

# Information Circular

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## Communication dated 17 November 2022 received from the Permanent Mission of the People's Republic of China to the Agency

1. The Secretariat has received a Note Verbale dated 17 November 2022 from the Permanent Mission of the People's Republic of China to the Agency.
2. As requested, the Note Verbale, together with its attachment, is herewith circulated for the information of all Member States.



**THE PEOPLE'S REPUBLIC OF CHINA**  
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The Permanent Mission of the People's Republic of China to the United Nations and other International Organizations in Vienna presents its compliments to the Secretariat of the International Atomic Energy Agency, and has the honor to request the latter to duly circulate the attached Chinese working paper as well as its statement addressed to the 66<sup>th</sup> General Conference on the issue of nuclear submarine cooperation under AUKUS.

The Permanent Mission of the People's Republic of China to the United Nations and other International Organizations in Vienna avails itself of this opportunity to renew to the Secretariat of IAEA the assurances of its highest consideration.

Vienna, 17 November 2022



The Secretariat of  
International Atomic Energy Agency  
VIC, Vienna 1400

## WORKING PAPER

### **China's Position on Nuclear Submarine Cooperation under AUKUS**

17 November, Vienna

In September last year, the US, the UK and Australia announced the decision of their nuclear submarine cooperation, which sparked broad concerns among the international community concerning its far reaching and dangerous implications. In a reflection of these widely shared concerns, for more than a year now, the Board of Governors of the Agency has agreed by consensus to place a separate item on its agenda for 6 sessions in a row devoted to consideration of the AUKUS issue. Further confirming the grave importance of this issue, the 66th regular session of the General Conference of the Agency also included a similar item on its agenda. Many Member States, including China, spoke under this agenda item, at the BoG sessions as well as the General Conference, expressing grave concerns about a string of issues arising from the illicit transfers of nuclear weapon materials that the AUKUS will entail.

From what has transpired in the above intergovernmental discussions within the Agency's highest policy making organs, the following four principles can be distilled which must be fully adhered to in order to address the grave nuclear proliferation concerns arising out of the AUKUS:

#### **I. It is imperative that the Agency's non-proliferation mandate and political orientation be upheld**

As it is known to all, along with promotion of peaceful uses of nuclear energy, prevention of nuclear proliferation is the very *raison d'être* and fundamental mandate of the Agency. According to Article III of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), each Non-Nuclear-Weapon State Party to the Treaty undertakes to negotiate and conclude Comprehensive Safeguards Agreements (CSA) with the IAEA in accordance with the Agency's Statute and its safeguards regime with a view to preventing diversion of nuclear materials from peaceful uses to nuclear weapons or other nuclear explosive



devices. Accordingly, the NPT has legally assigned the non-proliferation mandate to the Agency whose safeguards system, in turn, provides the institutional arrangements for implementing that mandate. Without the Agency performing on this mandate through its safeguards regime and ensuring that the NPT States Parties are meeting their obligations, the NPT would become a dead letter and the Agency would forfeit the justification of its existence.

The integrity of the NPT and the effectiveness of the Agency's safeguards system are mutually dependent; one cannot survive without the other and to undermine one is to undermine both. By the same token, upholding the non-proliferation mandate of the Agency is nothing but maintaining the NPT and the international non-proliferation regime. As the current international non-proliferation regime is constantly facing new risks and challenges, the importance of achieving this goal becomes ever more imperative. By becoming a willing or unwitting facilitator and enabler of an act of nuclear proliferation, the Agency will strike at its own roots. In order to justify its very existence, the Agency must in no way get involved in any acts of thinly disguised nuclear proliferation.

In view of the fact that AUKUS is, by its very nature, an act of flagrant nuclear proliferation, the Agency's Comprehensive Safeguards Agreement (CSA), and in particular its Article 14 (Exclusion Clause), cannot be invoked to give it the fig leaf of legitimacy.

## **II. It is imperative that the Secretariat and the Director General conform to the required standards of professional conduct under the Agency's Statute**

Since taking office in December 2019, the Director General has, on the whole, performed his duties with commendable dedication and professionalism. He has played a positive role in promoting nuclear power in response to climate change, renovating the Agency's nuclear technology laboratory (ReNuAL), building the Nuclear Security Training and Demonstration Centre (NSTDC), as well as working to help address regional hotpot nuclear issues such as that of Iran. China recognizes and appreciates these efforts. At the same time, it is also a fact that China has come to entertain serious concerns about the Director General's approach to the AUKUS issue. China believes that there must be complete clarity about his role and responsibilities as provided for in the Agency's Statute, on the one hand, and the rights, privileges and prerogatives of Member States, on the other, as well as the relationship between the two.

Under Article 7B of the Statute of the Agency, the Director General shall be



under the authority of and subject to the control of the Board of Governors. He shall perform his duties in accordance with regulations adopted by the Board. Accordingly, what the Director General can and cannot do is governed by rules. As far as the relationship between the two is concerned, the DG should act under the "leadership" of the Member States and in strict accordance with and within the confines of the Agency's Statute and rules of procedure. He must not step beyond his authority, much less purport to position himself above the membership constituted by sovereign States.

With regard to a project like AUKUS, the Statute of the Agency has clearly stipulated the reporting obligations of the Director General. It is the duty and obligation of the Director General to submit reports on the issue of AUKUS. Since the Board session of last November, Member States have been consistently urging the Director General to submit a report.

It was only in September this year that the Director General submitted his first report to the Board of Governors. This was, of course, a step in the right direction. However, such reporting must be factual and strictly technical in nature in accordance with the spirit of the Statute of the Agency and the CSA. The Director General cannot arrogate to himself the right to draw so-called "conclusions" on his own by going beyond his well-defined role and mandate.

In accordance with Article 12C of the Agency's Statute, the Director General is required to report to keep the Board fully informed at each and all stages of the cooperation between the three AUKUS countries.

Firstly, the Director General shall report on Australia's fulfillment, or otherwise, of its obligations under the modified code 3.1 of the CSA Subsidiary Arrangement, in particular its timely declarations on:

- all aspects of all phases relating to the nuclear submarine cooperation; such as,
  - the commencement of construction of relevant facilities, and
  - the revision of the cooperation programme.

Secondly, the Director General shall report on Australia's compliance, or otherwise, with its obligations under the Additional Protocol (AP) with the Agency, in particular timely declarations on:

- nuclear submarine bases;
- onshore safeguarded facilities, and

- any other information.

Thirdly, the Director General shall report on the implementation of his own obligations under the Statute as required

- by Article 11A, F4 and Article 12A1 and A6 of the Statute.

It should be further noted that, under Article 12C of the Statute, the Director General is also required to report:

- if Australia is in breach of its obligation under the CSA and AP and,
- if so, to call upon it to forthwith remedy any such instance of non-compliance.

It is regrettable that none of the above essential elements have been reported on by the DG in the year-long period since the launching of the intergovernmental review process last November.

It should also be noted that, since November 2021, many Member States have repeatedly raised a series of pertinent questions from political, legal, technical and other perspectives regarding the potential nuclear proliferation risks inherent in the AUKUS cooperation. Some of these questions, just to cite a few examples, include:

- Does the nuclear submarine cooperation involve illegal transfer of nuclear weapons materials?
  - Does it violate the objectives and purposes of the NPT?
  - Does AUKUS breach the CSA and Revised Guideline 3.1?
  - Does it violate Australia's Additional Protocol with the Agency?
  - Can Article 14 of the Agency's CSA be used to "whitewash" acts of nuclear proliferation?
  - Can the Secretariat of the Agency on its own address, based on its existing mandate, nuclear proliferation activities by relying on the CSA template document?
  - Does AUKUS count as legitimate military activities within the sovereign rights of a State or an act of nuclear proliferation between nuclear weapon States and a non-nuclear weapon States? What measures can be taken to prevent AUKUS from undermining the Agency's non-proliferation mandate and authority?
  - How can the Secretariat be prevented from been taken hostage to engage in activities prohibited by the NPT and the Agency's Statute, as a result of



AUKUS?

The above is not an exhaustive list of questions raised by the vast number of Member States. It is, therefore, all the more disappointing that the Director General's report fails to acknowledge, much less answer, these valid and legitimate questions.

The Director General's report is also not in consonance with his statutory obligations. It is perplexing that instead of faithfully and factually reporting on the cooperation among three countries in the report, the DG overstepped his authority to pass judgment on the so-called legal basis and legal framework for AUKUS. He even went so far as to draw the conclusion that Australia "may invoke Article 14 of the CSA" even at a time that when the three countries had declared no worthwhile information whatsoever on any nuclear materials and nuclear facilities that will be involved in the nuclear submarine cooperation. Such a logically absurd conclusion exceeds the DG's mandate, and it is, therefore, a void conclusion. It is not only a poor reflection of the Agency's executive head's professional conduct but also seriously undermines his credibility.

In this context, China calls on the DG to effectively fulfill his obligations under the Statute of the Agency as well as the CSA and AP in his follow-up report. The follow report must remedy the shortcoming of the first report by specifically addressing the concerns of Member States and responding to the series of questions. The objective must be to fully brief the Member States on all aspects of nuclear submarine cooperation in an open, objective and transparent manner and, thereby, create conducive conditions for the proper resolution of the issue of AUKUS nuclear submarine cooperation among the three countries through the member-driven intergovernmental consultation process within the Agency.

### **III. It is imperative that a member-driven intergovernmental review and consultation process be followed to address the safeguards formula for nuclear submarine cooperation under AUKUS**

In view of the severely negative implications of AUKUS for nuclear proliferation, the three countries should immediately cease and desist from further pursuing this project without delay.

If the three countries are bent in their own way to push ahead their nuclear submarine cooperation, it is the responsibility, right and obligation of all Member States of the Agency to address this important issue, which carries



grave ramifications for the international nuclear non-proliferation regime and the common interests of all Member States, through the intergovernmental consultation process, with the objective to working out an agreed solution and, on this basis, submitting recommendations to the Agency's Board of Governors and the General Conference accordingly.

The member-driven intergovernmental process was launched in November last year. However, the process has not yet been as effective as it should be. In essence, the foremost substantive reason is the lack of necessary information and data. To date, Australia has not supplied the necessary information by declaring all aspects of nuclear submarine cooperation to the Agency as required by the CSA and the AP. This virtually makes it impossible for Member States to advance the review and consultation process in a well informed and substantive manner. Secondly, it is attributable to a lack of common political will on the part of the three countries. They have engaged in political maneuvering and cynical shenanigans in an attempt to replace the open and transparent intergovernmental process with secretive and opaque bilateral and so-called technical consultations between the three countries and the Secretariat to the exclusion of the wider membership of the Agency. Their objective remains to eventually present the so-called safeguards "arrangements" as a *fait accompli* to Member States of the Agency. This nefarious attempt must not be allowed to succeed as it is the very survival of the global nuclear non-proliferation regime, with NPT as its cornerstone. This is much at stake for all member of the international community.

#### **IV. It is imperative that the safeguards arrangements for the nuclear submarine cooperation under AUKUS be worked out through a consensus-based approach**

Historically, the formulation, revision and interpretation of safeguards agreements has been carried out through extensive participation by the Agency's Member States through a consensus-based approach. Since the establishment of the Agency, safeguards agreements between the Agency and Member States have also been approved by consensus by the Board of Governors, and these are all well documented. They would not have carried the legal weight, legitimacy and broad ownership if they had not been the forged through consensus.

The nuclear submarine cooperation under AUKUS, given its involvement of illegal transfer of nuclear-weapon materials, is beyond the scope of the existing CSA model text and beyond the scope of CSA between Australia and the



Agency. Accordingly, any safeguards arrangements worked out must be subject to consensus decision by Member States through an open intergovernmental consultation process. The Secretariat can only make the corresponding safeguards arrangements with Australia as mandated by Member States and does not have the authority to make decisions on its own. Even in a scenario of a subsidiary arrangement to the existing CSA with Australia, given the proliferative nature of nuclear submarine cooperation under AUKUS, it will also have to be subject, in the first place, to the discussion and subsequent decision of the Board of Governors on a basis of consensus.

The so-called "legal basis," "legal framework," and "conclusions" put forward by the Director General on his own initiative are nothing more than his personal views and recommendations, no matter how they are labeled. They carry no validity and legality at all unless approved by Member States and endorsed by consensus. Likewise, it is also invalid for the three countries to use the Director General's report as a clean chit to impose the so-called "safeguards arrangement" without consensus through cynical abuse of their advantage in the number of votes in the Board of Governors.

Finally, China wishes to make it clear that, as far as AUKUS-related nuclear submarine activities pertaining to the Agency, the Agency's budget must be used in accordance with all the relevant provisions in the Statute of the Agency, and that China is opposed to using the Agency's budget for safeguards activities related to the nuclear submarine cooperation under AUKUS. This cannot be countenanced and must not be allowed to happen.

## **Conclusion**

The three countries shall not advance their nuclear submarine cooperation, nor shall the Secretariat negotiate any safeguards arrangement with them without authorization until the Agency's Member States reach an agreed solution. If the three countries and the DG try to impose the relevant safeguards arrangements, it will seriously undermine the unity of the Agency, paralyze its functions and undermine its credibility beyond repair, with great detriment to the effectiveness and integrity of the NPT and the international nuclear non-proliferation regime.

China, therefore, calls on the three AUKUS countries to reflect carefully before pushing ahead with any ill-advised and short sighted moves. They must take heed, shun their high-handed approach and return into compliance with established norms and principles of the international non-proliferation regime.

At the same time, China also calls on the Director General to effectively

perform his duties and act in strict accordance with the Agency's Statute and the mandate given to him by the its Member States.

China, for its part, will work together with other Member States to work together and channel their efforts towards effective measures to jointly safeguard and uphold the NPT and the international nuclear non-proliferation regime.



**Statement by H.E. Ambassador Wang Qun at the General Conference  
under Agenda Item 24 “Transfer of the Nuclear Materials in the  
Context of AUKUS and Its Safeguards in All Aspects under the NPT”  
30 September, Vienna**

Mr. Chairman,

China has, time and again, expressed its views on this agenda item. This expression has been clear, unambiguous and full of serious concerns for the NPT regime and for the regional and world peace.

Since nothing has been done till date to assuage our concerns and those of many other member states, it seems appropriate to reiterate once more the principled views that have been expressed before.

To do so, I will build on what we have stated before, forcefully and clearly, in the forums of the International Atomic Energy Agency and elsewhere. To begin with, I would like to recall that at the Agency's just-concluded Board of Governor's session in September, China clarifying its position on the AUKUS issue had expressed yet again its serious concern about the transfer of nuclear weapons materials involved in the cooperation among Australia, United Kingdom and United States of America under AUKUS.

Today, China would like to further elaborate on the views it has so often expressed on this most vital issue, especially its statements made at previous Board of Governor's sessions since last November.

The AUKUS cooperation violates the NPT, the Agency's CSA, and the Additional Protocol signed between Australia and the Agency. No matter what name the three countries use for their nuclear submarine cooperation and no matter how the relevant nuclear weapons materials are handled, they cannot conceal the fact that it is an illegal transfer of nuclear weapons materials. This is indeed the very essence of the problem which cannot be ignored under any circumstance. The negative impact of the three countries' so-called nuclear submarine cooperation is enormous, and the three countries should immediately

stop the relevant acts envisaged under it.

Unfortunately, the US, the UK and Australia have ignored the serious concerns of Member States of the Agency and the international community. Instead of stopping their nuclear proliferation acts, they have adopted an ostrich policy. By confounding black and white and confusing right and wrong, they have repeatedly interfered with and undermined the relevant intergovernmental process jointly promoted by Member States of the Agency.

First, the AUKUS countries have ignored the facts and misled public opinion. In order to advance their illegal nuclear submarine cooperation, they have attempted to impose the following three false conclusions on all Member States:

- The NPT allows the three countries' cooperation in "naval nuclear propulsion", which involves the illegal transfer of nuclear weapons materials.

- The Agency's Director General "has the right" to deal with nuclear proliferation issues on his own.

- The Director General has the personal right to interpret the NPT on his own, claiming that Australia has the discretion to invoke Article 14 of the Agency's CSA, i.e. the "exception clause".

Second, the AUKUS countries have tried hard to demonize agenda item on launching the intergovernmental process. The three countries are unwilling to recognize Article II of the NPT and the Agency's Statute in the relevant resolutions, nor do they recognize the serious concerns of the Agency's general membership and the international community, or even the obvious differences among the Agency's Member States in their evaluation of the Director General's report. Not only do the three countries deliberately evade the necessity of the Agency's intergovernmental review process, they also make spurious accusations against China and the other relevant Member States at large of avoiding their due responsibilities and obligations and thereby wasting Agency's resources, curbing the independent decision-making of the Director-General, and hindering the work of the Secretariat. Needless to say that all these accusations and allegations are false and unfounded and meant to cover up the illegal behavior inherent in the trilateral nuclear co-operation under AUKUS.

Third, the AUKUS countries have ventured to legitimize their act of nuclear proliferation as a result of the nuclear-weapon materials transfer involved under AUKUS. The three countries have coerced the Director General to overstep his authority and make misleading reports; they have created duplicative items in the Agency's Board of Governors and pushed for substantive amendments to



entire paragraphs in the resolutions routinely adopted by consensus in the General Conference, in an attempt to kidnap the relevant intergovernmental process and force the Agency's Member States to endorse the three countries and subsequently "whitewash" their nuclear proliferation acts.

Fourth, and this is the most damaging effect, the trilateral nuclear submarine cooperation is the first time in history that the US and UK as Nuclear-Weapon-States have openly and directly proliferated tons and tons of nuclear weapons materials to Australia as a Non-Nuclear-Weapon State. How the Agency handles the issue of the three countries' nuclear submarine cooperation has a bearing on:

- whether it should adhere to the international nuclear non-proliferation regime with NPT as the cornerstone;

- whether it should adhere to the relevant provisions of the Agency's Statute; and

- whether it should adhere to the non-proliferation function of the Agency's Director General and Secretariat.

These issues are matters of the utmost principle which go to the heart of nuclear proliferation regime and world peace. They are not only related to a series of political, legal and technical issues involved in the nuclear submarines cooperation under AUKUS, but also as stated, to maintaining the integrity of the international non-proliferation regime and international peace. There can't be anything ambiguous about it. In order to effectively address the non-proliferation concerns of the international community over the issue of nuclear submarine cooperation under AUKUS and to effectively safeguard the international nuclear non-proliferation system, China has the the following constructive propositions:

First, adhere to the political direction. As an international organization performing nonproliferation functions, the Agency must resolutely maintain the NPT's role as the cornerstone of the international nonproliferation regime and must not get embroiled, in any way, in any nuclear proliferation acts, nor in any activities that advance military objectives.

Second, adhere to the bottom-line of rules. The NPT and the Agency's Statute are important components of the post-war international system and clearly define the non-proliferation and safeguards legal obligations that Member States are required to fulfill. A game is only as good as its rules. From the perspective of the international system, everything must be governed by rules. The fact that

the three countries are terrified in following the rules exposes precisely their "guilty conscience" in pursuing nuclear proliferation acts.

Third, adhere to the member-driven intergovernmental process. Member States of the Agency should continue to participate in and jointly promote the intergovernmental review and consultation process already launched within the Agency. The three countries should report truthfully to the Agency on all aspects of nuclear submarine cooperation in accordance with CSA and the Additional Protocol. The Agency's Director General and the Secretariat, for their part, should also make objective and impartial reports on the issue of nuclear submarine cooperation under AUKUS, and all parties should work together to create conditions for the proper resolution of the issue of AUKUS nuclear submarine cooperation through the intergovernmental review and consultation process.

Fourth, we should insist on seeking common ground while reserving differences. It is not surprising that differences exist among the parties, but it is crucial to concentrate on the common goal of non-proliferation, put aside disputes and differences, focus on common challenges, work together to uphold the authority of Agency and the international non-proliferation regime, and seriously address this unprecedented non-proliferation issue in a historically responsible manner to find a solution acceptable to all parties through intergovernmental process.

China would like to point out that the current intergovernmental review and consultation process within the Agency on the AUKUS nuclear submarine cooperation, which has been launched and going in-depth, has received wide attention from the international community. It is like huge surging tidal waves that can't be stopped by anyone. There is no way for the three countries to break away from the intergovernmental process and force their way through. China urges the three countries to return to the non-proliferation regime and not repeat and exacerbate their mistakes by standing on the opposite side of the international community.

Thank you, Mr. Chairman.