavia" as a Member of the Agency.

52. The Security Council had in resolution 777 (1992) noted that "... the State formally known as the Socialist Federal Republic of Yugoslavia has ceased to exist" and that "the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations".

53. That resolution had been endorsed by the General Assembly in its resolution A/47/L.1 of 22 September 1992, a decision which had subsequently been reaffirmed by the Agency's General Conference the same year.

54. Therefore, in the list attached to the draft resolution submitted by Israel, Yugoslavia should be included with those States whose group membership was yet to be determined.

55. Mr. OTHMAN (Syrian Arab Republic) said that a country's geographical existence and its political identity were two different things and expressed surprise that a country which otherwise saw itself as a part of Europe should seek to become a member of the Middle East and South Asia group. Even if it was not a member of any area group, that country still received Agency technical assistance.

56. Mr. de YTURRIAGA (Spain), speaking on behalf of the EU, suggested that the draft resolution submitted by Israel be replaced by the following:

"The General Conference,

"(a) Noting paragraph 1 of the draft resolution submitted by Israel GC(39)/COM.5/10, and

"(b) Taking into account the legal and political implications of the drafting of a list allocating the IAEA's Member States among the eight regional groups,

"1. Requests the Legal Adviser of the Agency to study the legal implication of the proposal submitted by Israel and submit a report to the Board of Governors; and

"2. Requests the Board of Governors to examine the report of the Legal Adviser and to make relevant recommendations on the subject to the General Conference at its fortieth session."

57. Mr. AL-TAIFI (Saudi Arabia) said that his delegation could go along with the text suggested by the representative of Spain provided that "Legal Adviser" in operative paragraphs 1 and 2 was replaced by "Director General" and the Board was requested to submit to the General Conference merely a report on the legal and political aspects of the subject.

58. Mr. STRATFORD (United States of America), expressing support for the text suggested by the representative of Spain, said that he too would like to see "Legal Adviser" replaced by "Director General" in operative paragraphs 1 and 2. Also, he would like to see ", in consultation with interested Member States," added in operative paragraph 1.

59. Mr. de YTURRIAGA (Spain) said that he considered the amendments put forward by the representatives of Saudi Arabia and the United States of America to be acceptable.

60. Mr. LEDERMAN (Israel) said that his delegation was ready to accept the suggested text with the amendments put forward by the representative of the United States of America.

61. The CHAIRMAN proposed that further discussion under the present agenda item be postponed until the suggested new texts had been circulated in writing.

62. It was so agreed.

GC(39)/COM.5/OR.7

AMENDMENT OF ARTICLE VI OF THE STATUTE (GC(39)/21, GC(39)/21/Add.1, GC(39)/COM.5/10)

1. The CHAIRMAN, drawing attention to the text of a draft resolution which had just been distributed, said that it represented a consensus arrived at earlier that morning in informal consultations presided over by the delegate of Canada.

2. Mr. WALKER (Canada), introducing the text, said the consensus was based on the understanding that the text would be recommended for adoption with no amendments. He thanked those who had participated in the consultations for the spirit of co-operation which they had shown.

3. Mr. LEDERMAN (Israel), having expressed appreciation of the co-operative spirit shown during the consultations, said that his delegation favoured adoption of the text with the understanding that in operative paragraph 1 the word "especially" applied to both of the views referred to.

4. Mr. BENMOUSSA (Morocco) said that the consensus arrived at was a reasonable one and did not prejudice the outcome of the envisaged study. The matter would

be decided upon the following year, by which time the political climate might well have changed.

5. Mr. STRATFORD (United States of America), expressing support for the consensus text, said he was pleased that it made clear that two strongly held views should be taken into account in the preparation of the Director General's report to the Board of Governors.

6. Mr. de YTURRIAGA (Spain), speaking on behalf of the European Union, welcomed the consensus text and commended the spirit of co-operation which had led to it.

7. The CHAIRMAN said that the spirit of co-operation which had been shown could well be important for the future of the Agency and asked the Committee whether it wished to recommend to the General Conference that it adopt the consensus text.

8. It was so decided.^{1/}

^{1/} The recommended draft resolution was subsequently issued in document GC(39)/45.

**TEXTS OF COMMUNICATIONS FROM
ISRAEL, THE SYRIAN ARAB REPUBLIC AND TURKEY**

A. PERMANENT MISSION OF ISRAEL

27 February 1996

Dear Dr. Blix,

Resolution GC(39)/45 paragraph 1 "~~Request~~ the Director General to study all implications of the"- (Israeli) -"proposal contained in GC(39)/COM.5/10 and submit a report to the Board of Governors"...

I have the honour to submit to you the Government of Israel's position on the issue of "Amendments of Article VI (A-1) of the IAEA Statute/the composition of Member States in the eight regional areas.

As can be expected, the Israel's position paper "zooms" and discusses in great detail the arguments that would facilitate Israel's participation in its regional group i.e. MESA in all the group activities, including eventually its election to the Board of Governors.

Accept, Sir, the assurances of my highest consideration.



Dr. J. Alter
Ambassador
Resident Representative

Dr. Hans Blix
The Director General
I A E A

27 February 1996

Amendment of Article VI of the IAEA Statute

Israel's position

Background

At the IAEA 39th General Conference, Israel submitted a draft resolution GC(39)/COM.5/10 dated 19 September 1995, entitled "Amendment of Article VI of the Statute" (See Annex).^{2/}

In its operative paragraph 2, the draft resolution:

- "2. Adopts the attached list specifying the Member States belonging to the eight regional areas, listed in Article VI of the Agency's Statute."

The list attached to the draft resolution is the unofficial list of IAEA member states allocated to the eight regional groups according to the IAEA Statute, as distributed in document GOV/2814 of 8 June 1995.

The Israeli delegation submitted its draft resolution at the 39th IAEA General Conference because:

- A. Israel was a founding member of the IAEA in 1957. It has never been elected to the Board of Governors (BOG), because member states in the geographical group to which Israel belongs, i.e., MESA, opposed its participation, thus effectively excluding Israel from being elected as a member of the BOG.
- B. In accordance with "the principle of the sovereign equality of all members" - enshrined in the Agency's Statute - it was strongly felt by the Government of Israel that this situation ought to be corrected.
- C. At present, Article VI of the Statute defines the eight regional areas for the purpose of representation of members on the BOG without addressing the issue of their composition.

^{2/} Reproduced in Annex I.

- D. A list of member states in each regional area would provide member states the basic data to work with during consultations on the issues pertaining to Article VI.
- E. By turning the IAEA unofficial list of states by region into an official one, Israel's participation in its regional group, i.e., MESA, would be given official recognition and sanction.

During the deliberations on the issue at the Committee of the Whole at the 39th General Conference, it became clear that the Israeli draft resolution, while drawing support from several delegations, could not become a consensus resolution due to strong opposition of several states.

After a long process of deliberations on the floor of the Committee of the Whole and extensive consultations, consensus has been reached on resolution GC(39)/45 which reads as follows:

"The General Conference,

- (a) Noting the draft resolution submitted by Israel GC(39)/COM.5/10, and
 - (b) Taking into account all the implications of the drafting of a list allocating the IAEA's Member States among the eight regional groups,
1. Requests the Director General to study all the implications of the proposal contained in GC(39)/COM.5/10 and submit a report to the Board of Governors. This report should take into account the general debate undertaken in this regard, especially the view that the primary responsibility for deciding upon the composition of regional groups lies with the respective groups themselves and the view that every State has the right to participate in a regional group; and
 2. Requests the Board of Governors to consider this matter and report to the General Conference at its fortieth session."

Pursuant to that resolution, the Government of Israel would like to present its views on the subject.

Israel's positions - main elements

In accordance with the IAEA Statute all member states should have the right to participate in all IAEA activities and enjoy all rights and privileges of membership. Some of these rights are exercised through participation in the geographical area groups.

The fact that Israel is a part of the Middle East area, cannot be denied on geographical, political or any other grounds.

Israel has the right to be a part of and to participate in MESA area group, including, inter alia, the right to be elected on its behalf to the IAEA Board of Governors. Therefore, the opposition of certain states in MESA to Israel's participation in the activities of MESA is an infringement of the principle of sovereign equality of member states of the Agency, as laid down by the Statute.

We believe that the adoption of a list allocating each of the IAEA's member states to the eight regional groups would:

- a. Provide the required data needed for the continued consultation on the composition of the BOG.
- b. Constitute a first, modest step in eliminating the long overdue discrimination of Israel and enabling Israel to enjoy all the rights as practiced by all other states.

A. Legal Aspects of the IAEA Statute provisions

Article IVc of the IAEA Statute opens by stating that "The Agency is based on the principle of the sovereign equality of all its member states, ...". This provision echoes the parallel requirement of Article 2, paragraph 1, of the Charter of the United Nations, embodying the principle of sovereign equality in the central and vital set of provisions detailing the purposes and principles of the United Nations.

Article IVc establishes the equation between ensuring the rights and benefits resulting from membership in the Agency on the one hand, and, on the other, the fulfillment in good faith of the obligations assumed by members in accordance with the Agency's Statute. Neither this provision nor any other provision in the Statute provides for the denial of rights to a member state which fulfills in good faith its membership obligations. Hence, the denial of Israel's right to the full enjoyment of its membership rights is not justified by the Statute, and such a denial negates a central tenet of membership as set in it.

This is further strengthened in the context of the inter-relationship between the IAEA Statute and the United Nations Charter, as formalized both in Article IIIB of the Statute as well as in Article I(4) of the 1957 Relationship Agreement between the IAEA and the United Nations, whereby the Agency "undertakes to conduct its activities in accordance with the purposes and principles of the United Nations Charter ...".

Article VI of the Statute establishes the principle of geographical distribution of the membership of the BOG, adding the necessity to give "due regard to equitable representation on the Board as a whole of the members in the areas listed in subparagraph A.1 ...". It is not unreasonable to interpret the concept of equitable representation of the members in the area groups, as indicating that all the members of the Agency should be entitled over time, to be elected to a term, or terms of membership of the BOG, without any exception.

B. Area groups composition in IAEA practice

Article VI of the Statute does not address the issue of composition of the eight area groups. However, the practice at the IAEA is based on an unofficial list of states by region (GOV/2814, 8 June 1995, Annex C).

This has also been applied to MESA as an area group which includes Israel according to that list.

In 1989 the IAEA defined the Middle East as: "... the area extending from Libyan Arab Jamahiriya in the West, to the Islamic Republic of Iran in the East and from Syria in the North to the People's Democratic Republic of Yemen in the South. This selection carries no political significance and it is purely geographical" (Modalities of Application of Safeguards in the Middle East", GC(XXXIII)/887, 29 August, 1989).

This practice was evident also in the Secretariat structure. For example a Middle East section was until 1995 part of the Division of Technical Cooperation Programs in the Department of Technical Cooperation. Israel was also included in the geographical area covered by that section.

C. The Middle East : The Geographical Perspective

The 1990 report of the UN Secretary-General's study team (A/45/435 of October 1990) has extensively considered the delineation of the region for purposes of a NWFZ. In defining the region, the report distinguished between "core" and "peripheral" states. The "core" states include Israel. The peripheral region was defined as including members of the Arab League.

The US Arms Control Initiative for the Middle East of May 29, 1991, that has inspired the establishment of ACRS Working Group, defined the region of the Middle East as extending from Iran in the East to the Maghreb in the west.

A draft treaty, discussed at the Arab League, on the establishment of the Middle East as a WMDFZ, defined in Article I in the term the Middle East region as "the territories under the jurisdiction or control of the Arab League member countries, in addition to Iran and Israel." (Al-Ittihad, Abu Dhabi, in Arabic, 15 February 1995, p.23).

In conclusion, all the definitions and delineations include the State of Israel in the Middle East region.

D. The political perspective - stating the obvious

1) The Peace Process

Israel is politically a part of the Middle East. The purpose of the present Middle East Peace Process is to achieve a just and lasting peace between Israel and its neighbors.

This process has underlined that:

- Israel is a full partner in the Middle East peace process.
- Israel is a full member of all working groups of the multilateral track of the peace process (Water, refugees, economic cooperation and development, Environment, Arms Control and Regional Security - ACRS).
- Israel is a member-party in the foundation of a regional Middle East Bank and the operation of a regional Tourist Organization, both of which are the outgrowth of the Middle East peace process.

2) The Arab Approach

- As mentioned, the Arab League's text for a draft Middle East WMDFZ uses the term "Middle East region" as meaning "the territories under the jurisdiction or control of the Arab League member countries, in addition to Iran and Israel" (Al-Ittihad, Abu Dhabi, in Arabic, 15 February 1995, p.23).
- Resolutions on the Middle East sponsored by Arab states both in the UN General Assembly and the IAEA General Conference, address Israel as part of the region.

3) UN and IAEA

- **The states in the region of the Middle East approached by the Secretary-General of the UN in 1975 in the context of the UN General Assembly resolution on the establishment of a NWFZ in the Middle East included Israel (S/11778, 28 July 1975; A/10027/Add.1, 1976, para.72). This has been the practice followed by the Secretary-General ever since.**
- **IAEA General Conference Resolutions pertaining to Middle East and/or Israel treated Israel as part of the Middle East region.**

Points raised at the Committee of the Whole

During the deliberations of the Committee of the Whole several delegations expressed opposition to the Israeli draft resolution on Amendment of Article VI of the Statute.

Representatives of Syria, Saudi Arabia, Tunisia, Lebanon, Algeria, Jordan and Iran presented the following arguments:

Argument A: The geographical distribution of states is not identical with their political distribution. The Israeli proposal should be dealt with in the United Nations General Assembly and not in the IAEA General Conference.

Israel's response:

At issue here is the composition of the area groups, as practiced in the IAEA. These area groups are defined in the IAEA Statute on geographical grounds only. The group definition and composition at the UN General Assembly are different and not relevant.

In the IAEA there is no legal meaning to "political distribution".

Accordingly, the Israeli proposal should be dealt with in the Policy Making Organs of the IAEA and not be dependent on extraneous considerations.

Those who use this argument admit and acknowledge that Israel belongs geographically to the Middle East.

Argument B: Priority should be given to amending Article VI (the expansion issue) and only after its completion, consideration should be given to the situation of certain states in order to determine to which area groups they belong.

Israel's response:

On the contrary : in order to facilitate consultations on amendments to Article VI concerning the number of seats on the BOG a formal list of member states in each regional area should be provided in advance.

Adoption of such a list would acknowledge the general practice which is exercised by all geographic area groups except MESA.

A variation on this argument declares that there are other member states that are trying to become part of a different regional area group. It should be noted that in those cases a state belonging to one regional area may want to become a member in another regional area. In such a case no denial of privileges and rights is involved. Israel's situation requires urgent correction: it does not belong in effect to any regional area group.

Argument C: While Israel wishes to belong to MESA group, in other contexts it belongs to other area groups (to European area groups, for example). There is no reason why Israel, within the Agency context, should not be regarded as belonging to Western Europe.

Israel's response

In the context of the IAEA Statute, groups are defined according to geographical regions. Israel belongs to the Middle East. This is an irrefutable fact in the IAEA as anywhere else. It is not accepted by certain states in the MESA regional group. This should be corrected.

Argument D: A country should not be able to impose itself on an area group.

Israel's response:

This argument implies that some members of a regional area group can arbitrarily exclude another member from that group by exploiting their majority vote.

Such a behavior contradicts the IAEA statutory principle of sovereign equality of all member states and creates inequality : all member states belong to a regional group, except one state that is arbitrarily excluded. This means that the rights of one member state have been suspended.

Argument E: The list of members states attached to the Israeli draft resolution for adoption was termed an "Israeli List".

Israel's response:

The list attached to the Israeli draft resolution GC(39)/COM.5/10 is not an "Israeli List". It is the unofficial list that has always been in use by the Agency. The only exception to this practice is by the MESA group and this is an additional reason for a change.

It should also be noted that during the deliberations, the Israeli position was strongly supported by several delegations. The United States delegation supported by the delegation of the Netherlands, maintained that "It would be most unfair if there were member states regarded as not belonging to any of the eight areas referred to in Article VI. Adoption of a list which assigned the Agency's Member States to the different areas, would facilitate future consultations on Article VI."

The delegation of Canada pointed out that "it would be very difficult to explain to ... the Canadian tax payer for example, why the General Conference was not prepared to acknowledge that Israel belonged to the MESA group."

The Israeli draft resolution was compatible with the letter and spirit of the Statute. It proposed the inclusion of the notion that "especially ... every state has the right to participate in a regional group".

The persistence of some Arab delegations and the Iranian one to include in the resolution the phrase "especially the view that the primary responsibility for deciding upon the composition of regional groups lies with the respective groups themselves" can only have had a political motive as there is no legal or substantive basis. The arguments presented by some Arab delegations and the Iranian one against Israel's position can only lead to the conclusion that the aim was political discrimination.

Conclusion

By objecting to the list of member states in the regional areas, Arab states and Iran, in fact, discriminate against Israel. This is unacceptable and detrimental to the objectives of the IAEA. One cannot treat Israel as an essential part of the Middle East, when the aim is to condemn it and exclude it from the region on the exercise of its rights and privileges.

It would have been hoped that the achievements of the Peace Process in the Middle East and its ongoing progress would have changed the political climate, eliminated old animosities and helped to correct the discrimination against Israel in the IAEA.

Israel trusts that its position in the context of Resolution GC(39)/45, will be considered and hopes that the DG's report to the BOG, will recommend, to adopt the IAEA unofficial list of states by region. This would be a small but important step in the elimination of Israel's discrimination at the IAEA governing bodies.

B. PERMANENT MISSION OF THE SYRIAN ARAB REPUBLIC

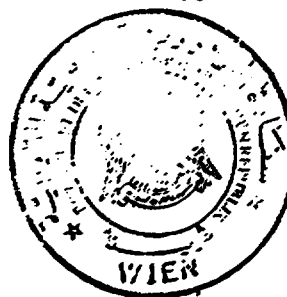
28 March 1996

V E R B A L N O T E

The Permanent Mission of the Syrian Arab Republic presents its compliments to the Director General of the International Atomic Energy Agency in Vienna and has the honour to convey the following note no.52, dated 28. March 1996, in Arabic language.

The Permanent Mission of the Syrian Arab Republic avails itself of this opportunity to renew to the Director General of the International Atomic Energy Agency in Vienna the assurances of its highest consideration.

Attachment



EMBASSY OF THE SYRIAN ARAB REPUBLIC
Vienna

No. 52

The Permanent Mission of the Syrian Arab Republic presents its compliments to the Director General of the International Atomic Energy Agency and has the honour to inform him as follows:

1. The IAEA General Conference resolution GC(39)/RES/22, adopted at the 39th session (1995), on the amendment of Article VI of the Statute, requested the Director General to study all the implications of the proposal contained in document GC(39)/COM.5/10 submitted by Israel and submit a report to the Board of Governors. This report should take into account the general debate undertaken in this regard, especially the view that the primary responsibility for deciding upon the composition of regional groups lies with the respective groups themselves.

2. In accordance with the above-mentioned resolution, the Mission wishes to state the position of the Government of the Syrian Arab Republic, which is as follows:

"The inclusion of any State in a group requires the agreement of the members of the group to its inclusion. Likewise, any modification in the existing geographical groups requires the agreement of every group to the list of Member States included in it."

The Permanent Mission of the Syrian Arab Republic requests the Director General to take note of and study the position of Syria and to take it into consideration in preparing the report to be submitted to the Board of Governors, and avails itself of this opportunity to renew to him the assurances of its highest esteem.

Vienna, 28 March 1996

C. PERMANENT MISSION OF TURKEY

13 October 1995

The Permanent Mission of Turkey presents its compliments to the International Atomic Energy Agency and in accordance with Resolution 39/22 adopted by the 39th General Conference of the Agency has the honour to transmit herebelow the views of the Government of Turkey on the membership to the list of eight regional groups mentioned but not identified in Article VI of the IAEA Statute:

In the "indicative" list which had been prepared by the Secretariat of the Agency and has been solely used for practical purposes, "Cyprus" (Greek Cypriot Administration) is included in the "Western Europe" area. This list has not been adopted by the General Conference and thus has not born any effect whatsoever so far. Consequently, the members of the eight areas specified in Article VI of the Statute have not legally been identified. Now, in line with the General Conference Resolution No. 39/22, as a result of the drafting process of a list allocating IAEA member States among the eight regional groups, such a list will eventually become formalized and thus legally binding upon the adoption by the General Conference.

As is known, "Cyprus" belongs to the "Asian Group" among the geographical groupings of the member States both at the United Nations Headquarters in New York and at the United Nations Office in Geneva.

Moreover, "Cyprus", being a member of the "Non-aligned movement" and taking part in the Asian Group at the United Nations Offices both in New York and in Geneva, neither geographically nor politically belongs to the Western Europe area. Therefore, in the drafting process of such a list as envisaged by the GC(39)/RES/22, this fact should be reflected accordingly and "Cyprus" should be included in the Middle East and South Asia area where it geographically and politically suits.

On the other hand, in the aforementioned "indicative" list "Yugoslavia" is included in the area of Eastern Europe. As is known, the former Yugoslavia has physically disintegrated and there now exist three independent sovereign States on its territory, all members of the UN, namely Slovenia, Croatia, Bosnia Herzegovina and a fourth State, the Federal Republic of Yugoslavia (Serbia and Montenegro), whose participation in the UN is conditioned to its application for membership to the UN. In fact, according to the United Nations General Assembly Resolution 47/1 of 1992, the General Assembly "considers that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot

continue automatically the membership of the former Yugoslavia in the United Nations; and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly". As a consequence of this Resolution, the Federal Republic of Yugoslavia (Serbia and Montenegro) has not, in fact, participated in the work of the General Assembly and its subsidiary organs or in the Conferences and meetings convened by them. In the light of the General Assembly Resolution no. 47/1, the 36th General Conference of the IAEA adopted on 24 September 1994 Resolution no. 576 stating that "The General Conference ... considers that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the IAEA; and decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the Agency and that it shall not take any further part in the work of the Board and the General Conference". Accordingly, the Federal Republic of Yugoslavia (Serbia and Montenegro) has not participated in the work of the Board and the General Conference of the IAEA.

Therefore, the question of the membership of the Federal Republic of Yugoslavia (Serbia and Montenegro) should be settled at the United Nations and the IAEA in accordance with the abovementioned Resolutions before this State is included in one of the eight areas indicated in Article VI of the Statute.

The Permanent Mission of Turkey requests that the above-mentioned views be duly reflected in the report of the Director General to the Board of Governors on this issue and avails itself of this opportunity to renew to International Atomic Energy Agency the assurances of its highest consideration.



Vienna, 13 October 1995

International Atomic
Energy Agency

Vienna