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COMMITTEE OF THE WHOLE

RECORD OF THE THIRTY-EIGHTH MEETING

Held at the Neue Hofburg, Vienna,
on Thursday, 27 September 1984, at 10.45 a.m.

Chairman: Mr. UMAR (Nigeria)
later: Mr. STRULAK (Poland)

CONTENTS

<u>Item of the agenda**</u>		<u>Paragraphs</u>
20	Amendment of Article VI.A.2 of the Statute	1 - 51
14	The Agency's programme for 1985-86 and budget for 1985 (resumed)	52 - 60

*/ A provisional version of this document was issued on 10 October 1984.

**/ GC(XXVIII)/730.

The composition of delegations attending the session is given in document GC(XXVIII)/INF/223/Rev.4.

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AMENDMENT OF ARTICLE VI.A.2 OF THE STATUTE (GC(XXVIII)/728,
GC(XXVIII)/COM.5/36)

1. The CHAIRMAN invited the Committee to consider item 20 of the Conference's agenda, "Amendment of Article VI.A.2 of the Statute". A report to the General Conference by the Board of Governors pursuant to resolution GC(XXVII)/RES/420 was to be found in document GC(XXVIII)/728, which also contained the summary records of the Board's discussion of the subject since the twenty-seventh session of the Conference. A draft resolution co-sponsored by Iraq, Kenya, Nigeria, Saudi Arabia and the Syrian Arab Republic was set forth in document GC(XXVIII)/COM.5/36.
2. Ms. AJAKAIYE (Nigeria) recalled that, since the issue had been raised in 1977, several resolutions had been adopted on the question of securing adequate representation on the Board for the regions of Africa and the Middle East and South Asia. In the intervening time the number of Member States in the Agency had increased significantly, and more than two thirds of that increase was accounted for by the two regions in question. Of the 35 Governors on the Board, only five were from Africa, which nevertheless had 28 Members in the Agency.
3. If the Agency was to fulfil the objectives laid down in Article II of the Statute, there had to be adequate representation of Member States at all levels. Representation on the Board should not be based solely on technological advancement, but also on geographical spread and on the possession of nuclear raw materials.
4. There was no doubt that the areas of Africa and the Middle East and South Asia deserved increased representation on the Board. She therefore proposed that the Board be increased by three Members, two representing Africa and one representing the Middle East and South Asia. An increase of three Members in a Board composed of 35 Members would not make it less efficient, nor would it upset the balance in favour of any one group. At least four of the United Nations specialized agencies had more than 40 members on their Boards without detriment to their efficiency.
5. She appealed for action to be taken promptly on amending Article VI.A.2. Discussion on Article VI as a whole should be deferred to a later stage.

6. Mr. DARTOIS (Belgium) said that his delegation supported the establishment by the Board of a working group whose task it would be to review Article VI with a view to maintaining the Board's efficiency and preserving the existing balance.

7. The question of amending Article VI.A.2 had never been examined really seriously, and the legitimate requests of countries from the areas of Africa and the Middle East and South Asia had never been met during the seven years of discussion on the subject. In view of the considerable development of nuclear power in many countries, particularly in Latin America and Western Europe, Article VI needed to be reviewed as a whole; but, in that process, due attention should of course be given to the claims of the countries of Africa and the Middle East and South Asia. Clearly, the two-thirds majority required by Article XVIII.C of the Statute for the adoption of an amendment to the Statute meant that broad agreement would have to be reached between the parties interested in a review of Article VI if any positive result was to be achieved.

8. In conclusion, he was in favour of a review of Article VI as a whole and would not be able to support a resolution calling for a review of Article VI.A.2 alone. A more general resolution was needed, and for that purpose he advocated the establishment by the Committee of a contact group composed of the representatives of interested delegations.

9. Mr. NANIOV (Bulgaria) said that his delegation was prepared to support the draft resolution contained in document GC(XXVIII)/COM.5/36.

10. Mr. MAPARA (Zambia) said that seven years of discussions on amending Article VI.A.2 had not brought the Board or the Conference any nearer to a decision. It was unnecessary to repeat the arguments in favour of increased representation on the Board for the areas of Africa and the Middle East and South Asia, and there was no doubt that the present system of representation on the Board was undemocratic.

11. A lack of political will and the pursuit of selfish regional interests on the part of some Member States were contributing to the delay in resolving the problem. To suggest that the existing balance in the Board of Governors should be maintained was tantamount to advocating a continuation of the existing under-representation of Africa and the Middle East and South Asia.

12. He recommended that the representation of Africa be increased by three seats and that of the Middle East and South Asia by two.

13. The question of amending Article VI.A.2 should be considered separately from any revision of Article VI as a whole, in order to avoid complicating the issue. It was to be hoped that the Conference would find the political will necessary to reach a decision and avoid postponing indefinitely the correction of the present undemocratic composition of the Board.

14. Mr. HERNANDEZ MATA (Mexico) expressed support for the draft resolution contained in document GC(XXVIII)/COM.5/36 and stated that his country wished to be added to the list of sponsors.

15. Mr. ASMAN (United Republic of Tanzania) supported the statements made by the representatives of Nigeria, Bulgaria, Zambia and Mexico.

16. The increased membership in the Agency of countries from Africa and the Middle East and South Asia during the seven years of discussion on amending Article VI.A.2 warranted an increase in their representation on the Board of Governors. It was incompatible with the Agency's principle of the sovereign equality of all its Members that some Member States should be denied equitable representation on the Board.

17. He did not propose to repeat the arguments which had been put forward on numerous occasions, but appealed to those developed Member States which were opposed to amending Article VI.A.2 to alter their position and accept the modest increase in the representation of Africa and the Middle East and South Asia which had been suggested. Member States and the Secretariat should increase their efforts to reach a solution to the problem.

18. His delegation supported the draft resolution in document GC(XXVIII)/COM.5/36 and wished to be added to the list of co-sponsors.

19. Mr. SOEPRAPTO (Indonesia) expressed sympathy with the impatience and frustration of the delegations which had, years earlier, raised the question of amending Article VI.A.2 of the Statute and had not since then seen any progress on the issue. The seven-year delay in reaching agreement on an appropriate amendment of Article VI.A.2 stood in sharp contrast to the ten-month period needed to amend Article VI.A.1 in order to accommodate the entry of China.

20. The proposal to increase the number of seats allocated to certain areas would correct the present imbalance. The efficiency of the governing body of an international organization did not depend solely on the size of that body, and in fact several other international organizations had larger governing bodies than the Agency's Board. It had not been suggested that the existing balance would be changed or that the Board's efficiency would be reduced when its membership under Article VI.A.1 had been increased from 12 to 13.

21. His delegation was in favour of increasing the representation of certain geographical areas referred to in Article VI.A.2 and would support any mechanism that allowed a solution to be found rapidly.

22. Ms. MIRALLES (Venezuela) said that changes had previously been made to Article VI in response to developments in the Agency's membership, either through amendments or by a liberal interpretation of the Article. The groupings of Member States set out in Article VI, and consequently their representation on the Board, were in fact rather arbitrary. Clearly, a detailed examination of Article VI was necessary in order to bring it into line with present needs. She therefore agreed with the representative of Belgium that the Board of Governors should review Article VI as a whole, setting up an open-ended working group for that purpose.

23. Mr. MIGLIORINI (Italy) said his delegation had long considered that the evolution of the Agency's membership and activities called for a review of Article VI. He believed that Article VI should be studied as a whole, the aim being to find a just solution which would not upset the existing balance and effectiveness of the Board. His delegation could not support any resolution recommending amendment of only one part of Article VI. It did, however, favour the Belgian proposal for the establishment by the Committee of a contact group.

24. Mr. KOREF (Panama) said that he could support the draft resolution in document GC(XXVIII)/COM.5/36 provided that the resolution enabled the Board of Governors to discuss Article VI as a whole.

25. Mr. MELIBARY (Saudi Arabia) felt that it was unnecessary to restate the legitimate claims of the areas of Africa and the Middle East and South Asia for just representation. The situation had already been clearly explained by the representatives of Nigeria and Zambia and by others. He

recalled that the agreement to amend Article VI.A.1 so as to facilitate the entry of China into the Board had taken very little time to reach and suggested that amendment of Article VI.A.2 should be treated in a similar way.

26. Mr. MAHMOUD (Iraq) thanked those countries which supported the draft resolution contained in document GC(XXVIII)/COM.5/36. His delegation was pleased that the Board had, in June, recommended to the General Conference that it adopt a resolution on amending Article VI.A.1 of the Statute so that China could become a designated member of the Board, and it hoped that the same serious and constructive attitude would be shown in relation to the present problem. The establishment of a working group to seek a solution might be a step in the right direction; but if such a group were established, it should act quickly and report as soon as possible. His delegation was not opposed to considering Article VI as a whole, but, like many others, felt that Article VI.A.2 should be given priority.

27. Mr. FAHMY (Egypt) felt that the arguments presented by the Member States opposed to the draft resolution contained in document GC(XXVIII)/COM.5/36 did not genuinely challenge its validity and urgency. His delegation supported, in particular, the lucid statement made by the representative of Zambia.

28. His delegation felt that the Committee should confine itself to discussing the item on the agenda - namely, "Amendment of Article VI.A.2 of the Statute". If it attempted to deal with Article VI as a whole, a solution to the problem of securing an equitable distribution of seats on the Board might be delayed indefinitely. Egypt, therefore, supported the draft resolution contained in document GC(XXVIII)/COM.5/36.

29. Mr. MORALES PEDRAZA (Cuba) said his delegation had stated on a number of occasions that the question of amending Article VI.A.2 deserved the attention of all the Agency's Member States. Cuba had repeatedly expressed its readiness to analyse any proposals made with a view to finding a just solution to the problem, provided that the interests of the Latin American countries were taken into account.

30. The question of revising Article VI.A.2 had been debated within the Agency for many years, and it was high time that new formulas were sought for a possible solution. The Board should therefore redouble its efforts to find a solution acceptable to all as soon as possible. In the interests of finding such a solution, his delegation was prepared to support the draft resolution contained in document GC(XXVIII)/COM.5/36.

31. Mr. ORNSTEIN (Argentina) recalled that in June the Board had, in order to facilitate China's entry into the Board, recommended to the Conference that it amend Article VI.A.1 of the Statute. On that occasion his delegation had already expressed its opinion that the importance of Article VI of the Statute was such that it should be considered as a whole with a view to improving its structure. It was well known that the group of Latin American countries was ready to consider any proposal which took account of their interests in such a way that the level of their representation on the Board was not reduced.

32. Despite the fact that the present agenda item referred to Article VI.A.2, his delegation felt that the scope of the discussion should be enlarged to cover Article VI as a whole.

33. Mr. ZHOU (China) said that the Committee should face the fact that the areas of Africa and the Middle East and South Asia were under-represented on the Board. An early solution to the problem was of vital importance.

34. He supported the aspirations of the developing countries in Asia and Africa for three reasons. First, due consideration should be given to equitable geographical distribution of the seats on the Board; secondly Third-World countries needed to accelerate the development of nuclear power and therefore needed adequate representation on the Board; and, thirdly, equitable representation would help to improve the efficiency of the Board.

35. His delegation would co-operate with others in seeking a mutually acceptable solution.

36. Mr. KHAN (Pakistan) said that two elements of consensus had emerged over the many years of debate on the subject of Article VI.A.2 in the Board and the General Conference. The first was that the discussion should be confined to Article VI.A.2 and the second was that it should be confined

to the under-representation of the areas of Africa and the Middle East and South Asia. Although no consensus had been reached on the number of additional seats which should be given to those two areas, wide agreement had in fact been reached at the twenty-second session of the Conference, in 1978, with the adoption of resolution GC(XXII)/RES/361, preambular paragraph (d) of which showed that a majority of the Agency's Member States accepted a moderate increase of one seat for each of the two areas in question; however, the two-thirds majority required for adoption of the appropriate amendment had not been achieved. In collaboration with many delegations, in particular those representing the Latin American area, his delegation had been working towards a consensus on the matter. The proposal to increase the representation of Africa and of the Middle East and South Asia was now supported by all geographical areas with the exception of North America, Western Europe and Eastern Europe.

37. In considering the proportional strength of the representation which Africa and the Middle East and South Asia should have on the Board - their present proportion being 20% and 22.9% respectively as compared with at least 30% enjoyed by each of the other areas - the Committee should take the following facts into account. Firstly, the two areas in question both took an active part in the Agency's work. Secondly, they supplied oil and uranium which was used to fuel the economies of the Western countries. Thirdly, those areas had made considerable technical progress in their nuclear programmes.

38. With regard to the question of amending Article VI as a whole, his delegation sympathized with the concerns expressed by the representatives of other areas about Article VI.A.1. However, the question of designated seats on the Board was a highly political and complex one and it would have to be resolved separately from that of the elective seats on the Board, which was the subject of Article VI.A.2.

39. Mr. HOSSAIN (Bangladesh) said that his delegation supported the statements made by the representatives of other developing countries in favour of amending Article VI.A.2 of the Statute. It had made its position clear through its sponsorship of a draft resolution for an amendment seven years earlier.

40. His delegation felt that the notion of balance raised by the representatives of a number of Western Member States was based on subjective rather than objective criteria and tended to be introduced whenever the developing countries expressed their views on the present matter.

41. He appealed to Western delegations to reconsider their positions so that the desired amendment of Article VI.A.2 could be approved.

42. Mr. MELIBARY (Saudi Arabia) supported the draft resolution before the Committee (GC(XXVIII)/COM.5/36) and urged that it be brought before the General Conference for adoption.

43. Mr. BIN-DAAER (United Arab Emirates) also supported the draft resolution and asked for his country to be added to the list of co-sponsors. His delegation had no objection to considering Article VI as a whole, an amendment of which might make for more equitable geographical distribution. If any delegation wished to consider the Article as a whole, however, it should draft a separate resolution. Finally, he thanked the representative of China for his statement in support of the proposed amendment of Article VI.A.2.

44. Mr. ZOBOV (Union of Soviet Socialist Republics) said that his delegation agreed with many of the arguments advanced about the approach the Committee should take to its work and concurred, in particular, with the views expressed in that regard by the representatives of Egypt and Pakistan. He felt that the Committee was now in a position to decide whether or not to approve the draft resolution contained in document GC(XXVIII)/COM.5/36.

45. His delegation was opposed for practical reasons to the Belgian proposal to establish a contact group. It was not convinced that such a group would make it possible to reach a consensus.

46. Ms. GALLINI (United States of America) said that, given the divergence of opinion on the question of amending Article VI.A.2, it was not likely to be resolved in the near future. Consequently, consultations should continue under the guidance of the Chairman of the Board, and the present size and composition of the Board should be maintained until a consensus had been reached. In her delegation's view, that was still the most rational course of action and the one best in line with the delicate balance established by the Statute. She did not believe that the establishment of a committee by the

Board would help to resolve the issue. On the contrary, it was universally acknowledged that the Agency worked best when consultations had matured to the point where a reasonable consensus solution could be worked out. That stage had not yet been reached.

47. The CHAIRMAN summed up the discussion on the draft resolution, emphasizing that he was not speaking as a representative of Nigeria - a co-sponsor of the draft resolution. Though he had not taken legal advice on the point, he believed that the Committee had to confine itself to consideration of Article VI.A.2 and should not deal with the whole of Article VI.

48. The representative of Belgium had suggested the establishment of a contact group to discuss the draft resolution before the Committee, but the representative of the Soviet Union had opposed that proposal.

49. The draft resolution did not call for an increase in the membership of the Board of Governors, but merely for a report by the Board to the General Conference at the latter's next session.

50. He proposed that further consideration of the question be deferred until a later meeting of the Committee, in order to allow time for informal consultations.

51. It was so agreed.

Mr. Strulak (Poland) took the Chair.

THE AGENCY'S PROGRAMME FOR 1985-86 AND BUDGET FOR 1985 (GC(XXVIII)/COM.5/32 and Add.1) (resumed)

52. The CHAIRMAN invited the Committee to resume consideration of the draft resolution on the Vienna Convention on Civil Liability for Nuclear Damage set forth in document GC(XXVIII)/COM.5/32.

53. Mr. HAWAS (Egypt) said that two amendments had emerged from informal consultations with co-sponsors and other delegations. He proposed that a new preambular paragraph be added, to read:

(f) Noting that a number of Member States are parties to the Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention of 29 July 1960) and the Convention Supplementary to the Paris Convention of 29 July 1960 (Brussels Supplementary Convention of 31 January 1963);".

Secondly, he proposed that the words "efforts in assisting Member States" in operative paragraph 1 be replaced by the word "interest".

54. Mr. LAMPARELLI (Italy) thanked the Egyptian delegation and the other co-sponsors for their co-operation and supported the amendments proposed by the representative of Egypt.

55. Mr. ORNSTEIN (Argentina), speaking as representative of a co-sponsor of the draft resolution, said that the Vienna Convention channelled civil liability for nuclear damage chiefly to the operator and set a limit on his liability. Exemption of suppliers from liability and limitation of the operator's liability were doubtless beneficial to the nuclear power industry, particularly in connection with facilities operated by private parties. If other legal provisions obtained, the magnitude of the nuclear risk might discourage private companies and capital.

56. In Argentina, nuclear power installations were operated by the State and there was unlimited liability, since it would be unethical for the State to limit its liability in respect of a risk that it had itself created.

57. He supported the proposals of the Egyptian delegation and pointed out the universality and flexibility of the Vienna Convention, which had been signed by countries in Africa, Latin America, Asia and Western and Eastern Europe. The Convention offered a system under which the rights of potential victims could be satisfied, while affording a sound economic framework for the nuclear power industry and protecting the sovereign interests of all countries.

58. Mr. DARTOIS (Belgium) thanked the representative of Egypt for the amendments he had suggested. Belgium was a party to the Paris Convention of 29 July 1960 and a signatory of the Brussels Supplementary Convention of 31 January 1963, but it was not a party to the Vienna Convention and did not intend to become one.

59. The CHAIRMAN asked whether the Committee wished to recommend to the General Conference the adoption of the draft resolution as amended.

60. It was so agreed.

The meeting rose at 12.30 p.m.

