

Information Circular

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Communication from the Permanent Mission of the People's Republic of China to the Agency

1. On 12 September 2023, the Secretariat received a Note Verbale, together with an attachment, from the Permanent Mission of the People's Republic of China to the Agency.
2. As requested, the Note Verbale and its attachment are herewith circulated for the information of all Member States.



THE PEOPLE'S REPUBLIC OF CHINA
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No. CPMV/2023/104

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 circulate this Note as an INFCIRC document, together with the enclosed joint working paper titled "Different views by some IAEA Member States regarding the IAEA Director General's Statement on Naval Nuclear Propulsion", which is co-sponsored by China, Myanmar, Nicaragua, the Russian Federation and Syrian Arab Republic.

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, 12 September 2023



The Secretariat of
International Atomic Energy Agency
VIC, Vienna 1400

Different views by some IAEA Member States regarding the IAEA

Director General's Statement on Naval Nuclear Propulsion (2023/Note 44)

On June 7, 2023, during the session of the IAEA Board of Governors, the IAEA Director General R.Grossi made his Statement on Naval Nuclear Propulsion (further referred to as "NNP Statement", 2023/Note 44), outlining what appears to be the Secretariat's planned approach to paragraph 14 of the Model Comprehensive Safeguards Agreement (CSA, INFCIRC/153). We carefully studied this Statement and, as our contribution to further exchange of views among IAEA member states in the on-going inter-governmental discussion process, would like to make the following comments:

I. On the interpretation of paragraph 14 of INFCIRC/153

In 1978, the then-Director General S.Eklund, in his exchange of letters with the Resident Representative of Australia in Vienna (GOV/INF/347), offered his interpretation of p.14 of INFCIRC/153. The current Director General is now trying to dissociate himself with this interpretation, as it clearly stems from p.6 of his NNP Statement. However, since the Director General's mandate with regards to the CSA has been exactly the same back then and now, we believe that the interpretation provided in the exchange of letters between the Secretariat and Australia in 1978 must remain intact. In order to review or contest that, this matter should be brought to the Board of Governors' attention.

In the same p.6 of his NNP Statement Director General R.Grossi indicates that the exchange of letters that took place in 1978 does not constitute interpretation of the paragraph 14 of INFCIRC/153 by the Board of Governors. That is most certainly true – the issue has never been brought to the Board's attention. But the response of Director General S.Eklund at the time, as contained in GOV/INF/347, was the following: "No State Party to NPT has so far exercised the discretion referred to in paragraph 14. Accordingly, the Board of Governors has not had occasion to interpret that paragraph, nor has it elaborated in further detail the procedures to be followed pursuant to that

paragraph". Now that this discretion has been exercised, it's time for the Board to develop an interpretation of paragraph 14 of INFCIRC/153.

II. On the mandates of the Director General

In p.7, Director General claims that the technical discussions initiated in accordance with Article 14 "would need to address all aspects related to the application of safeguards to nuclear material *and related facilities*", contrary to the fact that the IAEA safeguards can only be applied to nuclear material.

In p.11, Director General quotes paragraph 20 of INFCIRC/153, that *the State party to the CSA and the Agency* "shall, at the request of either, consult about any question arising out of the interpretation or application of [the CSA]". However, three lines later he speaks about interpretation matters between *the State party concerned and the Secretariat*, therefore basically equating the Agency and the Secretariat. This runs counter to what constitutes the basic understanding existing ever since the IAEA was established – the Agency is Member States and the Secretariat, not the Secretariat alone. It should also be noted that, different from DG Grossi's statement, a clear distinction between the Secretariat and the Agency was made in GOV/INF/347 by DG Eklund.

This being said, Director General's June Board NNP Statement did not fully and adequately cover the AUKUS submarine project and therefore can't serve as a basis for the development of the verification formula for future Australian submarines procured with a very elaborate assistance from the two Nuclear-Weapon-States.

III. What makes the the AUKUS nuclear submarine cooperation such a particular case from the IAEA safeguards standpoint?

First, the essence of AUKUS is that the United States and the United Kingdom, as Nuclear-Weapon-States, decided to conduct nuclear submarine cooperation with Australia, a Non-Nuclear-Weapon-State and their military ally, involving transfer of tons of weapon-grade HEU. This is precedent-setting. Any potential arrangement on AUKUS will have a profound impact on all similar cooperation in the future, and therefore it requires, first and foremost, development of a concept.

Second, taking into account the historical practice of the Agency in strengthening the safeguards system, the issue of AUKUS should be discussed by all interested Member States through a transparent, open and inclusive intergovernmental process, following the tradition of inclusiveness and consensus. The role of Member States in this process is embedded in the relevant fundamental documents, notably the IAEA Statute and INFCIRC/153.

Third, any potential arrangement on AUKUS should entail application of IAEA verification measures not to one, but to three Member States – Australia, the United Kingdom and the United States. In his NNP Statement Director General R.Grossi suggests (p.4) that, from the safeguards point of view, it doesn't matter whether the nuclear material for submarines has been produced domestically or imported. However, the material would need to be verified before it is closed in the reactor core, and this should imply some amount of verification measures in the supplying Nuclear-Weapon-States.

IV. An arrangement under Article 14 of the CSA for AUKUS will require development of a concept

It is important to note that an arrangement under Article 14 on non-application of safeguards to nuclear material to be used in non-peaceful activities (or "non-proscribed military purposes") involving transfer of highly-enriched nuclear material from two NPT Nuclear-Weapon-States to one Non-Nuclear-Weapon-State will inevitably be a document of a conceptual nature. It remains unclear how the language used in Article 14 may accommodate that transfer. What is certainly clear is that verification measures should be applied not only to Australia alone, but to all three States involved, which makes this challenge to the safeguards system even more complex and amplifies the conceptual nature of whatever arrangement is to be developed.

To those who argue that the Article 14 arrangement is covered by the CSA already approved by the Board, it should be taken into account that this future arrangement, in nature, is not by any means a practical arrangement. The relevant analogy for a practical arrangement would be, for instance, Subsidiary Arrangements to the CSA – with their content clearly defined and related measures explicitly written into the CSA itself. However, there is a massive

difference between that and an implementation document to the CSA, which Article 14 arrangement, once formulated, will certainly be.

V. The discussion on AUKUS and Article 14 is only the beginning of a long intergovernmental process

In history of the Agency all new concepts in safeguards application were subject to an inclusive discussion among interested Member States.

Creating a negative precedent with the future arrangement between AUKUS and the IAEA risks threatening the universality of approaches to safeguards application, while "privatization" of the IAEA by those States that have majority at the Board will negatively impact the effectiveness of the IAEA safeguards system as a whole in the long run. Therefore, it is essential to ensure the discussion of the matter among Member States with a view to its subsequent adoption by consensus. The most fit for purpose would be the discussion at the Board of Governors under a standing agenda item. Then, as appropriate, additional supporting formats may be created, inter alia, a committee of the Board of Governors, an open-ended working group, or an international group of experts, subject to consensual understanding and agreement by the Board of Governors. Relevant practice exists at the Agency for all the mentioned options.