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Communication de la mission permanente de la République populaire de Chine auprès de l'Agence

1. Le 29 mai 2024, le Secrétariat a reçu de la mission permanente de la République populaire de Chine auprès de l'Agence une note verbale, accompagnée d'une pièce jointe.
2. Conformément à la demande qui y est formulée, la note verbale et sa pièce jointe sont reproduites ci-après pour l'information de tous les États Membres.

MISSION PERMANENTE
DE LA RÉPUBLIQUE POPULAIRE DE CHINE
AUPRÈS DE L'OFFICE DES NATIONS UNIES
ET DES AUTRES ORGANISATIONS INTERNATIONALES
À VIENNE

N° CPMV/2024/71

La mission permanente de la République populaire de Chine auprès de l'Office des Nations Unies et des autres organisations internationales à Vienne présente ses compliments au Secrétariat de l'Agence internationale de l'énergie atomique et a l'honneur de lui présenter ci-après le résumé de l'atelier intitulé « AUKUS : étude de cas sur l'évolution des garanties généralisées de l'AIEA », qu'elle a organisé le 10 mai 2024 au Centre international de Vienne. La mission permanente de la Chine espère que la présente note et le résumé qui l'accompagne seront dûment distribués en temps voulu à l'ensemble des États Membres, sous la forme d'une circulaire d'information.

La mission permanente de la République populaire de Chine auprès de l'Office des Nations Unies et des autres organisations internationales à Vienne saisit cette occasion pour renouveler au Secrétariat de l'AIEA l'assurance de sa très haute considération.

[sceau]

Vienne, le 23 mai 2024

Secrétariat
de l'AIEA

Résumé du Président¹

AUKUS : étude de cas sur l'évolution des garanties généralisées de l'AIEA

Atelier organisé par la mission permanente de la Chine

Salle CR-1, CIV 10 mai 2024

Note : Le présent résumé a été établi pour information en vue de la réunion du Conseil des gouverneurs de juin 2024, ainsi que pour faciliter un processus de discussion intergouvernementale dans le cadre de l'AIEA sur le programme AUKUS d'acquisition de sous-marins nucléaires. L'objectif est que les États Membres prennent davantage conscience de la sensibilité et de la complexité des questions de garanties liées à toute application du paragraphe 14 du document INFCIRC/153 (Corr.).

Le 10 mai, un atelier intitulé « **AUKUS : étude de cas sur l'évolution des garanties généralisées de l'AIEA** » a été organisé par la mission permanente de la Chine au Centre international de Vienne (l'ordre du jour et les présentations complètes figurent en pièces jointes). Plus de 100 représentants d'une cinquantaine d'États Membres de l'Agence internationale de l'énergie atomique (AIEA) et d'académies y ont participé. S. E. l'Ambassadeur Li Song, Représentant permanent de la République populaire de Chine, a formulé des remarques liminaires. Le Représentant résident de l'Australie auprès de l'AIEA, S. E. l'Ambassadeur Ian Biggs, était également présent et a fait part de ses vues.

Après les discussions tenues lors du premier atelier sur AUKUS organisé par la mission permanente de la Chine il y a un an, l'atelier de cette année s'est concentré sur divers aspects de la coopération proposée dans le cadre d'AUKUS concernant les sous-marins nucléaires et sur ses implications pour le système de garanties généralisées de l'Agence. Quatre experts ont fait des présentations, à titre personnel, et ont formulé des évaluations et des commentaires :

- M^{me} Laura Rockwood (chargée de recherche principale au Centre de Vienne pour le désarmement et la non-prolifération, ancienne cheffe de la Section de la non-prolifération et des organes directeurs du Bureau des affaires juridiques de l'AIEA) a fait une présentation sur le thème « La tradition des garanties à l'AIEA : cas typiques et historiques dans l'évolution du système de garanties de l'AIEA, y compris les arrangements liés à la non-application ou aux procédures spéciales de garanties » ;

¹ Ce résumé du Président est établi à des fins d'information uniquement ; il reflète les principaux sujets soulevés et les domaines de discussion qui étaient pertinents eu égard au thème annoncé, il ne vise pas à obtenir l'accord de tous les participants et ne prétend pas être exhaustif.

- M. Anton Khlopkov (directeur du Centre des études sur l'énergie et la sécurité à Moscou) a abordé le thème « Le transfert de matières nucléaires de qualité militaire dans le cadre d'AUKUS : nouvelle pratique, nouveau champ d'application et nouvelle évolution des garanties de l'AIEA » ;
- M. Tariq Rauf (ancien chef de la Section de la coordination des politiques de vérification et de sécurité, bureau faisant rapport au Directeur général de l'AIEA) a présenté une analyse sur le thème « Le paragraphe 14 et AUKUS : est-il nécessaire/possible de disposer d'une méthode universellement applicable ? Comment définir des méthodes de contrôle, des objectifs de garanties, des mesures de contrôle non discriminatoires et universellement applicables, et des procédures spéciales ? » ;
- M. Guo Xiaobing (chargé de recherche principal à l'Institut chinois des relations internationales contemporaines) s'est exprimé sur le thème « Élaboration d'un arrangement de garanties relatif à AUKUS : rôle du Secrétariat, du Conseil des gouverneurs et des États Membres ».

Quatre autres experts et universitaires, invités en tant que commentateurs et s'exprimant à titre personnel, ont apporté des contributions importantes à la discussion :

- M. Vilmos Cserveny (ancien Sous-Directeur général de l'AIEA) ;
- M. Nikolai Khlebnikov (représentant russe auprès du Groupe consultatif permanent sur l'application des garanties de l'AIEA (SAGSI), ancien directeur de la Division de l'appui technique de l'AIEA) ;
- M. Naeem Ahmad Salik (directeur exécutif de l'Institut de vision stratégique à Islamabad) ;
- M. Zhao Xuelin (chercheur associé à l'Institut chinois de stratégie de l'industrie nucléaire).

M. Ionut Suseanu (chef de la Section de la non-prolifération et des organes directeurs du Bureau des affaires juridiques de l'AIEA) a présenté, au nom du Secrétariat de l'AIEA, les aspects juridiques relatifs aux points de l'ordre du jour de l'atelier. Les participants à l'atelier ont discuté de plusieurs points soulevés dans sa présentation. (La présentation intitulée « Éléments présentés par le Secrétariat à l'atelier du 10 mai 2024 », telle que fournie par M. Suseanu, figure en pièce jointe).

Lors de l'atelier, les points de vue suivants, entre autres, tels que résumés par le Président, ont été mis en exergue par les présentateurs et les intervenants.

1. La coopération dans le cadre d'AUKUS signifie que, sur la base de considérations géopolitiques, pour la toute première fois, deux États dotés d'armes nucléaires envisagent une coopération en matière de sous-marins nucléaires avec un État allié sur le plan militaire non doté d'armes nucléaires. Cette coopération implique le transfert de réacteurs de propulsion nucléaire navale alimentés par de grandes quantités d'uranium hautement enrichi (UHE) de qualité militaire, qui seraient de l'ordre de 4 tonnes d'UHE à 93 %-97 % et suffiraient à produire 160 dispositifs nucléaires explosifs.
2. À l'évidence, la coopération en matière de sous-marins nucléaires dans le cadre d'AUKUS ne constitue pas un projet de garanties ordinaire et pacifique entre des États Membres de l'AIEA non dotés d'armes nucléaires et le Secrétariat de l'Agence. En outre, le projet AUKUS se distingue fondamentalement de la mise au point par des États non dotés d'armes nucléaires, par leurs propres moyens, de sous-marins à propulsion nucléaire alimentés en uranium faiblement enrichi (UFE), en particulier pour ce qui est des activités de vérification futures.
3. L'application et la mise en œuvre du paragraphe 14 du document INFCIRC/153 (Corr.) relatif à la non-application des garanties de l'Agence aux activités militaires non interdites posent de nouveaux enjeux. Cela créerait un précédent important remettant en cause l'exactitude et l'exhaustivité des déclarations d'activités nucléaires faites par des États non dotés d'armes nucléaires (ENDAN) au sens du TNP, ainsi que l'intégrité du régime international de non-prolifération nucléaire qui repose sur le Traité sur la non-prolifération des armes nucléaires (TNP).
4. La non-application des garanties de l'Agence à plusieurs quantités significatives d'uranium hautement enrichi de qualité militaire utilisées dans des sous-marins à propulsion nucléaire d'attaque est sans précédent. Si elle n'est pas traitée de manière ouverte, transparente, responsable et inclusive, cette question pourrait nuire à l'intégrité et à l'autorité du système des garanties de l'AIEA et des pratiques de vérification connexes.
5. L'application envisagée du paragraphe 14 du document INFCIRC/153 (Corr.) soulève de nombreuses questions de fond ainsi que des questions juridiques et techniques en raison du manque de clarté et de l'absence de définitions, du fait de la mauvaise rédaction et de l'inexactitude d'éléments clés du paragraphe 14. Le champ d'application et les limitations concernant l'application du paragraphe 14 n'ont jamais été définis ni précisés et n'ont par conséquent jamais été examinés ni évalués par le Conseil des gouverneurs de l'AIEA à des fins d'approbation ou de la prise de « mesures appropriées ». L'examen juridique de cette question par le Secrétariat ayant été limité, il ne fournit aucun précédent ni aucune donnée d'expérience concrète qui permettrait

d'aborder les pratiques et les préoccupations concernant la mise en œuvre d'arrangements au titre du paragraphe 14 par des ENDAN qui sont Parties au TNP.

6. Les conclusions relatives aux garanties de l'AIEA s'appuient sur des normes fondées sur des preuves. Par conséquent, tout arrangement prévoyant la non-application des garanties aux activités militaires non interdites doit être transparent et justifiable devant l'Agence (Conférence générale et Conseil des gouverneurs) et devant tous les autres États ayant un accord de garanties généralisées (AGG) en vigueur. La Conférence générale de l'AIEA n'a pas encore examiné cette question et n'est pas encore parvenue à un accord sur la mise en œuvre des AGG, ce qui souligne l'urgence de poursuivre le dialogue.

7. Le Secrétariat et les États Membres de l'AIEA devraient envisager d'établir ou d'utiliser divers cadres de discussion pour contribuer à l'élaboration d'une interprétation commune des « arrangements » mentionnés comme nécessaires au titre du paragraphe 14 des AGG, notamment des comités spéciaux du Conseil, des experts techniques internationaux indépendants, le Groupe consultatif permanent sur l'application des garanties (SAGSI), ainsi que des séances d'information et des réunions techniques sur la non-application des garanties dans le contexte du programme de sous-marins nucléaires dans le cadre d'AUKUS. Toutes les parties concernées et tous les États Membres intéressés devraient être associés aux activités susmentionnées.

8. Avant que des ENDAN puissent utiliser des matières nucléaires non soumises aux garanties et destinées à des activités nucléaires militaires non interdites, il convient de parvenir à une interprétation commune des concepts, des termes et des implications de toute application du paragraphe 14 du document INFCIRC/153 (Corr.). Indépendamment de sa forme finale, tout arrangement conclu doit être conçu de manière à ne pas nuire à la crédibilité et à l'universalité de l'application des AGG.

9. Les participants ont remercié l'Ambassadeur Li Song pour l'organisation de cet atelier et pour ses remarques liminaires. Ils ont en outre salué la présence et la déclaration de l'Ambassadeur Ian Biggs, Représentant résident de l'Australie auprès de l'AIEA, notant qu'un dialogue régulier, ouvert et transparent entre les partenaires AUKUS, les États Membres et le Secrétariat était urgent et essentiel, et ont encouragé les partenaires AUKUS à participer à de futurs ateliers et discussions sur le paragraphe 14 du document INFCIRC/153 (Corr.). Au cours de l'atelier, il a également été souligné qu'il serait utile de continuer à organiser de tels séminaires.

La complexité et le caractère polémique de la coopération dans le cadre d'AUKUS ont été illustrés par la diversité des points de vue et des préoccupations exprimés lors de l'atelier.

1. L'atelier a permis de revenir brièvement sur l'historique des négociations relatives au paragraphe 14 du document INFCIRC/153 (Corr.) et sur les différentes approches adoptées dans la pratique par l'AIEA pour élaborer des procédures et des orientations sur des questions de garanties. Certains ont estimé que l'Agence n'avait mené que très peu de réflexions stratégiques approfondies par le passé sur cette question et qu'on ne disposait d'aucune expérience pratique de l'interprétation ou de la mise en œuvre par les parties au TNP et le Secrétariat de l'Agence d'arrangements au titre du paragraphe 14. D'autres ont fait valoir que la propulsion nucléaire navale n'était interdite ni par le TNP ni par le document INFCIRC/153 (Corr.). D'autres encore ont souligné que par le passé les États Membres et les experts techniques, notamment le SAGSI, avaient joué un rôle crucial dans le traitement de questions de garanties inédites et complexes.

2. Les avis sur l'application du paragraphe 14 sont restés partagés. Certains ont laissé entendre que compte tenu de la nature de la collaboration en matière de sous-marins à propulsion nucléaire dans le cadre d'AUKUS et du fait que celle-ci créait un précédent, la question devait en premier lieu être débattue au Conseil, que la prise de décisions devait se faire par consensus et qu'il était essentiel de travailler en toute transparence et dans le cadre d'accords juridiques pour préserver le régime de non-prolifération nucléaire. D'autres ont fait valoir que le paragraphe 14 avait été inclus par les négociateurs pour veiller à ce que l'exclusion des garanties de matières nucléaires utilisées à des fins militaires de cette nature ne serve pas de brèche permettant le détournement de matières nucléaires dans le cadre d'un programme d'armement. Ils ont fait remarquer que cette considération avait été prise en compte dans presque tous les AGG conclus par l'AIEA et que la numérotation des paragraphes du document INFCIRC/153 (Corr.) correspondait globalement aux numéros des articles des AGG concernés. Certains ont souligné que la question de savoir qui avait le droit de se prononcer sur l'interprétation du paragraphe 14 et de son application restait en suspens.

3. À cet égard, le rôle du Secrétariat, du Conseil des gouverneurs et des États Membres concernant l'interprétation et l'élaboration d'arrangements relatifs aux garanties dans le contexte d'AUKUS est demeuré un sujet de controverse lors des débats. Certains ont souligné que les arrangements devraient faire l'objet de discussions et d'un consensus parmi les États Membres de l'AIEA, notamment au sein du Conseil des gouverneurs, afin de préserver le caractère universel et l'efficacité du système des garanties de l'Agence. D'autres, en revanche, ont insisté sur le fait que le Conseil des gouverneurs devrait jouer un rôle plus actif dans l'élaboration d'une interprétation sur

le fond et sur le plan technique concernant le paragraphe 14. Certains ont fait valoir que le paragraphe 14 n'exigeait pas, à première vue, l'approbation du Conseil, mais qu'il ne l'excluait pas non plus, et que par conséquent, tout arrangement de cette nature serait soumis au Conseil afin qu'il prenne les « mesures appropriées » et que c'était au Conseil qu'il revenait de décider quelles seraient les « mesures appropriées » (à ce propos, il a été rappelé que le Secrétariat de l'AIEA avait eu tendance à estimer, par le passé, qu'il convenait qu'un arrangement visé à l'article 14 b) soit soumis par le Secrétariat au Conseil des gouverneurs et qu'il nécessiterait l'approbation de ce dernier). Au contraire, certains ont continué à faire valoir que les questions d'interprétation et d'application de l'accord de garanties généralisées, notamment du paragraphe 14, étaient intrinsèquement des questions politiques et que tous les États Membres de l'AIEA et les États parties au TNP devaient y être associés.

4. En ce qui concerne les implications de la coopération en matière de sous-marins à propulsion nucléaire dans le cadre d'AUKUS, certains ont estimé que compte tenu du caractère sans précédent de la collaboration AUKUS, qui suppose le transfert de grandes quantités d'uranium hautement enrichi de qualité militaire non soumises aux garanties, toute méthode de contrôle qui serait élaborée devrait définir l'application future du paragraphe 14 aux programmes d'acquisition de sous-marins à propulsion nucléaire. Par conséquent, la tenue de discussions professionnelles techniques et gouvernementales, ouvertes à tous, entre les États Membres dans le cadre de l'Agence est jugée nécessaire, voire essentielle. Certains se sont dit préoccupés par les potentielles implications des programmes de sous-marins à propulsion nucléaire alimentés par de l'UHE concernant la mise en œuvre à l'avenir des politiques de réduction au minimum de l'utilisation de l'UHE dans le cadre d'applications nucléaires, politiques qui devraient en principe recevoir un large soutien au niveau ministériel à la prochaine Conférence internationale sur la sécurité nucléaire (ICONS2024) organisée à Vienne par l'AIEA.

La divergence des vues susmentionnées met en lumière l'importance et la nécessité d'un processus de discussion intergouvernemental complet, inclusif et transparent sur AUKUS. Les discussions menées dans le cadre de l'étude de cas consacré à AUKUS et à l'« arrangement » sur la non-application des garanties qui est envisagé ne constituent que le début de ce processus. Les questions ci-après ont été posées au cours de l'atelier. Elles appellent une réflexion et une discussion plus approfondies, auxquelles tous les États Membres intéressés de l'AIEA sont invités à participer :

- Qui jouit du droit ou de l'autorité permettant de se prononcer sur l'interprétation du paragraphe 14 du document INFCIRC/153 (Corr.) ? Le Secrétariat de l'AIEA

a-t-il autorité pour interpréter les dispositions du TNP sans la participation des États Membres ? En a-t-il le mandat ?

- Comment définir « une activité militaire non interdite » ? Qui serait chargé d'établir cette définition ?
- Quelle définition donner à « l'Agence » : s'agit-il des États Membres, du Directeur général, du Secrétariat, ou bien s'agit-il de l'ensemble formé par les États Membres, le Directeur général et le Secrétariat ?
- Pourquoi le Conseil et les États Membres n'ont-ils pas joué un rôle moteur dans l'élaboration d'une interprétation sur le fond et sur le plan technique concernant l'application du paragraphe 14 du document INFCIRC/153 (Corr.) ?
- Quelles pourraient être les méthodes de contrôle crédibles et les objectifs techniques des garanties connexes pour les réacteurs et le combustible utilisés dans le cadre de la propulsion nucléaire navale à l'UHE ?
- Quelle sera l'incidence sur le fait de tirer une conclusion élargie au titre du protocole additionnel si un ENDAN au sens du TNP fait valoir la non-application des garanties à des matières nucléaires devant être utilisées dans des activités non pacifiques au titre du paragraphe 14 du document INFCIRC/153 (Corr.) ?
- Comment l'accord de garanties généralisées traiterai-t-il la question du transfert vers un ENDAN au sens du TNP de réacteurs de propulsion nucléaire navale alimentés à l'UHE ?
- Quelles mesures de contrôle techniques s'appliqueront aux activités de maintenance qui seront menées sur les sous-marins à propulsion nucléaire dans les ports d'Australie à compter du second semestre 2024 ?
- Comment l'AIEA déterminerait-elle la crédibilité et l'exactitude de la « connaissance des secrets militaires ayant trait à cette activité » et de « l'utilisation des matières nucléaires dans cette activité » ? Un accès serait-il donné à l'AIEA pour la vérification des renseignements descriptifs (VRD) concernant les réacteurs nucléaires navals ?
- Au paragraphe 14 c), la référence selon laquelle les arrangements relatifs à l'établissement des rapports n'impliquent pas une approbation de l'activité militaire ni la connaissance des secrets militaires ayant trait à l'utilisation des matières nucléaires dans cette activité non soumise aux garanties implique-t-elle que l'État n'est pas tenu d'informer l'Agence de la prétendue activité nucléaire (qu'il s'agisse de propulsion nucléaire navale ou d'autre chose) ?
- Qui déciderait de ce qui relève de la connaissance de secrets militaires ? Sur quels critères se baserait-on ?
- L'application des garanties au projet de sous-marins dans le cadre d'AUKUS peut-elle être considérée comme une « assistance » technique et ce type d'« assistance » contreviendrait-il à l'article II du Statut de l'AIEA ?

- Quelles mesures de contrôle l'Australie devrait-elle mettre en œuvre pour garantir la responsabilité et la transparence de son projet de sous-marins à propulsion nucléaire, étant donné en particulier que quatre tonnes ou plus d'uranium hautement enrichi de qualité militaire seront utilisées ?
- Comment l'AIEA vérifierait-elle l'exactitude et l'exhaustivité de la déclaration de l'État sur la quantité totale et la composition isotopique des matières nucléaires non soumises aux garanties utilisées dans le cadre d'une activité militaire non interdite ?
- L'interprétation de l'arrangement de garanties à élaborer dans le cadre d'AUKUS conformément au paragraphe 14 relève-t-elle de la compétence exclusive du Secrétariat ou du Conseil ?
- Quelles seraient la portée et la teneur des arrangements relatifs à l'établissement de rapports dans le cadre de la non-application des garanties aux activités militaires non interdites ?
- Comment évaluer les difficultés que présente le projet AUKUS, qui est sans précédent, pour le système de garanties existant de l'AIEA, notamment en ce qui concerne la pratique habituelle de l'Agence de tenir des consultations inclusives, transparentes et ouvertes à tous les États Membres intéressés sur toutes les questions relatives aux garanties, à la sûreté et à la sécurité, ainsi que la tradition de consensus sur les questions relatives à chaque étape importante de l'évolution des garanties de l'AIEA ?
- Quel appui les États Membres intéressés pourraient-ils apporter au Directeur général et au Secrétariat pour faciliter la tenue de consultations et de réunions d'information techniques ouvertes à tous sur les questions liées à l'interprétation et à l'application du paragraphe 14 ?
- Quel rôle le Secrétariat devrait-il jouer pour faciliter le processus d'examen intergouvernemental concernant AUKUS ?
- L'arrangement de garanties relatif à la coopération en matière de sous-marins nucléaires dans le cadre d'AUKUS constituera-t-il un précédent et servira-t-il de modèle à d'éventuelles futures collaborations de même nature ?

AUKUS: A Case Study about the Development of IAEA Comprehensive Safeguards

(VIC CR-1, 14:00 10 May)

Opening remarks by the Moderator

Introductory remarks

H.E. Amb. Li Song, *Permanent Representative of the People's Republic of China to the United Nations(Vienna)*

H.E. Amb. Ian David Grainge Biggs, *Permanent Representative of Australia to the United Nations(Vienna)*

Panel 1: IAEA safeguards tradition: typical and historical cases for the development of IAEA safeguards system, including arrangements related to the non-application or special procedures of safeguards.

Panelist: Laura Rockwood, *Senior Fellow of the VCDNP, Former Section Head for Non-Proliferation and Policy Making in the Office of Legal Affairs of the IAEA*

Panel 2: AUKUS and its transfer of weapon-grade nuclear material: new practice, new territory and new development of IAEA safeguards.

Panelist: Anton Khlopkov, *Director of the Center for Energy and Security Studies, Russia*

Panel 3: Article 14 and AUKUS: whether an universally applicable method is necessary/feasible? How to define non-discriminatory and universally applicable safeguards approaches, safeguards objectives, safeguards measures, and special procedures?

Panelist: Mr. Tariq Rauf, *Former Head of the Verification and Security Policy Coordination Office of the IAEA*

Panel 4: Developing safeguards arrangement on AUKUS: role of the Secretariat, Board of Governors and Member States.

Panelist: Guo Xiaobing, *Senior Fellow of the China Arms Control and Disarmament Association (on-line)*

Commentators

Mr. Vilmos Cserveny, *Former Assistant Director General of the IAEA*

Mr. Nikolai Khlebnikov, *Russian Representative at Standing Advisory Group on Safeguards Implementation of the IAEA, Former Director of the Division of Technical Support of the IAEA*

Mr. Naeem Ahmad Salik, *Executive Director of Strategic Vision Institute, Pakistan* (on-line)

Mr. Zhao Xuelin, *Research Associate of China Institute of Nuclear Industry Strategy* (on-line)

Representative of IAEA Secretariat

Mr. Ionut Suseanu, *Head of the Non-Proliferation and Policy-Making Organs Section, Office of legal Affairs of the IAEA*

Q&A session**Conclusion by the Moderator**

**Introductory Remarks by H.E. Ambassador Li Song
at the Workshop on “AUKUS: A Case Study about the
Development of IAEA Comprehensive Safeguards”**

Distinguished ambassadors, experts and colleagues,

Thank you for joining us at this workshop. A year ago, the Chinese Mission held the first workshop on AUKUS at the VIC, which played an useful role in facilitating the intergovernmental discussion process within the framework of the IAEA. Building on that, and taking into consideration of the discussions among member states over the past year, today's workshop is to provide again an open and inclusive platform for the continued and in-depth discussions on issues regarding AUKUS, focusing on a case study about the development of IAEA comprehensive safeguards regime.

I thank all the panelists and commentators who join us today. Look forwards to your contributions to our workshop. I would like to welcome all the ambassadors, experts and colleagues attending today. I want to extend a special welcome to H.E. Amb. Biggs of Australia for joining us and sharing his views. I also welcome Mr. Suseanu from the IAEA Secretariat. I always believe that Secretariat should engage more and listen carefully to the views, concerns and propositions of wider range of member states on AUKUS, and to maintain communication and discussion with us.

Over the past two years, AUKUS has been an important and sensitive issue of wide concern to the international community. As we all know, the AUKUS cooperation is for the first time that two nuclear-weapon States, based on geopolitical purposes, have carried out nuclear submarine cooperation with a non-nuclear-weapon military ally and involves the transfer of nuclear power reactors and a large amount of weapons-grade HEU. This cooperation is clearly not a routine and peaceful safeguards

project between IAEA non-nuclear-weapon member States and the Secretariat. And it is fundamentally different from the indigenous development of nuclear-powered submarines by non-nuclear-weapon member States.

On the basis of the above-mentioned important factors involved in the AUKUS project, China is of the view that the IAEA Secretariat and all Member States, including the AUKUS countries, should view the unique and significant impact of the AUKUS cooperation to the integrity, effectiveness, authority and universality of the NPT and IAEA regimes in a serious and responsible manner. Bering this in mind, it is also necessary to conduct in-depth discussions at the technical and legal levels on various aspects of AUKUS within the framework of the IAEA.

The AUKUS partners insist to say that AUKUS should be regarded as a routine safeguards project. After in-depth discussions within IAEA since last year, it is clear that not all the IAEA Member States believe so. No matter what kind of safeguards arrangements are to be reached between the AUKUS partners and IAEA Secretariat, these arrangements will surely bring the Agency' s safeguards practice to new territories and uncharted waters, and setting important example or precedents. I hope that this workshop will be conducive to a better understanding on the complicity of the above aspects of AUKUS in the context of IAEA, as well as on the importance and necessity of upholding the IAEA tradition of inclusiveness and consensus on issues concerning the development of IAEA safeguards mechanism. Only in this way will it be possible to continue to ensure the authority, effectiveness and universality of the IAEA safeguards mechanism, as well as the further efforts to promote the universality of this regime.

I would also like to emphasize that today' s workshop is open to all the IAEA member states. It is not a campaign about taking sides. All the IAEA member states and the Secretariat should stand on the side of safeguarding the authority and effectiveness of the NPT regime and IAEA safeguards mechanism. In this regard, I invite Amb. Biggs to side with me. Let' s work together in the intergovernmental discussion process,

respect and listen carefully to each other's views and concerns, and address the challenge of AUKUS and the issue of the development of IAEA safeguards regime in the most responsible and professional manner.

I do hope with the support and participation of all participants, this workshop will make new contributions to the intergovernmental discussion process. Looking forward to benefiting from your wisdoms, insights and expertise.

Thank you!

Australia's Naval Nuclear Propulsion Program

Remarks by HE Ambassador Ian Biggs, Permanent Representative of Australia to the IAEA at 'AUKUS: A Case Study about the Development of IAEA Comprehensive Safeguards'

10 May 2024

Excellencies, colleagues

I was invited by my friend Ambassador Li to speak on AUKUS partners' cooperation and our engagement with the International Atomic Energy Agency Secretariat, during the introductory segment of this workshop.

You won't be surprised to know that I had to think about the invitation, for it is unusual for one country to direct and organise, and I quote, 'a platform for a case study', targeted at another country's sovereign endeavour and bilateral engagement with the IAEA.

But transparency is almost always good, and I really would be concerned if there was such an event about us, without us.

So, I decided to accept the invitation and address a number of fundamental points in connection with the topics which feature on the agenda of this workshop.

If you will allow me, I take this opportunity to explain:

- what AUKUS is, and what it isn't;
- the legal framework, on the basis of which the IAEA is currently progressing consultations on naval nuclear propulsion separately with Australia and Brazil; and
- the importance of respecting the technical authority and independence of the IAEA in implementing its safeguards mandate.

First, what is AUKUS?

AUKUS is a technology and capability sharing partnership between Australia, the United Kingdom and the United States, three countries with longstanding defence ties.

Australia is facing an extraordinarily rapid military build-up by others in our region, the Indo-Pacific. A build up that is occurring with limited transparency.

In this environment, we see enhanced capabilities as necessary for reducing the risk of conflict.

Through AUKUS, Australia is investing transparently to enhance our ability to make a credible contribution to maintaining strategic balance, and the rules and norms that have long supported stability in our region.

This is only one component of Australia's overall approach, which also supports the region's aspirations for economic development, critical infrastructure, and the clean energy transition.

Transparency, as well as strict and full adherence to our international obligations is key to our approach.

These have been and will continue to be core principles underpinning Australia's participation in the AUKUS partnership.

And I hope that you will recognise that our approach has been fully consistent with these principles.

The AUKUS partnership's centrepiece, which we call AUKUS Pillar One, is Australia's planned acquisition of conventionally armed, nuclear-powered submarines.

Australia has had submarines since the 1910s – 110 years. Through AUKUS, Australia will work to transition our existing fleet of six diesel-powered submarines to eight conventionally armed, nuclear-powered submarines.

Importantly, cooperation on Pillar One – naval nuclear propulsion – is and will remain exclusively trilateral between Australia, the United Kingdom and the United States.

It will remain distinct from the other, separate part of AUKUS, known as Pillar Two Advanced Capabilities, which translates cutting edge technology into practical capabilities.

Pillar Two, and any cooperation with additional partners on Pillar Two projects, will not include naval nuclear propulsion information, technology, or materials.

Naval nuclear propulsion itself is not a new capability, neither globally nor in our region.

There are over 40 countries worldwide that cumulatively operate nearly 500 naval submarines – around 135 of which are nuclear-powered.

We recognise that the acquisition of this capability by a non-nuclear-weapon state is new and carries with it a responsibility to ensure that the highest standard of non-proliferation is met.

I expect you will hear today that Australia's acquisition of this capability on the basis of Article 14 is 'controversial'.

This is a curious assertion.

So, what is Article 14?

Director General Grossi addressed this question very clearly in his statement to the International Atomic Energy Agency Board in June 2023, which I invite you all to revisit.

The DG stated:

- It is a provision originally approved and reflected in paragraph 14 of INFCIRC 153.
- It was developed with the specific intent to address the use of nuclear material required to be safeguarded under a safeguards agreement, whether produced domestically or imported, for naval nuclear propulsion.
- And it is part of the legal framework set out in safeguards agreements concluded on the basis of INFCIRC 153 and, as such, included in Australia's bilateral CSA – and the other CSAs approved by the Board of Governors in the past 50 years – as well as the quadripartite safeguards agreement of Argentina and Brazil.

The DG then set out how, once relevant provisions had been invoked, the IAEA had worked methodically to develop approaches within the applicable legal frameworks, with Canada in 1988, Brazil since 2021 and Australia since 2023.

Of course, it is a process that involves complex technical matters, as the DG has acknowledged.

This process is about developing a robust safeguards and verification approach that ensures that the IAEA can continue to meet its technical objectives – no diversion of nuclear material, no misuse of nuclear facilities, and no undeclared nuclear material or activity.

The technical considerations will reflect factors that are specific to the naval nuclear propulsion program concerned.

So that it is fit-for-purpose, rather than one-size-fits-all.

But to question the applicability of Article 14, as a well-established treaty provision, simply because its application and implementation involve complex technical issues, risks going down a dangerous path.

In this context, I want to highlight that all Member States share an interest in protecting their fundamental right to engage bilaterally and in confidence with the Agency on the implementation of their safeguards agreements.

Which brings me to my final point on **IAEA safeguards**.

I was pleased to hear Ambassador Li's reference to a commitment to preserving the nuclear non-proliferation system.

Those words describe what lies at the heart of our collective efforts here in Vienna: to preserve and strengthen the non-proliferation architecture of which the IAEA safeguards system is a fundamental pillar.

Over the system's more than fifty-year history, through the changing technological and international landscape, the IAEA has worked continuously to adapt and direct its technical work to meet its practical goal of achieving safeguards objectives in the most effective way.

Member States have certainly contributed to these efforts and have employed a range of mechanisms over the years in doing so.

But colleagues, our constructive contribution, while important, must not extend to Member States' seeking to direct the IAEA on how to do its work.

If we accept that the IAEA's technical role is an integral part of the non-proliferation system, then it becomes our responsibility to ensure that any contribution we make as Member States respects the independence, mandate and technical authority of the IAEA.

In the context of naval nuclear propulsion, I recall the DG has specifically said that the IAEA has, and I quote:

- “significant experience in applying safeguards... to many types of facilities, including reactors using different types of fuel”; and
- “the necessary experience to develop the arrangements related to the use of nuclear material for naval nuclear propulsion in accordance with the Statute and the relevant safeguards agreements”.

This is why Australia has expressed serious concern about references to ‘an intergovernmental process’, if it is intended to be a process subjecting the IAEA's technical work to the political deliberations of Member States.

And at the risk of stating the obvious – all Member States share an interest in protecting the IAEA's technical mandate, as we need to rely on its ability to carry out its mandate independently and impartially in these challenging times.

Please allow me to reiterate **Australia's commitment in relation to our naval nuclear propulsion program.**

We are committed to concluding an arrangement under Article 14 that will enable the IAEA to continue to fulfil its technical objectives at all stages of Australia's submarines' lifecycle, and to provide confidence to the international community on the non-diversion of nuclear material.

We remain concerned that a preoccupation with dictating a uniform, one-size-fits-all approach to implementing IAEA safeguards might hamper the IAEA's ability to meet its technical objectives.

In fact, given state-specific variations between naval nuclear propulsion programs, we strongly doubt that such an approach would even be feasible for enabling the IAEA to achieve all of its technical objectives.

When our Article 14 arrangement comes before the Board of Governors, in the fullness of time, we expect it to be judged on its non-proliferation merits. In other words, on whether it enables the IAEA to fulfil its technical objectives.

Despite the history of our program attracting exaggerated rhetoric, I hope I have given you a sense of the well established legal and policy framework through which we are engaging with the IAEA.

Working transparently and within the framework of our legal agreements is fundamental to the non-proliferation regime we are all committed to protecting here in Vienna.

Once again, I want to express our sincere appreciation for your continuing interest in this matter.

We are very conscious of that interest and we will continue to listen and engage.

We have appreciated expressions of support and confidence that we, AUKUS partners and the IAEA, will get this right.

I also thank you for your messages of appreciation for our efforts to keep you informed.

In accepting Ambassador Li's kind invitation, I was fully cognisant of my limited role in this forum, devised by another delegation, about my country's sovereign endeavour, and my country's bilateral engagement with the IAEA.

But in keeping with our spirit of openness – maybe even 'excessive' transparency – I decided to come and speak today.

We will continue to engage, regularly and transparently, with the IAEA and with the international community – here in Vienna and beyond.

We look forward to providing an update at the June Board and in other fora.

We continue to welcome constructive Board discussions on naval nuclear propulsion on the basis of reports by the DG.

We will continue to provide updates whenever there are substantive developments that fall within the Board's vital remit.

Thank you to Ambassador Li and to you all.

AUKUS: A Case Study about the Development of IAEA Comprehensive Safeguards

Workshop Organized by the Embassy of China

10 May 2024

Provided by Ms. Laura Rockwood

1. Compatibility of nuclear naval propulsion with the NPT and the Agency's Statute

NPT: Nuclear naval propulsion is not prohibited under the NPT. The negotiators explicitly debated the issue and decided NOT to prohibit the use of nuclear material for naval propulsion. Nor is the transfer of high enriched uranium prohibited under the NPT, regardless of its enrichment level. Indeed, HEU has regularly been supplied as fuel for research reactors.

IAEA Statute: Art. II of the Agency's Statute provides that the Agency "shall ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose". The implementation of safeguards does not constitute "assistance" as contemplated under the Agency's Statute. As confirmed in a legal opinion issued during the negotiation of INFCIRC/153¹, the assistance referred to in Article II relates to Agency projects (that is, when materials or other items are made available to a State by the Agency).

Not only is the conclusion of a paragraph 14 arrangement not prohibited by the NPT or the Agency's Statute, such an arrangement is a *sine qua non* for such use: its conclusion is required before a NNWS is permitted to use nuclear material that would otherwise be subject to safeguards in a non-prohibited military nuclear activity.

2. Negotiation history highlights

All comprehensive safeguards agreements concluded by the IAEA are based on INFCIRC/153 (Corr.), negotiated by an open-ended committee of the Board of Governors (Committee 22). Paragraph 14 of INFCIRC/153 was included by the negotiators to ensure that the exclusion from safeguards of nuclear material for such a military use would not serve as a loophole for the diversion of nuclear material to a weapons programme. It is reflected in almost all CSAs concluded by the IAEA, with the paragraph numbers in INFCIRC/153 corresponding, by and large, to article numbers in the actual CSAs.

- Australia: The corresponding provision in Australia's CSA is Article 14.
- Brazil's CSA differs somewhat in that regard, not just insofar as the corresponding provision is found in Article 13:
 - In July 1991, before either Brazil or Argentina became parties to the NPT or the Tlatelolco Treaty, the States concluded a bilateral agreement in which they undertook to use their nuclear material and facilities "exclusively for peaceful purposes". In that text, they also agreed that the use of nuclear energy for the propulsion of any type of vehicle, including submarines, was permitted under their bilateral Agreement, "since propulsion is a peaceful application of nuclear energy."²

¹ COM.22/4.

² INFCIRC/395, Article III.

- Subsequently, the Agency negotiated a CSA with Argentina, Brazil and ABACC (their bilateral inspectorate) – the Quadripartite Agreement (INFCIRC/435). While the text was based on 153, Article 13 refers to “special procedures”, rather than the “non-application of SG”, to reflect: (1) the States’ commitment to accept safeguards on *all* nuclear material in *all* nuclear activities; and (2) their interpretation that, while the use of nuclear material for naval propulsion may be military, it was not “non-peaceful.”
- In addition, unlike other CSAs, Article 13 of the Quadripartite Agreement refers explicitly to the application of special procedures to “nuclear propulsion or operation of any vehicle, including submarines and prototypes, or in such other non-proscribed nuclear activity as agreed between the State Party and the Agency”.
- In the late 1980’s, Canada initiated negotiations on a para. 14 arrangement in connection with its plans to acquire nuclear powered submarines. Although Canada and the Secretariat held extensive discussions, Canada decided in 1989 not to pursue the initiative and no arrangement was concluded between the IAEA and Canada.
- Australia and Brazil are the only countries since then to have initiated negotiations on a paragraph 14 arrangement. Although Iran has also alluded to possible plans to pursue a submarine programme, it has not formally requested the IAEA to conclude such an arrangement.

3. Process

The IAEA has in the past employed a variety of mechanisms in developing procedures and guidance on safeguards-related matters, including:

- Open-ended Committees of the Board of Governors: Committees 22 and 24 on the negotiation of 153 and 540, respectively, and Committee 25 established in 2005 to consider further strengthening safeguards. Committees 22 and 24 were as successful as Committee 25 was unsuccessful.
- Advisory groups appointed by the Director General, including the Standing Advisory Group on Safeguards Implementation (SAGSI).
- Technical working groups convened in collaboration with representatives of relevant States, such as the late 1990s Trilateral Initiative, in which Russia, the US and the IAEA jointly worked on procedures for the verification of fissile material released from weapons programmes.
- External initiatives of its Member States, such as the early 1980s Hexapartite Project, an initiative of the 6 technology holder States, in which the secretariates of the IAEA and Euratom participated, which developed the safeguards approach for commercial gas centrifuge enrichment facilities that has been used since then by the IAEA.
- And, most commonly, bilateral negotiations between the Secretariat and individual States, such as was the case with Canada in connection with its proposed para. 14 arrangement. This is also the approach taken in the negotiation of Subsidiary Arrangements.

So, as to an open-ended committee? While that approach has worked in some cases, it has not in others, with the results being highly dependent on the context and the political environment. Experience suggests that, when dealing with novel and complex technical issues, particularly in a politically volatile environment, there is merit to leaving their resolution to the technical experts.

As regards the role of the Board of Governors, para. 14 does not, on its face, require Board approval; nor does it not preclude it. Two proposals were considered during the negotiation of 153, one which would have required Board approval, and the other which would have required approval by the Director General. Both were rejected by the negotiators on the premise that the IAEA should not be in a position to exercise any policy judgement, or veto over, the non-explosive military nuclear activity or the use of nuclear material in that activity. Ultimately, the text agreed to simply called for conclusion of the arrangement “in agreement with the Agency”.

As indicated by the then-Director General in the 1978 exchange of letters initiated by Australia,³ and reiterated by the current Director General, any such arrangement will be provided to the Board for “appropriate action”. Ultimately, it is for the Board to decide on what the “appropriate action” may be.

4. The arrangement

The non-application of routine safeguards under a CSA can only be while the nuclear material is in the non-proscribed military nuclear activity, and safeguards are to be reapplied as soon as the nuclear material is reintroduced into a peaceful nuclear activity. While the drafters of INFCIRC/153 did not agree on a definition of either “peaceful” or “non-peaceful”, they did agree that certain activities were not inherently military and therefore not entitled to exclusion, specifically:

- Activities such as transport and storage; and
- Activities or processes that merely change chemical or isotopic composition (e.g. enrichment and reprocessing).⁴

As Australia will not be engaged in enrichment or reprocessing of the reactor fuel, that could simplify the negotiation process. Brazil’s nuclear naval programme poses perhaps a more challenging safeguards situation given that it has domestic enrichment capabilities.

Is it possible to apply some verification measures while a para. 14 arrangement is in place? Absolutely – if that were not the case, there would hardly have been a need for

³ GOV/INF/347, July 1978.

⁴ Para. 14 is often referred to as “withdrawal” of nuclear material from safeguards to distinguish it from provisions related to the termination of safeguards on nuclear material or the exemption of nuclear material from certain provisions under the agreement. However, the title of this provision – “non-application of safeguards” – was explicitly formulated by the negotiators to underscore that the IAEA “should be consulted and satisfactory administrative arrangements reached concerning the use of any nuclear material for a military purpose permitted under [the NPT], whether or not the material was initially under safeguards.” It was explicitly stated that “The provision should thus be applied to all material which was either actually under safeguards and to be withdrawn or which had never been placed under safeguards and which was intended to be used in a permitted nuclear activity.”

a paragraph 14. The arrangement is intended to build in guardrails to make sure the material and activities involved are not misused for prohibited purposes.

In this context, it is important to note that there is nothing in the Statute of the IAEA that limits the application of safeguards to peaceful nuclear activities.

A key question will be how to get safeguards as close as possible to the submarine reactor without access to classified information, minimizing the time during which the material will not be subject to routine verification under the CSA.

5. Safeguards conclusions

The language used by the IAEA to reflect its safeguards conclusions has evolved over the years. For States with a CSA and an AP, we currently have the possibility of what has come to be known as the broader conclusion, i.e. that all nuclear material of the State remains in peaceful activities.

The broader conclusion is premised on the Agency's ability to fulfill its technical objectives of verifying that:

- There has been no diversion of declared nuclear material;
- There has been no misuse of declared nuclear facilities or LOFS (i.e. no undeclared production or processing of nuclear material at declared facilities or LOFs); and
- That there are no undeclared nuclear material or activities in the State as a whole.

The broader conclusion language is not carved in stone and could, as it has in the past, be further evolved. However, whatever the formulation, the conclusion must be drawn for the State as a whole, and not only for part of the State (a "qualified conclusion")

6. Final thoughts regarding the question of precedent

Any such arrangement may inevitably be invoked as a precedent for other States. However, each arrangement will have to be tailored to the specific circumstances of the State concerned.

In that context, it could prove useful for any such arrangement to articulate the premises on which it is being concluded (e.g. that State is a NNWS party to a CSA and an AP; the State has/does not currently have indigenous reprocessing or enrichment capabilities) and whatever other parameters were taken into account in determining that the applicable verification measures will contribute to the IAEA's ability to draw credible conclusion about the non-diversion of nuclear material used in such activities.

Whatever the arrangement ultimately concluded, it must be designed as fit for purpose, regardless of who the partner States might be.

AUKUS and Its Transfer of Weapon-Grade Nuclear Material: New Practice, New Territory and New Development of IAEA Safeguards

Anton Khlopkov
Director, Center for Energy and Security Studies (CENESS)

10 May 2024



1

The presentation is based on a joint study of China Arms Control and Disarmament Association (CACDA) and the Center for Energy and Security Studies (CENESS).

The report examines the main challenges of the AUKUS nuclear submarine deal to the non-proliferation regime, IAEA safeguards system, and other nuclear risks associated with the alliance, as well as ways to address them.



2

AUKUS Nuclear Submarine Deal

- The USA and the UK (NWSs) embarked on unprecedented nuclear submarine cooperation with Australia (NNWS).
- In practical terms, the US and UK will assist Australia in establishing fleet of **8 nuclear-powered submarines** in total.

Australia's Acquisition of the SSNs in the Context of AUKUS Deal

| Type of Submarine | Quantity | Delivery | Supplier |
|-------------------|----------|-------------|------------|
| U.S. Virginia | 3-5 | Early 2030s | The US |
| SSN-AUKUS | 5-3 | Early 2040s | Australia* |

*Australia will build SSN-AUKUS with the use of UK submarine design and advanced US technology



3

Transfer of HEU under AUKUS

- According to the information available, each U.S. Virginia-class submarine and UK Astute-class submarine contains about **500kg of highly enriched uranium (HEU)** at weapons-grade enrichment 93–97% U-235.
- That means the nuclear fuel of Australia submarines will contain about **4 tons of HEU**.
- It is intended that safeguards will not be applied to this amount of nuclear material for a lengthy period of time, which makes this issue unprecedented, including with regard to the future arrangement under the Article 14 of CSA.
- There are some precedents that need to be factored in the risk assessment since diversion of significant amounts of HEU happened in the past.



4

Transfer of HEU under AUKUS (2)

- "We successfully completed removals or confirmed the downblending of highly enriched uranium (HEU) and plutonium from more than 50 facilities in 30 countries — in total, enough material for over 150 nuclear weapons."

Source: FACT SHEET: The Nuclear Security Summits: Securing the World from Nuclear Terrorism, March 29, 2016, The White House, Office of the Press Secretary

- The amount of HEU to be supplied to Australia by the UK and USA as part of AUKUS project, announced in September 2021, would be enough to produce 160 nuclear explosive devices.



5

The NUMEC Affair

- In the period of 1960–1968 according to the U.S. Nuclear Regulatory Commission (NRC) up to **337 kg of HEU went missing** from the Apollo uranium plant, owned by the Nuclear Materials and Equipment Corporation (NUMEC) in Pennsylvania, USA.
- In the 1960s, the Apollo plant among its other tasks was processing HEU enriched to 97.7 percent for naval reactor fuel. The U.S. Atomic Energy Commission and subsequently one of its successor agencies, the NRC, as well as FBI, CIA, NSC, and other subsidiary bodies investigated what became of the missing HEU.
- The results of the investigation showed circumstantial evidence that the lost uranium was transferred to Israel to facilitate nuclear weapon development in the state.



6

Challenges to IAEA Safeguards System

- According to **Article 14** of the *Comprehensive Safeguards Agreement* between Australia and the IAEA (INFCIRC/217), **safeguards will not be applied to HEU** while it is used in non-proscribed military activity in nuclear submarines.
- It is going to be **the first case of practical implementation of Article 14** provisions. There are a lot of unanswered questions in relation to interpretation and implementation of the Article 14, such as *legal basis, concrete procedure, technical feasibility, etc.*
- In accordance with existing practice, the IAEA Member States should take part in the development of arrangements on conceptual issues related safeguards, that includes arrangements necessary under the Article 14 of CSA.



7

Possible Types of IAEA Fora

The Secretariat and the IAEA Member States shall consider establishing or using different types of fora to contribute to the development of arrangements necessary under the Article 14 of CSA:

- *Special Committee* open to all IAEA Member States;
- *Special Expert Group*;
- *Standing Advisory Group on Safeguards Implementation (SAGSI)*;
- *Technical Meetings* on application of safeguards in the context of AUKUS nuclear submarine deal.



8

AUKUS: Need for Transparency and Inclusive Dialogue

- The AUKUS partners expressed their **commitment to adhere to "the highest standards" for international transparency** in joint statements on multiple occasions. The transition from AUKUS partners statements to their actions is required.
- The information on the nuclear submarine project is provided in a very limited form to other members of the Agency, the AUKUS states avoid inclusive engagement on the subject at the governmental level and with NGOs.
- For example, the AUKUS states didn't participate in-person or online in the sessions on the topic of AUKUS and the NPT as part of the Moscow Nonproliferation Conference (MNC), organized by CENESS in December 2022 and April 2024.



9

Last, but not least...

- In March 2023, IAEA DG Rafael Grossi indicated the "the serious legal and complex technical matters" in relation to the process required under Article 14 of Australia's CSA. He noted that once the arrangement is finalized, it will be transmitted to the IAEA Board of Governors "for appropriate action".
- The IAEA Board of Governors repeatedly decided by consensus to set up a formal agenda item to discuss "transfer of nuclear materials in the context of AUKUS and its safeguards in all aspects under the NPT".
- In accordance with existing practice, the arrangements on conceptual issues related to safeguards, which includes arrangement under Article 14 of CSA, should be submitted to the Board of Governors for approval.



10

Workshop on AUKUS: A Case Study about the Development of IAEA Comprehensive Safeguards

IAEA-VIC Conference Room CR-1

10 May 2024

Comments by Tariq Rauf¹

To begin with, I would like to extend my thanks and appreciation to Ambassador Li Song, Permanent Representative of the People's Republic of China to the Agency, for convening this open discussion on a matter which if not addressed in an open, transparent and inclusive manner could possibly have a deleterious impact on the integrity and authority of the Agency's safeguards system anchored in INFCIRCs 153 and 540 – the comprehensive safeguards agreement and the model additional protocol.

In this regard, I welcome and commend the presence and statement of Ambassador Ian Biggs, Permanent Representative of Australia to the IAEA, and a former colleague in the IAEA Secretariat, which is in keeping with the statement in the Board on 8 March 2024 to “address genuine questions from interested delegations” as well as with the AUKUS States statement of 6 March to “continue to engage in good faith with member states on genuine questions, consistent with [the] approach to maintaining open and transparent engagement”. I very much hope that such engagement shall continue in an open and transparent manner.

In addition, I also commend the presence and comments of Mr Ionut Suseanu, Head of the Section on Non-Proliferation and Policy Making Organs, Office of Legal Affairs of the IAEA. The involvement of the IAEA Secretariat in workshops such as this one is an indication of transparency and should be appreciated and encouraged by Member States. Furthermore, I have full confidence in and support the efforts of the Director General and IAEA Secretariat Staff in upholding the authority, integrity, independence and professionalism of the Agency in fulfilling its Statutory and international legal obligations while rejecting any undue influence from external sources.

I should like to emphasize that I have full confidence in the integrity of those non-nuclear-weapon States party to the Non-Proliferation Treaty and their stated intentions to fully honour and implement the obligations under their respective safeguards agreements in connection with the NPT and relevant nuclear-weapon-free zone treaties, in their efforts to indigenously develop and/or acquire conventionally armed nuclear powered submarines.

¹ Tariq Rauf is former Head of Verification and Security Policy, Office reporting to the Director General, IAEA (2002-2011) – all comments in personal capacity. tariqrauf@icloud.com

It should be understood that my commentary and questions on various aspects of the IAEA's activities concerning nuclear safeguards, safety and security activities, as a former IAEA official, is motivated by supporting the organization's efforts and to suggest information, ways and modalities to further enhance the IAEA's performance on contentious and complex matters, as well as to expose undue pressures on the Secretariat from various external sources. The external pressures and politicization introduced into the IAEA's work by certain external sources is reprehensible and must be exposed and countered.

I would like to focus my comments today on the matter of "Non-Application of Safeguards to Nuclear Material to be Used In Non-Peaceful Activities", as provided for in IAEA document INFCIRC/153 (Corrected) of June 1972 on *The Structure and Content of Agreements between the Agency and States Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons* (NPT). INFCIRC/153 serves as the template for the comprehensive safeguards agreements (CSA) in connection with the NPT (IAEA INFCIRC/140 of 22 April 1970).

Agency safeguards conclusions are based on evidentiary criteria and thus any arrangement or procedure for the non-application of safeguards to non-proscribed military activities must not only be transparent but also accountable to the Agency to other States with CSAs in force – this cannot and must not be done behind a veil of secrecy and must be based on credible technical criteria.

Non-Proliferation Treaty

To recall, ARTICLE III.1 of the NPT *inter alia* stipulates that:

Each Non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the **Statute** of the International Atomic Energy Agency and the **Agency's safeguards system**, for the **exclusive purpose of verification** of the fulfilment of its obligations assumed under this Treaty with a view to **preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices**. Procedures for the safeguards required by this Article shall be followed with respect to source or special fissionable material whether it is being produced, processed, or used in any principal nuclear facility or is outside any such facility. **The safeguards required by this Article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere**

INFCIRC/153

Accordingly, INFCIRC/153, the CSA template, stipulates in its **Paragraph 1, the Basic Undertaking**:

The Agreement should contain, in accordance with Article III. 1 of the Treaty on the Non-Proliferation of Nuclear Weapons¹), an **undertaking by the State to accept safeguards, in accordance with the terms of the Agreement, on all source or special fissionable material in all peaceful nuclear activities** within its territory, under its jurisdiction or carried out under its control any where, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

And, INFCIRC/153, the CSA template, stipulates in its **Paragraph 2, Application of Safeguards**:

The Agreement should provide for the **Agency's right and obligation to ensure that safeguards will be applied**, in accordance with the terms of the Agreement, **on all source or special fissionable material in all peaceful nuclear activities** within the territory of the State, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

But then, INFCIRC/153, the CSA template, stipulates in its **Paragraph 14, Non-Application of Safeguards to Nuclear Material to be Used In Non-Peaceful Activities**:

The Agreement should provide that if the **State intends to exercise its discretion to use nuclear material which is required to be safeguarded thereunder in a nuclear activity which does not require the application of safeguards under the Agreement**, the following procedures will apply:

- (a) The **State shall inform the Agency of the activity**, making it clear:
 - (i) That the use of the nuclear material in a **non-proscribed military activity** will not be in conflict with an undertaking the State may have given and in respect of which Agency safeguards apply, that **the nuclear material will be used only in a peaceful nuclear activity**; and
 - (ii) That during the period of non-application of safeguards the nuclear material will not be used for the production of nuclear weapons or other nuclear explosive devices;
- (b) The **Agency and the State shall make an arrangement** so that, only while the nuclear material is in such an activity, the **safeguards provided for in the**

Agreement will not be applied. The arrangement shall *identify, to the extent possible*, the period or circumstances during which safeguards will not be applied. In any event, the safeguards provided for in the Agreement shall again apply as soon as the nuclear material is reintroduced into a peaceful nuclear activity. **The Agency shall be kept informed of the total quantity and composition of such unsafeguarded nuclear material in the State** and of any exports of such material; and

- (c) **Each arrangement shall be made in agreement with the Agency.** The Agency's agreement shall be given as promptly as possible; **it shall only relate to the temporal and procedural provisions, reporting arrangements, etc., but shall not involve any approval or classified knowledge of the military activity or relate to the use of the nuclear material therein.**

Paragraph 14 of INFCIRC/153

With the prospects looming of the implementation of Paragraph 14 of INFCIRC/153, for the first time since 1987, many policy and technical questions arise from the poor drafting of this paragraph, and its lack of definitional clarity as regards the meaning and scope of application of key elements.

The negotiating record that I was able to access in the Agency's Archives does not provide clarity, definitions or broader context and concepts underlying the necessity for the non-application of safeguards on the use of nuclear material in a non-proscribed military activity. I am given to understand that more detailed records, including the statements and position papers of the negotiating States are in the custody of the IAEA Department of Safeguards but these are not available to Member States and to the public for examination and assessment.

- May I hereby kindly request the representative of the Secretariat present here today, from the Office of Legal Affairs, to inform us during this discussion on the matter of public access to the full and complete negotiating record and documentation related to INFCIRC/153, in particular to its Paragraph 14; as well as that related to INFCIRC/435² (the Quadripartite Agreement).
- And, may I further to request the organizers of this discussion and indeed all IAEA Member States to formally request the Secretariat to make available on the Agency's website without exception the full unredacted negotiating record and documentation held by the Secretariat whether in the Agency's Archives, the Department of Safeguards, the Secretariat of the Policy Making Organs, or in any

² The Agreement (and the Protocol thereto) between the Republic of Argentina, the Federative Republic of Brazil, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials and the International Atomic Energy Agency for the Application of Safeguards, [INFCIRC/435](#), March 1994.

other location. If doing so requires instituting any changes in the Agency's confidentiality policy, or safeguards confidentiality policy, to fully and entirely de-restrict the full extent of the negotiating record of INFCIRC/153, then the required changes must be instituted as a matter of priority.

In this regard, in the interest of transparency and the strengthening of application of safeguards, all concerned Member States must formally convey to the Director General their full consent to de-restrict in unredacted form any and all documents, statements, working papers etc. submitted by them during the negotiations on INFCIRC/153 and INFCIRC/435, and further to make it available on the Agency's website.

With respect to paragraph 14 provisions, it is essential that the Secretariat:

- issue a generic technical report on the modalities and procedures, safeguards criteria and objectives;
- issue a generic legal assessment on safeguards conclusions;
- set up an open-ended working group or consultations mechanism; and
- provide regular detailed briefings to Member States and to interested experts.

Aurora Papers No. 8 (1988)

Since the first public discussion was held in November 2021 on the matter of the non-application of safeguards on nuclear material to be used in non-proscribed military activities³, I have written quite extensively on the matter and also made available on the internet to first comprehensive examination of the meaning and implications of Paragraph 14 of INFCIRC/153 that was done by my then-colleague at the Canadian Centre for Arms Control and Disarmament, Marie-France Desjardins and I, published as [*Aurora Papers No. 8*](#) in 1988 under the title, [*Opening Pandora's Box: Nuclear-Powered Submarines and the Spread of Nuclear Weapons*](#)⁴.

In preparing our study we consulted at the time and benefitted from the views and inputs of, among others:

David Fischer, former Assistant Director-General for External Relations at the IAEA; **Benjamin Sanders**, Secretary-General of the Third NPT Review Conference and formerly with the safeguards department at the IAEA who was closely involved from the Secretariat in the negotiation of INFCIRC/153; **Myron Kratzer** of the US

³ [Australia's Nuclear-Powered Submarines Will Risk Opening a Pandora's Box of Proliferation](#) (19 September 2021); [Nuclear Submarines: Who Will Get Them Next?](#) ((24 November 2021); Policy Brief No.122: [Crashing Nuclear Submarines Through IAEA Safeguards](#) (January 2022); [Nuclear Submarines and The Non-Proliferation Treaty: Brazil Gets a Jump on Australia?](#) (8 August 2022), [IAEA Safeguards and Naval Nuclear Propulsion](#) (10 November 2022).

⁴ Canadian Centre for Arms Control and Disarmament, [Aurora Papers No. 8](#), Marie-France Desjardins and Tariq Rauf: *Opening Pandora's Box: Nuclear-Powered Submarines and the Spread of Nuclear Weapons*, (Ottawa, February 1988, Updated June 1988).

Atomic Energy Commission and US State Department, who represented the US at the INFCIRC/153 negotiations; **Frank Houk and Richard Hooper** both of the US State Department, Hooper later was Director of the Division of Concepts and Planning in the IAEA Department of Safeguards – both Richard Hooper and Frank Houck were the “technical brains” behind the model additional protocol INFCIRC/540; **Charles van Doren**, former Assistant Director of the US arms control and disarmament agency and head of its (nuclear) Non-Proliferation Bureau; **Jon Jennekens**, DDG Safeguards at the Agency; and **Christopher Herzig**, Director, Division of External Relations at the Agency; as well as senior officials from the nuclear division of Canada’s Department of External Affairs and the Atomic Energy Control Board of Canada.

Why this name-dropping – only to reinforce that my 1988 study was based on solid information and analysis. I would recommend that Member States consider having this study made available as an IAEA INFCIRC to serve as a background reference.

Also, I would like to remind Member States about [INFCIRC/1091](#) of 1 June 2023 that contains a summary and the proceedings of a workshop on “The AUKUS and Article 14: Challenges Ahead, organized by the Permanent Mission of China on 18 May 2023⁵, here at the VIC.

In Aurora Papers 8, it is noted that as early as the Conference on the IAEA Statute in 1956, questions were raised concerning the Agency's role in relation to such an application of nuclear energy. Although it is not clear if the intention at that time was for non-nuclear-weapon States to use nuclear ship propulsion for military purposes, it is worth noting that the issue was brought up in connection with definitional problems concerning the Statute.

Indeed, concerned that the proposed Statute included no definition of the terms “peaceful” and “military”, two States, France and India, proposed amendments in this regard. As Paul C. Szasz noted: “After a brief debate, in which the principal sponsors recorded their understanding that the Agency would not be precluded from concerning itself with the nuclear propulsion of civilian ships and vehicles even though similar propulsion units might be used for military transport, both proposals were withdrawn”.

It is difficult to speculate on the reasons why France and India, both known as strong opponents of safeguards, would have been interested in clarifying the Agency's responsibilities in this matter. It is worth noting, however, that at the time of the negotiations on the Statute, studies on the efficiency of naval nuclear reactors were well underway. At the time of the Conference on the Statute, a US nuclear-powered

⁵ Proceedings of a workshop on “[The AUKUS and Article 14: Challenges Ahead, organized by the Permanent Mission of China](#),” on 18 May 2023, IAEA INFCIRC/1091 (1 June 2023); see also “[Different Views some IAEA Member States regarding the IAEA Director General’s Statement on Naval Nuclear Propulsion \(2023/Note 44\)](#)”, IAEA INFCIRC/1130 (12 September 2023).

submarine, the *Nautilus*, had already been operationally deployed for two years, and another such boat was being built. In this context, it is plausible that during the negotiations on the Statute, developing countries such as India, perceiving that they were already being discriminated against under the proposed Statute in terms of the application of safeguards, wanted to secure as many compensating benefits as possible.

Considering that nuclear ship propulsion could have both military and civilian applications, it was not at all certain that the Agency could be in a position to render assistance to States with respect to this (new) application of nuclear energy. In any case, this episode illustrated that the nuclear ship propulsion option was a matter of concern, even before the implementation of the NPT, and that some States were opposed to having it reserved exclusively for the superpowers.

IAEA Safeguards Committee (1970)

When the IAEA Safeguards Committee met in 1970 to advise the Agency's Board of Governors on the content of a safeguards agreement necessary to meet the obligations of the NPT, it was not in a position to challenge the Treaty calling for the application of safeguards only on nuclear materials in peaceful activities in non-nuclear weapon States and implicitly exempting from safeguards all nuclear materials used in non-proscribed military activities. The historical reason was an interest in naval nuclear propulsion among some non-nuclear-weapon States (Italy and the Netherlands) at the time the NPT was negotiated. The Director General had drawn the attention of the Safeguards Committee (1970) to the problem. The Secretariat had done its best to block the loophole by proposing several conditions to the Committee (which it accepted and incorporated into INFCIRC/153) that the State concerned would have to comply with before withdrawing nuclear material from safeguards for non-explosive military use – as stipulated in Paragraph 14, INFCIRC/153.

INFCIRC/153 and the NPT

In my presentation in November 2021, I had noted that the 1975, 1985, 1995 NPT Review Conferences' Final Declarations made no reference to INFCIRC/153. It is surprising that NPT States parties never formally reviewed or approved INFCIRC/153 as fulfilling the requirements of NPT. Article III.1. The first reference came only at the 2000 NPT Review Conference. Even though Canada had announced a programme of acquisition of nuclear-powered submarines in 1987 and had approached the Agency on Paragraph 14, the 1990 NPT review conference unfortunately did not take up the matter of non-application of safeguards on non-proscribed military activities. The draft President's final document at the 2022 NPT Review Conference did not address this matter and, in the

meagre five-line paragraph 36, only called for transparent and open dialogue on this topic.

- Fifty-two years after Paragraph 14, INFCIRC/153, was adopted – a question to NPT States parties – should the Director General be requested to submit a detailed technical report to the 11th NPT Review Conference (2026) on the implications for the CSA and the additional protocol of the implementation of Paragraph 14 of INFCIRC/153? This to enable the NPT Review Conference to reconsider the matter of the “Non-Application of Safeguards to Nuclear Material to be Used In Non-Peaceful Activities” and to decide whether this option should still be made available or that it is to be rescinded and recommend accordingly to the IAEA Board of Governors?

Questions regarding Paragraph 14, INFCIRC/153

Until now the scope, definitions and implementation of Paragraph 14 of INFCIRC/153 remain untested and have not been brought before the IAEA Board of Governors for their review, assessment and for approval or for “appropriate action”.

Indeed, in GOV/INF/347 (3 July 1978), the-then IAEA Director General stated that, “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” [emphasis added].

In connection with Canada’s stated intention in 1987 to acquire a fleet of conventionally-armed nuclear-powered submarines, in response to my enquiry, the-then IAEA Director of External Relations essentially confirmed the Secretariat’s views expressed in GOV/INF/347, in its letter dated 20 August 1987 (reproduced in the Annex to this paper). The Agency stated in its communication that, “To the Secretariat's knowledge there is no formal definition of "non-proscribed military activity". We understand that at the time of preparing INFCIRC/153 naval propulsion was commonly considered the most likely use. We also understand that most, if not all, participants in the Committee which prepared INFCIRC/153 favoured a narrow construction of the term "non-proscribed military activity", and that processes such as enrichment or reprocessing to produce materials for use in such an activity would not themselves be considered as non-proscribed military uses and would therefore be subject to safeguards in the NNWS concerned” [emphasis added].

However, on 7 June 2023, the IAEA Director General in his statement to the Board of Governors on “Naval Nuclear Propulsion” stated that, “... as a general matter, to the issue of interpretation, there are specific provisions on the interpretation and application of the CSA in paragraphs 20 and 21 of INFCIRC/153. Paragraph 20 provides 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]”, including paragraph 14. Pursuant to paragraph 21, the State party to the CSA has the right to request that “any question arising out of the interpretation or application of [its CSA] be considered by the Board”. So interpretation where it is a matter between the State party concerned and the Secretariat, this is according to the existing legal framework, I repeat, which is the only one I can apply” (IAEA: 2023/Note44, 7 June 2023) [emphasis added].

Thus, there now exists some uncertainty regarding the matter of interpretation of the provisions of INFCIRC/153 as expressed by responsible senior IAEA officials in 1978, 1987 and 2023; and in an IAEA safeguards reference document discussed below.

Part II of INFCIRC/153, paragraphs 36-38 on “Exemptions from safeguards”, and paragraphs 98-116 on “Definitions”, respectively do not address any of the terms or concepts in paragraph 14. Furthermore, the 182 CSAs in force today while they all include paragraph 14, the Board has never had the opportunity to assess the implications for the Agency’s safeguards system, nor developed a common understanding on, the implementation of paragraph 14.

Paragraph 14 (a), INFCIRC/153, stipulates, “(i) That the use of the nuclear material in a non-proscribed military activity will not be in conflict with an undertaking the State may have given and in respect of which Agency safeguards apply, that the nuclear material will be used only in a peaceful nuclear activity” [emphasis added].

However, in the “[Guidance for States Implementing Comprehensive Safeguards Agreements and Additional Protocols](#)”, IAEA Services Series 21 (May 2016)⁶, which is “principally intended for State and regional authorities responsible for safeguards implementation ... [and] is a reference document”, it is claimed in “Section 7.6. Non-application of safeguards to nuclear material to be used in non-peaceful Activities: CSAs allow for the possibility that a State may wish to use nuclear material in a non-peaceful, but not prohibited, nuclear activity” [emphasis added].

- Could the Secretariat clarify its understanding of paragraph 14 (a)(i) of INFCIRC/153 that stipulates that nuclear material under non-application of safeguards “will be used only in a peaceful nuclear activity” and explain why its reference document on CSAs implementation states that CSAs allow for the possibility that a State may wish to use nuclear material in a non-peaceful nuclear activity?

⁶ IAEA, “Guidance for States Implementing Comprehensive Safeguards Agreements and Additional Protocols”, [IAEA Services Series 21](#) (May 2016). The Foreword clearly states that, “This Guidance is principally intended for State and regional authorities responsible for safeguards implementation, as well as for facility operators. This Guidance is a reference document that will be supported by detailed guidance and examples in Safeguards Implementation Practices Guides to be published separately [emphasis added].

While uranium enrichment facilities in non-nuclear-weapon States would remain under safeguards, questions arise with respect to paragraph 14 (b) regarding information to be provided by the State to the Agency on the total quantity and composition of nuclear material not subject to safeguards for use in naval nuclear fuel:

- How would “a non-proscribed military activity” be defined, and by whom?
- Would IAEA Member States be expected to accept the definition of “a non-proscribed military activity” as formulated between a State and the Agency, or would or should Member States have a role in formulating the definition?
- How would the IAEA verify the correctness and completeness of the declaration by the State on the total quantity and isotopic composition of the nuclear material not under safeguards in use in a non-proscribed military activity?
- How would the IAEA determine the credibility and accuracy of “classified knowledge of the military activity” and to “the use of the nuclear material therein”?
- Would the IAEA have access for design information verification (DIV) for naval nuclear reactors?

Paragraph 14 (c), INFCIRC/153, stipulates that “Each arrangement [for the non-application of safeguards on non-proscribed military activities] shall be made in agreement with the Agency”, the questions arise:

- What is the definition of the Agency: is it the Member States, the Director General, the Secretariat; or is the Agency the collectivity of the Member States along with the Director General, and the Secretariat? Or is the Agency its policy making organs (General Conference and Board of Governors) and the Secretariat?
- If the Agency is the collectivity and the arrangement for the non-application of safeguards on non-proscribed military activities requires the agreement of the Agency, then what is the role of Member States, the Director General, and the Secretariat in the designing of the arrangement?

Paragraph 14 (c), INFCIRC/153, refers to “reporting arrangements”, question in this regard:

- What would be the scope and content of the reporting arrangements for the non-application of safeguards on non-proscribed military activities?

Paragraph 14 (c), INFCIRC/153, refers to “reporting arrangements” that “shall not involve any approval or classified knowledge of the military activity or relate to the use of the nuclear material therein”:

- Who would decide what is deemed classified knowledge of the military criteria, and based on what criteria?
- Does Paragraph 14 (c) reference that the reporting arrangements shall not involve any approval or classified knowledge of the use of nuclear material in the military activity requiring non-application of safeguards – i.e., that the State is under no obligation to inform the Agency of the claimed nuclear activity (whether naval nuclear propulsion or other)?

On [6 March 2024](#), the “AUKUS statement to the IAEA Board of Governors” on “Nuclear safeguards”, *inter alia* noted that:

- the Agency already has “the necessary experience to develop the arrangements related to the use of nuclear material for naval nuclear propulsion in accordance with the Statute and relevant safeguards agreements”.
- Could the AUKUS partners or the IAEA Secretariat provide the information and details regarding the Agency’s experience to develop the arrangements related to the use of nuclear material for naval nuclear propulsion in accordance with the Statute and relevant safeguards agreements?

On [8 March 2024](#), the “AUKUS update to IAEA Board of Governors” on “Australia's naval nuclear propulsion”, *inter alia* noted that:

- Australia’s Paragraph 14 arrangement will not remove nuclear material from IAEA oversight: the Agency will continue to fulfil its technical objectives at all stages of Australia’s nuclear-powered submarine program – verifying no diversion of nuclear material; no misuse of nuclear facilities; and no undeclared nuclear material or activities in Australia;
- We will continue to provide updates on developments relating to Australia’s naval nuclear propulsion programme, and to address genuine questions from interested delegations regarding our non-proliferation approach through this and other fora, as appropriate.
- Could the IAEA Secretariat elaborate on the technical objectives of non-diversion, no misuse of nuclear facilities, no undeclared nuclear material or activities, in connection with the non-application of safeguards to non-proscribed military activities – stated to be nuclear-powered submarines?

- Could the IAEA Secretariat make available the elements of the “conceptual proposal on safeguards measures to be considered as part of the discussions on the arrangement under Special Procedures in relation to Paragraph 13 of [INFCIRC/435]”, so that Member States may assess the proposed safeguards measures in terms of their relevance to Paragraph 14 of INFCIRC/153?⁷

Paragraph 14 (c), INFCIRC/153, also refers to “The Agency’s agreement” not requiring “any approval or classified knowledge of the military activity or relate to the use of the nuclear material therein”:

- How is this stipulation to be interpreted – that the Agency would not be provided information on the use of the nuclear material in non-proscribed military activities subject to non-application of safeguards?

While uranium enrichment facilities in non-nuclear-weapon States would remain under safeguards, even if providing nuclear material to non-proscribed military activities, possible diversion scenarios could include:

- diversion of enriched uranium from the enrichment facility;
 - diversion of stockpiled enriched uranium intended for naval fuel fabrication;
 - diversion of nuclear fuel from the submarine construction or servicing facility; and
 - establishment of an undeclared enrichment plant.
- What diversion path analysis would the Agency conduct, what information and data would be utilized?
 - Would environmental sampling be carried out at the enrichment facility, nuclear fuel fabrication facility, naval nuclear propulsion reactor, naval construction and base facilities, and naval spent fuel storage?
 - What are the implications for the State Level Approach (SLA) for a State pursuing naval nuclear propulsion?

Safeguards Challenges and Measures

If international monitoring of naval HEU stocks were agreed, when HEU was required to fabricate new naval-reactor cores, a State would have to declare to the IAEA the amount of HEU that it required for the purpose. This would require States to be willing to declare to the IAEA the quantities of HEU in specific cores. Although some States currently classify this information, revealing it would not appear to reveal sensitive performance characteristics, such as the maximum power output of the core or how rapidly the power

⁷ GOV/INF/2023/11 (31 May 2023), paragraph 8.

output can change or how resistant the core would be to damage resulting from the explosions of nearby torpedoes or depth charges.

The verification challenge, which has not been completely worked out yet, would be to be able to determine non-intrusively that the fabricated “cores” contained the agreed amount of HEU and that the objects designated as “cores” were installed and sealed into naval reactor pressure vessels.

Some information crucial for uranium accounting need not be classified. For example, while the uranium inventory and the enrichment level of a fresh core can give an idea of the maximum lifetime a reactor can achieve before refueling, it gives little indication of the actual tactical performance of the submarine propulsion system.

HEU in naval use potentially could be verified through use of passive and active non-destructive assay techniques involving gamma spectroscopy and neutron counting to verify the presence of highly enriched uranium but also the mass, isotopic content and geometry of the fissile material. This would be dependent upon development of appropriate information barrier technologies to prevent release of proliferation sensitive information whilst allowing inspectors access to sufficient information for verification purposes.

Inspectors would need to be able to verify receipt of fresh fuel assemblies and monitor fuel elements placed in storage pending the loading of fuel into a reactor. The guarantee of non-diversion of fissile materials would mostly rely on cask sealing and tagging as well as random assaying of stored casks. Cameras could record the activity within the building as a complementary measure. Inspectors then would need to verify the assembly of the reactor core and the installation of the core into the submarine’s reactor pressure vessel. Once fuel has been loaded the HEU is beyond the reach of inspectors. Nevertheless, periodic measurements of radiation within or external to docked naval vessels as reactor power levels are varied would provide further assurance that the HEU remains committed to the declared NNPP.

When the submarines are defueled, spent fuel will need to be accounted for. Individual nuclear fuel elements could be transferred to shielded transport containers that could be tagged and sealed before transfer to a monitored spent fuel area. The inspectors could seal every spent fuel cask. Before doing so a neutron and/or gamma profiling of randomly selected fuel elements could be made using a cask radiation profiling system. This would allow re-verifying the content of the casks at a later stage by comparing new radiation profiles to the baseline fingerprints.’ Inspectors could then externally verify the absence of irradiated fuel within the submarine’s pressure vessel with gamma detectors.

Safeguards Conclusions and Nuclear-Powered Submarines

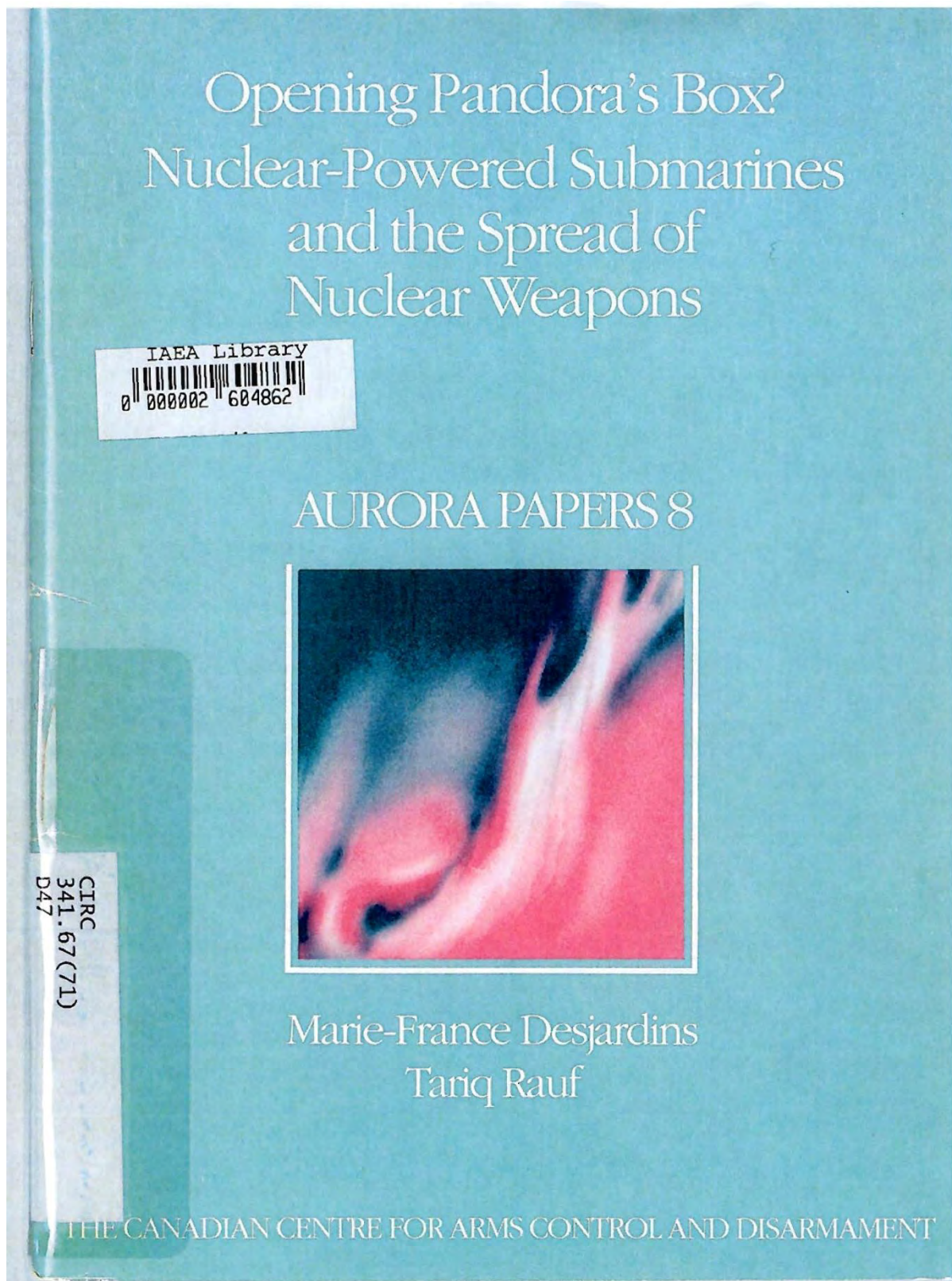
For “drawing safeguards conclusions”, the Agency specifies that, “For States with a Comprehensive Safeguards Agreement (CSA) and an Additional Protocol in force [such as, for example, Australia]: If the IAEA’s Secretariat has completed all evaluations and found no indication of the diversion of declared nuclear material from peaceful activities and no indication of undeclared nuclear material or activities for the State as a whole, the Secretariat concludes that all nuclear material remained in peaceful nuclear activities”.

Without getting into an unnecessary “legal discussion” in light of the above, in my view, were Australia or Brazil or any other NPT NNWS to withhold from the IAEA information regarding safeguards application on naval nuclear fuel, then they should not be able to qualify for the IAEA’s safeguards conclusions of: (a) “no indication of the diversion of declared nuclear material from peaceful nuclear activities; and, (b) no indication of undeclared nuclear material or activities. Thus, the IAEA Secretariat would not be able to conclude that, [for Australia / Brazil], “all nuclear material remained in peaceful activities”.

If NPT non-nuclear-weapon States really would like to set a good precedent, the only truly responsible way would be to agree to place viable Agency safeguards on nuclear-powered submarine programmes with the direct involvement and participation of the IAEA. Such States should ask and assist the IAEA to devise a safeguards concept, a safeguards approach, safeguards technical measures to apply credible safeguards to naval nuclear fuel and naval nuclear ship propulsion reactors in NPT non-nuclear-weapon States – this could be done without access to armaments and other parts of the submarine.

END

ANNEX



Appendix V



INTERNATIONAL ATOMIC ENERGY AGENCY
 AGENCE INTERNATIONALE DE L'ENERGIE ATOMIQUE
 МЕЖДУНАРОДНОЕ АГЕНТСТВО ПО АТОМНОЙ ЭНЕРГИИ
 ORGANISMO INTERNACIONAL DE ENERGIA ATOMICA

WAGRAMSTRASSE 5, P.O. BOX 100, A-1400 VIENNA, AUSTRIA
 TELEX: 1-12643, CABLE: INATOM VIENNA, FACSIMILE: 43 222 230184, TELEPHONE: (322) 2360

IN RUSSIA PLEASE REFER TO
 ПРОЕКТ НАПИСАНИЯ НА РУССКОМ ЯЗЫКЕ

DEAL DIRECTLY WITH EXTENSION
 COMPOSED BY TELETYPE NUMBER 1213

230-410.M1.11

20 August 1987

Dear Mr. Rauf,

I refer to the letters which you and Mr. Desjardins have addressed to several staff members of the International Atomic Energy Agency concerning your Centre's research project on nuclear non-proliferation. A number of the questions you have asked involve matters of judgement about the Non-Proliferation Treaty and the policy of the Canadian Government in relation to the Treaty. It would not be proper for individual staff members of the Agency to make comments or judgements in such political or policy areas, which could be interpreted as reflecting the view of the Agency and its Secretariat as a whole. Nor is it proper for the Agency itself to take a position on legitimate national policy debates.

I would suggest that the most comprehensive source of information on several of the questions you have asked is the records of the discussions of the Committee set up by the Agency's Board of Governors in 1970 with the task of formulating the document which eventually was published as INFCIRC/153 (corrected). This Committee was open to all Member States. The Secretariat of the Committee was provided by staff members of the Agency. If you have not done so already, you will no doubt be approaching the Canadian Government and requesting access to these records.

My colleagues will not be replying individually to the letters you have addressed to them. However, the following comments may be helpful to you in carrying forward your project. They reflect the Secretariat's understanding of the background to paragraph 14 of INFCIRC/153, which has, as you know, been incorporated in all safeguards agreements with the individual States concerned concluded pursuant to accession to the NPT.

INFCIRC/153 is intended to provide for the application of safeguards to enable non-nuclear-weapon States (NNWS) parties to the NPT to implement their undertaking made in Article III.1 of the NPT to conclude with the Agency safeguards agreements for the "exclusive purpose of verification of the fulfilment of its (the State's) obligations assumed under this Treaty (NPT) with a view to preventing diversion of nuclear energy from peaceful uses to

Mr. Tariq Rauf
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 Non-Proliferation Project
 Canadian Centre for Arms Control and Disarmament
 151 Slater Street, Suite 710
 Ottawa, Ontario K1P 5H3
 Canada



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nuclear weapons or other nuclear explosive devices". The undertakings made by NNWS parties to the Treaty prohibit the use by NNWS of nuclear material for nuclear weapons or other nuclear explosive devices. They do not explicitly exclude or include the possibility of NNWS parties to the Treaty making use of nuclear material for other non-proscribed military purposes.

However, also pursuant to Article III.1 of the Treaty all peaceful nuclear activities in NNWS parties to the Treaty are subject to safeguards. Hence, nuclear material in such States, which might eventually be used for a non-proscribed military purpose would be subject to safeguards until or unless such an event occurred. It was therefore considered necessary to include in INFCIRC/153 a provision (paragraph 14) to deal with a situation where safeguards would not be applied to nuclear material, hitherto subject to safeguards in the NNWS concerned, which was to be used in non-proscribed military activities. A provision of this nature would be necessary if the Agency were to continue to be able to fulfil its safeguards responsibilities under the individual safeguards agreements concluded with NNWS parties to the NPT.

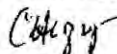
Paragraph 14 of INFCIRC/153 (corrected) has the same status today as it had at the time of its incorporation in the document. This document has not been amended since the request by the Agency's Board of Governors in 1971 that it should be used in the negotiation of safeguards agreements concluded in connection with NPT.

To the Secretariat's knowledge there is no formal definition of "non-proscribed military activity". We understand that at the time of preparing INFCIRC/153 naval propulsion was commonly considered the most likely use. We also understand that most, if not all, participants in the Committee which prepared INFCIRC/153 favoured a narrow construction of the term "non-proscribed military activity", and that processes such as enrichment or reprocessing to produce materials for use in such an activity would not themselves be considered as non-proscribed military uses and would therefore be subject to safeguards in the NNWS concerned.

There has been no request up to now to invoke the provisions of paragraph 14 of INFCIRC/153.

Regarding your question 12, while one could envisage highly-enriched uranium being procured for a non-proscribed military activity, but in fact being destined for nuclear weapons or explosive devices, such an action would be a clear violation of the undertakings made under the NPT.

Yours sincerely,



Christopher Herzig
Director
Division of External Relations

[https://www.researchgate.net/
publication/355141191_Opening_Pandora's_Box_Nuclear-
Powered_Submarines_and_the_Spread_of_Nuclear_Weapon](https://www.researchgate.net/publication/355141191_Opening_Pandora's_Box_Nuclear-Powered_Submarines_and_the_Spread_of_Nuclear_Weapon)

AURORA PAPERS 8

**Opening Pandora's Box?
Nuclear-Powered Submarines and the Spread of Nuclear Weapons**

*by
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The Canadian Centre For Arms Control And Disarmament

Authors

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Developing safeguards arrangement on AUKUS: Role of the Secretariat, Board of Governors and Member States


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Questions

- What are the mandates of the Secretariat, Board of Governors and Member States?
- What have the Secretariat, Board of Governors and Member States done up to now?
- What should the Secretariat, Board of Governors and Member States do respectively and cooperatively in the future?



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- Article 14 of the Comprehensive Safeguards Agreement template (INFCIRC/153) mentions the role of the Agency several times
 - (a) The State shall inform the Agency of the activity.
 - (b) The Agency and the State shall make an arrangement.
 - (c) Each arrangement shall be made in agreement with the Agency.

Mandates of the Secretariat, Board of Governors and Member States

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General Conference

Board of Governors

Secretariat

The Secretariat ≠ The Agency

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- This is an old question. There is no easy answer to it.
- It was a question when Committee 22 drafted the Comprehensive Safeguards Agreement template (INFCIRC/153) in early 1970s'.

Which part of the Agency has the right to interpret Article 14 and its applicability?

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- In 1978, the Director General S. Eklund clarified Article 14 in his exchange with the Resident Representative of Australia in Vienna.
 - First, Article 14 has not been interpreted by the Board of Governors yet.
 - He said, "As no NPT party had so far sought to apply Article 14, the Board of Governors had not yet had the opportunity to interpret the Article and relevant procedures."
 - Second, the Board of Governors has the authority to take appropriate action.
 - From the perspective of the IAEA Secretariat, Australia understood it correctly, and that the Secretariat would report to the Board of Governors any notification by the party's application of Article 14, the arrangements entered into by the IAEA with the party, or any breach by the party of the procedures set out in Article 14, and accordingly it would be for the Board of Governors to take appropriate action. (GOV/INF/347)

Director General S. Eklund's clarification

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- People tend to have confidences in the professionalism and objectiveness of Director General S. Eklund's response because his judgment was made without involvement of any controversial political factors.

Director General S. Eklund's clarification

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- The question raised by Australia in 1978 has not been completely resolved by the Agency yet, but AUKUS partners and the Secretariat rushed to apply Article 14 and tried to set "a perfect precedence" for the other member states to follow.

What have the Secretariat, Board of Governors and Member states done up to now?

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- "technical consultations and engagement" with AUKUS partners
- two reports on AUKUS. (GOV/INF/2023/10: Naval nuclear propulsion: Australia, 31 May 2023; GOV/INF/2022/20: IAEA safeguards in relation to AUKUS, 9 September 2022)
 - different views and concerns expressed by member states of the Agency about AUKUS safeguards totally ignored

The Secretariat

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- Director General tried to give his own interpretation of Article 14. (2023/Note 44, June 2023)
- Unfortunately, he tried to dissociate himself with the interpretation of article 14 made by his predecessor in 1978 and equated the Secretariat with the Agency.

DG's interpretation of Article 14

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- On 15 September 2021, AUKUS partners informed the Director General about their decision on nuclear-powered submarine transfer to Australia.
- On March 13, 2023, they announced an optimal pathway to produce a nuclear-powered submarine capability in Australia at the earliest point.
 - "strengthen the nuclear non-proliferation regime and set the strongest non-proliferation precedent"
 - who endowed the AUKUS partners with the rights to establish a "strong precedent" for other countries?
 - Who allow them to play as both athlete & referee at the same time, and expect all the other member states of the Agency to be quiet audience or even applauding fans?

AUKUS partners

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- The IAEA safeguards mechanism has been diligently improved and developed relying on the universal engagement, facilitation, and coordination of all member states.
- But Member States were inconceivably marginalized when the AUKUS nuclear material transactions were discussed.

Member States

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- Some tries to compare AUKUS safeguards program with Subsidiary Arrangements. But that analogy is not appropriate.

Analogy with the Subsidiary Arrangements does not work

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- First, AUKUS is not a routine safeguards program, while Subsidiary Arrangements contain clearly defined and related measures explicitly written into the CSA itself.
- The AUKUS is unprecedented in several respects.
 - Transfers of tons of weapon grade HEU from nuclear weapon states to a non-nuclear weapon state is unprecedented.
 - The application of article 14 is unprecedented.
 - The IAEA safeguards of tons of weapon grade HEU in Submarine used for military purpose is unprecedented.
- The future "arrangement" will be quite different from Subsidiary Arrangement.

Analogy with the Subsidiary Arrangements does not work

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- Second, 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 to the discussion and subsequent decision of the Board of Governors on a basis of consensus.



Analogy with the Subsidiary Arrangements does not work

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- Member states have different viewpoints about the AUKUS safeguards program, and review that topic for twelve times at the IAEA Board and General Conference.



reviews on AUKUS

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- The Secretariat
 - fully listen to and respect the different views from Member States.
 - Future reports on AUKUS submitted by Director General to the Board of Governors shall fully respect and objectively reflect discussions among Member States, by including different views and concerns expressed.



What should the Secretariat, Board of Governors and Member states do respectively and cooperatively in the future?

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- To facilitate the intergovernmental discussion of the AUKUS issue
- To keep Member States fully and timely informed of the developments of the AUKUS issue and the Secretariat's interactions with the AUKUS partners
- Not negotiate any safeguards arrangement with AUKUS partners without authorization until the Agency's Member States reach an agreed solution.

The Secretariat

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- To establish a Special Committee open to all IAEA Member States, to deliberate on the political, legal and technical issues related to AUKUS, and submit a report with recommendations to the Board of Governors and the General Conference of the IAEA.
 - follow the example of committees created by the Board of Governors such as Committees 22 and 24 on the negotiation of 153 and 540
- To establish a special expert group to study the related issues

the Board of Governors



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- Not advance their nuclear submarine cooperation until the Agency's Member States reach an agreed solution
- Support the current intergovernmental discussion among IAEA Member States on safeguards issues related to AUKUS nuclear cooperation



AUKUS partners



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- To recognize the impact and challenges that this issue poses to the international nuclear non-proliferation regime and the IAEA safeguards system, and participate more actively in the discussion process.

Member States



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- The Secretariat ≠ The Agency
- It is still an open question who has the right to interpret Article 14 and its application
- Member states have been marginalized to a great extent in the AUKUS safeguards discussion
- The AUKUS discussion should be carried out in an open, inclusive, transparent and sustainable intergovernmental discussion process



Main points



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- Thank you!



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Workshop on AUKUS: A Case Study about the Development of IAEA Comprehensive Safeguards

**IAEA-VIC Conference Room CR-1
10 May 2024**

Comments by Vilmos Cserveny¹

Dear Colleagues,

Let me also thank the Permanent Mission of China for inviting me to this Case Study workshop to make a few personal comments. When I saw the invitation, I wondered what is meant by ‘Case Study’. But then, from the definition made by the Western Sydney University in Australia, I understood that “Case Studies are used to understand a situation better whereby they can help decision makers to define the way forward in a specific case or in another case that has similar features”. I hope that colleagues participating at this Case Study workshop have a similar understanding of the purpose of our discussions.

Let me also say how important in my view is that Ambassador Ian Biggs shared with us his government’s expectations about the effective verification of Australia’s continued compliance with its NPT commitments in view of his country’s decision to acquire and operate several conventionally-armed, HEU-powered naval submarines in the decades ahead of us. I find this extremely important also in light of the policy discussions about the potential impacts such an HEU based programme may have on the future implementation of policies about the minimisation of the use of HEU in nuclear applications a wide ministerial level support of which is expected at the forthcoming International Conference On Nuclear Security (ICONS) meeting hosted by the IAEA.

Australia’s engagement is important also in the context of the recently reiterated expectation of several members of the IAEA Board for broad, transparent and inclusive discussions on the subject. Such discussions are useful and in fact needed in view of the recognition by the AUKUS partners that “there are genuine questions amongst Member States regarding naval nuclear propulsion in Non-Nuclear Weapon States under the NPT”, and their stated intention to “continue to engage consistently, openly and transparently with Member States and the Secretariat” in good faith on genuine questions.

In fact, in the past few years, there have been a number of substantive discussions on the subject at the IAEA’s Board of Governors, the General Conference, the NPT Review Conference process as well as by studies, publications and events organised by governments, NGOs, academic institutions and the media about the issues at our agenda today. The fact, however, that the IAEA GC has so far not expressed its view on this matter highlights again the need for further dialogue.

The presentations of our distinguished panelists confirmed that there exists considerable amount of theoretical technical, legal and policy knowledge on the subject. The problem, in my view, is that there has been very limited in-depth policy considerations by the Agency on this matter in the past and no practical experience exists with the implementation of Article 14 type of arrangements by NPT parties and the Agency’s Secretariat. These issues were only marginally discussed during the

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negotiations of INFCIRC/153. Subsequently, through an exchange of letters in 1978 between the then DG of the Agency and the government of Australia (GOV/INF/347), the then DG stated that “no State party to NPT has so far exercised the discretion referred to in Article 14” of INFCIRC/153 (Corr.) and confirmed, on behalf of the IEA Secretariat, Australia’s understanding that an ‘arrangement’ referred to in paragraph 14(b) would be referred to the Board of Governors and would require its approval.

The factual situation has not changed until today. Prior to Australia’s and Brazil’s recent engagement with the IAEA about their nuclear naval propulsion programme, only Canada approached the Agency on Article 14 in 1987 but lost interest on this issue due to its decision to fold its submarine plan in 1989 for reasons of “unaffordability”. And so, since then, no other request was received by the IAEA to invoke the provisions of Article 14 of INFCIRC/153, no practical experience of the implementation of this provision exists.

Another factor that would need to be born in mind is that Article 14 of INFCIRC/153 was not formally part of the Agency’s safeguards system at the time the NPT entered into force. Only subsequently, during the drafting of INFCIRC/153, the Agency’s Board of Governors agreed that a provision along the line of Article 14 should be included in the model document to deal with a situation where safeguards would not be applied to nuclear material, hitherto subject to safeguards in a NNWS, which was to be used in “non-proscribed military activities”.

Historically of course it is regrettable that the IAEA, did not formally obtain the opinion of the parties to the NPT on whether, in their view, the content of the text of INFCIRC/153 - including its Article 14 - satisfies the requirements of the Treaty. At the same time, such a historical omission, in my view, can hardly be rectified nor can it be “undone”, not least in view of the fact that in the past 50+ years Article 14 provisions have been incorporated in all CSA’s approved by consensus by the Board of Governors while authorising the IAEA DG to implement them.

Therefore, in view of the requests by Australia and Brazil to the Director General for the initiation of formal negotiations about the modalities of Article 14-type of ‘arrangements’, in my opinion, the focus of the discussions should now be on an appropriate and agreed process of arriving at such arrangements that will hopefully enjoy consensual support by the Board of Governors. As the reports of the IAEA DG testify to this, work in this regard has started even if it is only in its initial phase. The DG has conveyed his confidence that the Secretariat will be able to develop its proposals for the Board’s consideration as and when the required technical information from the relevant States will be available.

However, bearing in mind that the Agency has no practical experience in the non-application of safeguards to the type of non-proscribed military activities in question, in my view, over time, it could prove to be useful to involve the Director General’s Standing Advisory Group on Safeguards Implementation (SAGSI) in order to assist this work. Historically, SAGSI’s involvement in developing important advice on technical safeguards issues where there has been limited to no practical experience by the Agency proved to be helpful. In particular, in handling uncharted technical territories of the application of safeguards such as the development of the Agency’s 93+2 programme or the model Additional Protocol, to mention only a few. I also recall that, time and again, sharing SAGSI’s advice to the DG with the Board of Governors usefully served a consensual decision making on complex and complicated safeguards matters. Bearing in mind also that “one size usually does not fit all”, SAGSI’s considerations and technical wisdom in the process of developing appropriate safeguards approaches pursuant to the requests by Australia and Brazil would in my view be useful. In cases where additional specific expertise relating to e.g., submarines and their operation would be required, such expertise could be obtained for use by SAGSI.

Dear Colleagues,

In concluding, I hope you do not mind if I take liberty to refer to the recent book written by the IAEA's former DG, Hans Blix, entitled "A Farewell to Wars". The former Australian chief of staff to Hans Blix and later to Mohamed ElBaradei, John Tilemann, in his recent review of Hans Blix's new book, writes, among other things, that "A Farewell to Wars is a timely contribution to the debate in Australia, and elsewhere, of the relative weight to be accorded to diplomacy in the promotion of national and international security. Hans Blix is from the realist school and acknowledges the contributions of deterrence to global restraints on the use of force. But he makes a compelling case for a greater focus on diplomacy and detente, both to reduce security threats and to build structures and norms to further limit the use of violence, and to contain international competition within agreed boundaries" - John Tilemann writes.

While I thank again to the Permanent Mission of China for hosting this Case Study workshop, I recommend you Dr Blix's book and his timely and wise counsel, also in the context of the subject of our important discussion today.

Vienna, 10 May 2024

Elements presented by the Secretariat during the Workshop on 10 May 2024

(Provided by Mr. Ionut Suseanu)

- The Agency is an intergovernmental organization established by the Statute (Art. I of the Statute); 178 States are parties to the Statute and they have the authority to interpret its provisions; objectives (Art. II), functions (Art. III), roles of PMO (Art. V and VI), DG and the Secretariat (Art. VII).
- The safeguards or control function of the Agency set out in Art. III.A.5 of the Statute is different than the “assistance” function which is addressed in Art. III.A.1-4, 7, and Art. IX-XI.
- Art. III.A.5 authorizes the Agency to establish and administer safeguards designed to ensure that assistance made available by the Agency is not used in such a way as to further any military purpose; this applies to project and supply agreements approved by the Board involving Agency assistance (Art. XI – Agency Projects).
- In addition, Art. III.A.5 authorizes the Agency to apply safeguards, at the request of the parties, to any bilateral or multilateral arrangement (e.g. in connection with the NPT or NWFZ treaties) or at the request of a State, to any of that State’s activities in the field of atomic energy.
- The Board has the authority to carry out the functions of the Agency, including safeguards (Art. VI.F.). This has been confirmed by subsequent Board practice. The Board has authorized the DG to sign and implement all SG agreements (item-specific, CSA, VOA), now in force for 190 States.
- Since 1959, all safeguards documents (e.g. Inspector Document, first safeguards system (INFCIRC/26) and its subsequent revisions (INFCIRC/66, Rev. 1 and 2), INFCIRC/153, INFCIRC/540 and Safeguards Confidentiality Regime (1997) were developed by MS in the framework of the Board or its Safeguards Committees and approved by the Board.
- Regarding CSAs, the document contained in INFCIRC/153, was negotiated by Member States in the framework of Committee 22 established by the Board in 1970 after the entry into force of the NPT, and it was approved by the Board in 1971. The Board authorized the Director General to use this document as the basis for negotiating CSAs in connection with the NPT, and it has been doing so since 1971 without change. CSA concluded on the basis of INFCIRC/153 are currently in force for 182 NNWS parties to the NPT.
- The safeguards provisions in the Statute are not self- executing; the Agency applies safeguards on the basis of the safeguards agreements in force with States, and regional organizations. For States with CSAs in force, the Agency applies safeguards on the basis of their respective CSA concluded with the Agency pursuant to the authority provided for in Article III.A.5 of the Statute, i.e. “to apply safeguards, at the request of the parties to any bilateral or multilateral arrangement”.
- The safeguards agreements set out the States undertakings, rights and obligations of the parties and the relevant safeguards procedures to be applied.

- The issue of compatibility of safeguards agreements, including CSAs based on INFCIRC/153, and the Agency's Statute as regards the statutory legitimacy of non-explosive military applications of nuclear material subject to the Agency's safeguards system was considered by the Board in early 80's. The study carried out at that time by the Director General concluded that this statutory requirement is met under all types of safeguards agreements, including INFCIRC/153-type agreements. The Board took note of this study.
- The State's undertaking in Article 1 of the CSA is to accept safeguards on all nuclear material in "all peaceful nuclear activities within its territory, under its jurisdiction or carried out under its control anywhere". This is in accordance with Article III.1 of the NPT. The Agency has the right and obligation to apply safeguards, in accordance with the provisions of the CSA, on all such material to verify that it is not diverted to nuclear weapons or other nuclear explosive devices.
- The use of nuclear material required to be safeguarded under a CSA, whether produced domestically or imported, for nuclear-powered submarines was envisaged by Member States during the negotiations of Committee 22, it was agreed and reflected in paragraph 14 of INFCIRC/153, and included subsequently in the CSAs approved by the Board. Therefore, this is part of the legal framework, i.e. CSAs concluded on the basis of INFCIRC/153 which the Board has authorized the Director General to sign and implement. This function entrusted to the DG by the Board has been implemented in accordance with the safeguards agreements and under the authority of the Board.
- There is no mechanism in the CSA providing for automatic exclusion from safeguards of nuclear material "required to be safeguarded" under the CSA. This has to be done through the arrangement provided for in Article 14 of the CSA. Regarding the relevant reporting procedures of nuclear material, the nuclear material produced domestically or imported has to be reported to the Agency as provided for in Art. 34 (c) and 91-95. The definition of "inventory change" in the CSA also refers to receipts from a non-safeguarded (non-peaceful) activity and shipment for a non-safeguarded (non-peaceful) activity; none of these provisions have an exclusion for nuclear material used in naval nuclear propulsion or transferred for a non-proscribed military activity in a CSA State. Such advance notification enables the Agency to plan its activities under the CSA, prior to the time when the arrangement in Art. 14 becomes effective.
- Article 14 of the CSA allows the State to use nuclear material which is required to be safeguarded under the CSA in a nuclear activity, such as nuclear propulsion for submarines, provided that the State makes an arrangement with the Agency in this regard.
- Under Art. 5 of the CSA, the Agency has the obligation to protect confidential information coming to its knowledge in the implementation of the CSA. The Agency cannot not publish or communicate to any State, organization or person any information obtained by it in connection with the implementation of the CSA, including with respect to information received from a State in relation to Art. 14 arrangement, except that specific information relating to such implementation in the State may be given to the Board and to such Agency staff members as require such

knowledge by reason of their official duties in connection with safeguards, but only to the extent necessary for the Agency to fulfil its responsibilities in implementing the CSA.

- Since September 2021, the DG addressed the matter in his statements to the Board and also in the SIR and specific reports to the Board. In this context, DG pointed out, inter alia, that:
 - the legal obligations of the parties and the non-proliferation aspects are paramount; the Agency's role in this process is foreseen in the existing legal framework and falls strictly within its statutory competences;
 - the Agency will continue to have its verification and non-proliferation mandate as its core guiding principle and it will exercise it in an impartial, objective and technical manner;
 - the technical discussions initiated with two States with CSAs in force which notified the Agency of their decisions to acquire naval nuclear propulsion would need to address all aspects related to the application of safeguards to nuclear material and related facilities prior to and after the required arrangements would become effective, as well as the elements to be included in such arrangement; the Agency will consider in addition, which provisions of the Additional Protocol would be applicable, as well as any transparency measures that might be offered in this regard.
 - during this process, we will act in strict accordance with the letter and spirit of the legal framework (CSA, AP and the Statute) and keep the Board informed at all stages of our consultations.
 - The legal aspects to be discussed concern paragraph 14 of INFCIRC/153 as a whole and will include:
 - the State party's commitment that the use of the nuclear material in a non-proscribed military activity will not be in conflict with an undertaking the State may have given, and in respect of which Agency safeguards apply (e.g. an item-specific safeguards agreement or a project and supply agreement), that the nuclear material will be used only in a peaceful nuclear activity;
 - Duration of the arrangement;
 - Reporting arrangements, which do not involve any approval or classified knowledge of the military activity or relate to the use of nuclear material therein.
- Regarding the issue of interpretation of the CSA provisions, DG clarified during the Board meeting in June last year that there are specific provisions on the interpretation and application of the CSA in articles that correspond to paragraphs 20 and 21 of INFCIRC/153. Paragraph 20 provides 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]”, including paragraph 14. Pursuant to paragraph 21, the State party to the CSA has the right to request that “any question arising out of the interpretation or application of [its CSA] be considered by the Board”. So interpretation where it is a matter between the State party concerned and the Secretariat, this is according to the existing legal framework.

- DG also informed the Board on several occasions that he will ensure a transparent process that will be solely guided by the Agency’s statutory mandate and the relevant safeguards agreements and he will continue to keep the Board of Governors and Member States informed of this work and to transmit the arrangement when finalized to the Board of Governors for appropriate action.