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(GC(40)/1)

ARTICLE VI OF THE STATUTE

(a) AMENDMENT OF ARTICLE VI

The summary records of the discussion in the Board of Governors on 9 September 1996 under the agenda sub-item "Amendment of Article VI" are reproduced in the Attachment.

EXCERPT FROM THE RECORD OF THE BOARD'S 900th MEETING

ARTICLE VI OF THE STATUTE

(b) AMENDMENT OF ARTICLE VI (GOV/2880)

The CHAIRMAN recalled that in resolution GC(39)/RES/21 the General Conference had in 1995 requested the Board "to continue consultations with Member States through the existing Open-ended Consultative Group [on Article VI of the Statute] and to submit its report and recommendations on proposed amendments to Article VI for approval by the General Conference at its fortieth regular session."

Pursuant to that request, the Board had on 25 September 1995 decided that the Open-ended Consultative Group should continue its work. In December 1995, the Board had approved the nomination of Ambassador Bøjer of Denmark as the Chairman of the Group. At the Board's March and June sessions, Ambassador Bøjer had presented interim reports on the work done by the Group. He would now introduce the report contained in the Attachment to document GOV/2880.

Mr. BØJER (Denmark), speaking as Chairman of the Open-Ended Consultative Group on Article VI of the Statute, said that despite every effort it had not so far been possible to reach a consensus in the Group on amending Article VI. While a number of Member States were reluctant to accept any amendment, there seemed to be a trend towards acceptance of a limited increase in the size of the Board, it being understood that a solution would have to be found through consensus.

It was his impression that any compromise reached on amending Article VI would probably be based on the following: a small numerical increase in the number of designated Board members; no change in the number of areas provided for in Article VI; the possibility of immediate re-election to the area seats on the Board; and a gentleman's agreement that the Article VI amendment issue would be shelved for a 10-year period. He could not say that consensus had already been reached on such a compromise. What he had just said represented his best guess as to what might be the likely outcome of a process ending in consensus.

Although no conclusion had been reached, all members of the Group had worked together in good faith and had succeeded in bringing the discussion a step further towards consensus.

Ms. HASAN (Pakistan), speaking on behalf of the Group of 77, recalled General Conference resolution GC(XXV)/RES/389 adopted in 1981 and subsequent resolutions on Article VI and said that the question of increasing the membership of the Board was a long-standing one. During the past year, a number of proposals worthy of consideration - especially the Moroccan proposal - had been put forward. The Group would like to see Member States working towards a genuine consensus, so that the question could soon be settled once and for all.

Mr. EL-FEKI (Egypt) said that the prolonged negotiations on the question of amending Article VI had consumed much time and effort, and had adversely affected the Board's efficiency. An increase in the membership of the Board would enhance its moral and political authority by enabling it to reach decisions which were more widely acceptable to the international community. The reservations expressed by some delegations could no longer be justified, particularly in the light of the most recent General Conference resolution on the question, which called for "recommendations on proposed amendments to Article VI for approval by the General Conference at its fortieth regular session".

Some progress had been achieved, some delegations making serious attempts to devise formulae which would command wide acceptance. The Moroccan proposal, in particular, was to be commended, and the delegations of Pakistan and Spain had been making valuable contributions in the Open-ended Consultative Group.

The present arrangement did not take into account either the changes that had taken place on the international scene or the Agency's increasing membership. The participation of a greater number of Member States, especially developing countries, in the Board's activities could only benefit the Agency.

Mr. UMAR (Nigeria), having expressed support for the statement made by the Resident Representative of Pakistan on behalf of the Group of 77, noted that the issue under discussion had been before the Board and the General Conference for nearly two decades and

that numerous resolutions on it had been adopted. The most recent General Conference resolution called for "recommendations on proposed amendments to Article VI for approval by the General Conference at its fortieth regular session". Although he was not sure whether any amendment proposal would be ready in time for approval at the forthcoming General Conference session, he felt that some progress had been made in the Open-ended Consultative Group, where proposals worthy of consideration had been put forward.

The Board's membership should reflect present-day realities, not least recent changes in the nuclear field, and he would like to see Member States showing the political will necessary for reaching an agreement which was long overdue.

Mr. FU Manchang (China) said his delegation agreed in general with the summary of the position just presented by the Chairman of the Open-ended Consultative Group.

China would have no difficulty with an increase in the number of Board members which ensured proper geographical representation and took into account the interests of developing countries. Despite the progress made recently, there were still some differences of view, and his delegation appreciated the efforts being made by countries such as Morocco and Pakistan to help bring about a solution acceptable to all parties.

Ms. HASAN (Pakistan) said that the divergences of opinion on the question of amending Article VI had narrowed considerably over the past year, and her delegation believed that there would be a positive outcome in the not-too-distant future.

It was not the case that expansion of the Board could be achieved only at the expense of efficiency; on the contrary, efficiency would be increased through an increase in the number of responsible voices heard in the Board. Also, comparisons with the governing bodies of other international agencies were not relevant; every institution had to decide on the composition of its governing body in accordance with its own needs.

Ms. LAJOUS VARGAS (Mexico) said that, although consensus had not yet been reached in the Open-ended Consultative Group, the indications were that the Group's deliberations might well soon produce positive results.

Mexico, which continued to believe that the number of seats on the Board should be approximately equal to one third of the number of Agency Member States, did not agree that the necessary expansion of the Board would reduce efficiency.

With regard to other aspects of Article VI, she said that Mexico was in favour of retaining the eight areas mentioned there and of immediate re-election to area seats for a maximum of two consecutive terms.

The Agency could not ignore the major political and technological changes that had taken place in recent years nor the advances made in the nuclear field by many Member States, including Mexico, and she looked forward to an early outcome of the current negotiations which would properly reflect the changed international situation.

The meeting rose at 12.55 p.m.

EXCERPT FROM THE RECORD OF THE BOARD'S 901st MEETING

ARTICLE VI OF THE STATUTE

(b) AMENDMENT OF ARTICLE VI (GOV/2880) (continued)

1. Mr. Seung-Kon LEE (Republic of Korea) said that, while his delegation was grateful to the Chairman of the Open-ended Consultative Group for his efforts and fully understood the difficulties confronted by the Group in trying to reconcile a wide range of conflicting interests, it was nevertheless dissatisfied at the lack of progress in the Group's work. Given the substantial changes that had taken place over the previous two decades in the world nuclear community, no time should be lost in realigning the Board's membership.
2. One positive development was that some countries which had either opposed or been reluctant to accept any amendment to Article VI now seemed to have changed their positions, which gave reason to believe that a workable formula might emerge.
3. With regard to the main issue, the size of the Board, there was a wide spectrum of views, ranging from concern about efficiency at one extreme to concern about equitable

representation at the other. If the countries in question were not willing to reconcile their views, no useful result would be forthcoming in the near future. His delegation therefore urged those countries to adopt a realistic approach and engage in serious negotiations on the matter.

4. For its part, his delegation was in favour of a modest increase in the number of Board members and endorsed the conclusions presented by the Chairman of the Open-ended Consultative Group in his report. It believed that the Group should be allowed more time in order to complete its work and hoped that the Chairman of the Group would be able to continue his efforts to that end.

5. Mr. de YTURRIAGA (Spain) said that his delegation had had little time to prepare for the present session, having received the provisional agenda only shortly before the session started - in contravention of the Board's Provisional Rules of Procedure.

6. Having thanked the Chairman of the Open-ended Consultative Group for his efforts, he said his delegation believed that only one of the four elements listed in paragraph 12 of the Chairman's report was likely to prove viable - namely, the "possibility of immediate re-election to the area seats of the Board". With regard to the first element, "a small numerical increase in the number of designated members of the Board of Governors", such an increase would be a meagre outcome of the complex negotiations that had taken place, especially if the Article VI amendment issue was then to be "put to rest" for ten years.

7. His delegation, which believed that a more appropriate enlargement of the Board would be one which restored the earlier relationship between the number of Agency Member States and the number of Board members, agreed with those other delegations which felt that greater representativity would not mean less efficiency.

8. Regarding the second element of a possible compromise, "no change in the number of area groups, as set out in Article VI of the Statute", his delegation believed that the eight-area arrangement - which was unique - should be abolished; the Agency should align itself with the general United Nations practice based on five regional groups or explore other possibilities.

9. As to the fourth element, "a gentlemen's agreement that the issue of amendment of Article VI is put to rest for a 10-year period" was very unlikely to remain unchallenged, particularly if it followed the acceptance of only a small numerical increase in the number of Board members.

10. The work of the Open-ended Consultative Group had been helpful, but inconclusive. The entrenched positions of certain countries had prevented any real progress, although a number of Member States - including Spain - had made proposals aimed at the achievement of a solution.

11. For example, during informal consultations before the Board's June meetings Morocco had suggested that the number of area groups be reduced to six and that the number of Board members be increased to 51 - the envisaged number of members of the governing body of the organization to be established to monitor implementation of the CTBT. That suggestion, which broke two important taboos, deserved to be discussed further.

12. In addition to the inflexibility and lack of imagination displayed by some participants, in the Group's discussions there had been excessive emphasis on the need for consensus. However desirable consensus might be, an amendment to the Statute required the approval of only two thirds of the Member States voting on it at the General Conference session at which it was considered.

13. Mr. DAHMANI (Algeria), having thanked the Chairman of the Open-ended Consultative Group for his efforts, endorsed the statement made on behalf of the Group of 77 by the Resident Representative of Pakistan and commended Pakistan's contributions to the discussions in the Open-ended Consultative Group.

14. He reaffirmed his delegation's wish to see the Board's membership enlarged and recalled the General Conference resolutions adopted with a view to increasing the number of Board seats assigned to developing Member States - especially those in the African region, which was very under-represented in the Board. For his delegation, the issue of representativity was crucial; if it was not resolved, consensus would be difficult to achieve.

15. His delegation strongly believed that the Board should be enlarged through an increase in the number of elective seats, the increase to be agreed on in the Open-ended Consultative

Group. It feared that a selective enlargement on an indeterminate basis would be out of step with Member States' expectations, with the relevant General Conference resolutions and with developments in the international arena; the Article VI amendment issue could hardly be "put to rest" for ten years if the interests of the Agency's developing Member States had been neglected in such an enlargement.

16. His delegation would like to see the Open-ended Consultative Group continuing its work, without discrimination and with due account taken of the sensitivities and the technical potential of Member States belonging to the different regions.

17. Mr. ADAM (Belgium), thanking the Chairman of the Open-ended Consultative Group for his efforts, welcomed the optimistic tone of his report; in particular, paragraphs 6 and 12 indicated the direction that future progress might take.

18. Although the Board's efficiency was generally satisfactory, discussion of the Article VI amendment issue had been going on for too long and it was now time that the Board arrived at a compromise solution which would allow the issue to be "put to rest" for a number of years, enabling the Board to concentrate on matters of greater substance.

19. His delegation believed that a small increase in the membership of the Board would not impair its efficiency. Accordingly, it would like the Chairman of the Open-ended Consultative Group to continue his efforts on the basis of the progress already made, with a view to finding a solution that would maximize both the efficiency of the Board and the participation of the Member States with major nuclear programmes in the Board's deliberations. In the long term, those Member States were the ones most affected by the decisions of the Board.

20. Mr. DOSHI (India) said that his delegation, which welcomed the fact that there had been at least some meeting of minds in the Open-ended Consultative Group, believed that international organizations should be reformed at reasonable intervals in order to prevent their becoming inflexible. In the case of the Agency, the interval should be about ten years.

21. India would like to see a moderate expansion of the Board and hoped that agreement on such an expansion would be reached soon.

22. Mr. DAVIES (South Africa), having thanked Ambassador Bøjer for his report and associated his delegation with the remarks made on behalf of the Group of 77, reiterated his delegation's view that there was an imbalance in the membership of the Board and that more equitable representation of the various regional groups was essential. Since the situation was likely to be aggravated by the continuing increase in the number of Agency Member States, the task of achieving an expansion of the Board was an urgent one.

23. At the same time, his delegation was fully aware of the need to strike a balance between what was desirable and what was attainable. The current efforts to strike that balance should continue.

24. Mr. WALKER (Australia), speaking on behalf of the South East Asia and Pacific (SEAP) group, said that over the previous 18 months a number of formal and informal proposals for amending Article VI had been put forward without the SEAP group as a whole being consulted. He urged all Member States which were thinking of putting forward such proposals to consult with the SEAP group in advance; otherwise, they could not expect support from either the group or its individual members.

25. The SEAP group would consider all proposals in the light of the Agency's and its own members' interests. Any proposal aimed at attracting consensus approval would need to take due account of the interests of all Agency Member States and all geographical groups. No delegation should be surprised if SEAP group members opposed proposals which manifestly disadvantaged any group or its members.

26. The SEAP group considered that there was no reason to replace the current eight-area arrangement by the system of five regional groups used for electoral purposes by the United Nations General Assembly and its subsidiary bodies; none of the United Nations specialized agencies used the five-group system, and the SEAP group consequently welcomed the reference in the report of the Chairman of the Open-ended Consultative Group to the element "no change in the number of the area groups, as set out in Article VI of the Statute".

27. Mr. HASAN (Kuwait) said his delegation hoped that the Open-ended Consultative Group would soon resolve the Article VI amendment issue, which had already demanded much time and effort from the Board.

28. His delegation did not consider that an enlargement of the Board would reduce its efficiency and was grateful to those delegations which had made proposals for enlarging it - in particular the delegations of Morocco, Pakistan and Spain.

29. His delegation had reservations regarding the possibility of immediate re-election to the area seats, which it feared would have the effect of excluding some Member States from the Board's work. However, it was willing to join in any consensus on the Article VI amendment issue.

30. Mr. MOHAMED (Sudan)*, having thanked the Chairman of the Open-ended Consultative Group for his efforts and associated himself with the statement made on behalf of the Group of 77, expressed support for an enlargement of the Board which would favour African and West Asian Member States. Changes in the international arena had already caused many international organizations to introduce reforms, and the Agency should not be an exception in that regard.

31. Far from impairing its efficiency, enlargement of the Board would make it more effective thanks to its greater representativity and authority.

32. Mr. PRETTRE (France) said that his country had always attached great importance to maintaining the Board's efficiency. With that in mind, his delegation had noted the progress made in dealing with the Article VI amendment issue in the Open-ended Consultative Group. In its view, however, a reasonable consensus solution was still not in sight.

33. His delegation therefore hoped that the Group would continue its work and eventually arrive at a balanced solution which took account of Member States' enhanced technical capabilities, of the increased number of Agency Member States, and of the need to ensure that the Board continued functioning effectively.

34. Mr. BENMOUSSA (Morocco), having associated himself with the statement made on behalf of the Group of 77, said that the current discussions of the Article VI amendment issue had started almost twenty years before and that, even if an amendment were

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

approved by the General Conference at its forthcoming session, a further five years might be necessary for the constitutional processes involved in the entry into force of amendments to the Statute - for acceptance of the amendment by two thirds of the Agency's Member States. It was probably safe to say that during that period no Member State would re-open the Article VI amendment issue, so that early approval of an amendment meant that Pandora's box would remain shut for a long time.

35. Recalling that in resolution GC(39)/RES/21 the General Conference had requested the Board to submit recommendations on proposed amendments to Article VI "for approval" - not for consideration - by it at its fortieth regular session, he said that the General Conference had clearly set a deadline.

36. Referring to the Moroccan proposal contained in Annex 1 to the Attachment to document GOV/2880, he said that that proposal remained the only one which had been submitted on time and in the proper form. It took account of compromises reached earlier in the Open-ended Consultative Group, of the need to improve the representation of African Member States, of the support for the idea of immediate re-election to area seats, and of the situation of least developed countries. Also, it sought to achieve a balance between designated and elective seats, which would ensure that the Board functioned not as a "nuclear club" but as a universal body representing the interests of all Member States.

37. In that regard, he believed that greater representativity would not impair the Board's effectiveness, which was linked not just to the number of seats on the Board but also to factors such as the Chairman's leadership, the quality of the documents issued for Board meetings and the effectiveness of the co-ordination between different regional groups. For Morocco, effectiveness and representativity were complementary.

38. The Moroccan proposal sought to take full account of technological advancement in the nuclear field and at the same time to protect the rights of less advanced Member States. Also, it contained no "floating seat" provisions, which tended to create confusion.

39. The Moroccan proposal provided for an increase of ten - from 35 to 45 - in the number of Board members. Those who considered such an increase excessive should bear in mind that the number 45 was closer to a third of the present number of Agency Member

States than 35 was. They should also bear in mind that a figure of 51 had been agreed upon for the membership of the governing body of the organization being established to monitor implementation of the CTBT. In his delegation's view, if a consensus on amending Article VI was really being sought, an increase of ten in the number of Board members was the price to be paid.

40. What course of action should now be adopted? The report of the Chairman of the Open-ended Consultative Group pointed to the need for "a little more time" in order that consensus might be reached. In his delegation's view, with a modicum of good will two weeks would be enough if consensus was not taken to mean the enthusiastic unanimity of all Member States, but rather an equitable distribution of satisfaction and frustration. He would like to see those Member States which believed that consensus implied the right of veto abandoning that belief.

41. The Moroccan proposal was still the only proposal which had been formally made, as noted in subparagraph 4(b) of the report of the Chairman of the Open-ended Consultative Group. Copies of it certified by the Director of the Legal Division had been communicated by the Director General to all Member States more than 90 days before the 1995 General Conference session, and it had been discussed in the Board of Governors and in the General Conference.

42. Noting that a proposal to amend the Statute required approval in the General Conference "by a two-thirds majority of those present and voting after consideration of observations submitted by the Board of Governors", he said that the Board did not have to agree with such a proposal - only submit its observations on it to the General Conference.

43. The Moroccan proposal met all the legal requirements for a General Conference decision to approve it. Various informal proposals which had been made - while greatly appreciated by his delegation - did not meet those requirements. The legal distinction should be borne in mind by the Board and the General Conference.

44. Mr. STURMS (Director, Legal Division) said that the Moroccan proposal was indeed the only proposal that had been formally submitted to the General Conference, complying with the ninety-day requirement spelled out in Article XVIII.A of the Statute.

That did not preclude the submission of other proposals to the General Conference, but if the Conference was to act on them they should first be considered by the Board - and the ninety-day requirement would apply.

45. The CHAIRMAN, summing up the discussion, said that over the past year the Board and the Open-ended Consultative Group on Article VI of the Statute had discussed a formal proposal for amending Article VI submitted by Morocco and informal proposals submitted by Pakistan and Spain. Although there appeared to be some hopeful yet tentative signs of movement on the basic question of an expansion of the Board, opinion continued to be divided on the specific proposals - whether formal or informal - and on the nature of any change to be made in the present composition of the Board. The Board's observations on the proposals were thus that it was not in a position to make any recommendation on any proposal for amending Article VI for consideration and approval by the General Conference in response to resolution GC(39)/RES/21 adopted by the Conference in 1995. More time was needed for consultations and negotiations, and the Open-ended Consultative Group should be asked to continue its work in the hope that it would be in a position to make recommendations on an acceptable amendment, based on a proposal - formal or informal - which had already been under discussion or a new proposal which might be submitted.

46. Having said that, he took it that, as had been done in 1995 in similar circumstances, the Board agreed to transmit Ambassador Bøjer's report - together with the summary records of the present discussion, which would of course include his summing-up, to the General Conference in response to its request of the previous year.

47. It was so agreed.

48. It had been agreed that the clarification of the Governor from Morocco (as confirmed by the Agency's Legal Adviser) that the only proposal conforming to the provisions of the Statute and therefore formally before the General Conference for consideration and action was that submitted by Morocco would form part of the summary records to be transmitted to the General Conference.

49. He expressed the appreciation of the Board to Ambassador Bøjer for the skill, enthusiasm and patience with which he had conducted the deliberations of the Open-ended

Consultative Group. It was the wish of all Board members that he continue to chair the Group for another term - in the almost certain event of its continuation. He [the Chairman] hoped that Ambassador Bøjer would agree to do so.

