

Information Circular

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Communication dated 18 September 2022 received from the Permanent Mission of the People's Republic of China to the Agency

1. The Secretariat has received a Note Verbale dated 18 September 2022 from the Permanent Mission of the People's Republic of China to the Agency.
2. As requested, the Note Verbale, together with its attachment, is herewith circulated for the information of all Member States.



THE PEOPLE'S REPUBLIC OF CHINA
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The Permanent Mission of the People's Republic of China to the United Nations and other International Organizations in Vienna presents its compliments to the Secretariat of the International Atomic Energy Agency, and has the honour to request the circulation of the enclosed Chinese version of China's Working Paper on the Nuclear Submarine Cooperation under AUKUS, as well as its corrected English version, which were submitted to the Board of Governors meeting held from 12 to 16 September, under the agenda item "Transfer of the nuclear materials in the context of AUKUS and its safeguards in all aspects under the NPT".

The Chinese Permanent Mission shall be most grateful if this Verbal Note, together with the relevant supporting documents, is circulated to all Member States of the Agency in a timely manner.

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

Vienna, 18 September 2022



The Secretariat of
International Atomic Energy Agency
VIC, Vienna 1400

中国关于美英澳核潜艇合作的工作文件

(2022 年 9 月 12 日，维也纳)

2021 年 9 月，美国、英国、澳大利亚（下称“三国”）宣布建立三边安全伙伴关系（AUKUS）并开展核潜艇合作。对此，国际原子能机构（下称“机构”）理事会自 2021 年 11 月开启政府间讨论进程以来，已连续三次以协商一致方式设置单独正式议题并展开讨论。经过三次政府间讨论，国际社会和机构广大成员国更为透彻深入地认识到三国核潜艇合作的严重负面影响、特别是其防扩散风险和隐患，进一步看清了三国核潜艇合作的核扩散本质。

但与此同时，三国向《不扩散核武器条约》（NPT）第十次审议大会（下称“十审会”）提交“在 AUKUS 伙伴关系下开展合作”工作文件（NPT / CONF.2020 / WP.66），9 月 9 日又再次向机构成员国散发非文件。上述两份文件通篇颠倒黑白、混淆是非，企图借所谓“海军动力堆”问题掩盖三国核潜艇合作的核扩散本质，将危险的、非法的核扩散行为，伪装成无害的、合法的行为，误导国际社会。9 月 9 日，机构总干事也就三国核潜艇合作问题向九月理事会首次提交了相关报告。此前，广大成员国已对十审会工作文件 NPT / CONF.2020 / WP.67 中对

三国合作所表达的关切表示支持。中方也愿就三国相关谬论、消极动向以及总干事报告的不当之处阐明以下严正立场：

一、美英澳三国严重违反 NPT、违反机构全面保障监督协定（CSA）和附加议定书，始终回避三国核扩散行径的问题本质。

（一）三国用所谓“海军动力堆”为借口极力回避三国合作涉及核武器材料从核武器国家转移到无核武器国家这一“原罪”。与巴西等国家自主研发核潜艇存在本质区别，三国核潜艇合作所涉“海军动力堆”问题本质上是核扩散行为，直接违反 NPT 第一、二条，同时强行适用 CSA 的规定也违背机构《规约》第二条关于“不用于推进任何军事目的”的目标，因此自然不能适用 CSA 第 14 条“例外条款”。更何况，任何 CSA 都不能凌驾和抵触作为母法的 NPT。

（二）混淆一国主权范围内的军事活动与核扩散行径。三国核潜艇合作不是一个简单的主权国家自主研发军用舰艇所涉核材料问题，而是历史上首次由核武器国家公然、直接向无核武器国家非法转让成吨成吨的核武器材料，是赤裸裸的核扩散行为。两者不能混淆。

（三）以所谓“核材料封存在反应堆中，无法直接用于核武器”误导舆论。事实上，无论相关核材料如何处置，都回避不了三国合作涉及核武器材料转让的核扩散本质，更无法降低相关武器级核材料面临的核安全、核安保和核扩散风险。

（四）三国、尤其是澳大利亚，违反机构全面保障监督协

定和相关议定书规定的申报法律义务。根据 CSA 补充安排经修订的准则 3.1，澳大利亚作为 NPT 规定的无核武器国家，必须及时、全面申报其有关确定开展核潜艇合作、设施动工、修改合作方案、接受核材料等各阶段情况；根据澳与机构签署的附加议定书（AP）第 2a(i)、第 18 条，澳必须及时申报澳核潜艇基地、岸上保障设施等相关信息。而澳在正式宣布三国核潜艇合作决定近一年来，迄未按照 CSA 和 AP 要求作出任何实质性报告。这已违反其保障监督法律义务，应立即予以补救。

（五）公然声称“将与机构秘书处确定相关保障监督方案”。三国核潜艇合作是历史上首次核武器国家公然向无核武器国家转让核武器材料，因此，这不是三国和机构秘书处能够排除其他机构成员国来双边解决的问题。机构是政府间国际组织，机构《规约》第七条规定总干事“应接受理事会领导，受理事会管辖”，机构全体成员国必须拥有最终话语权！

（六）损害机构防扩散职能和权威，绑架秘书处从事《规约》禁止的活动。三国目前相关行径的实质，就是赤裸裸的政治操弄，企图胁迫秘书处提出豁免三国核潜艇合作的保障监督方案，然后凭借自己在理事会的票数优势，强行推动理事会通过，从而使其非法扩散行径合法化。这将使秘书处陷入三国的核扩散行为和推进军事目的的活动。如上述企图得逞，将使机构实质性违反《规约》的目标，从而沦为“核扩散机构”。

此外，三国始终以“未确定合作方案”为由，拒不向机构报告核潜艇合作实质进展，使总干事和秘书处无法就三国向此次

理事会作出实质性报告，也无法有效履行《规约》12条规定的报告义务。这一行径明显意在妨碍理事会行使其合法职权。

以上就是三国核潜艇合作及其相关谬论的“七宗罪”。总之，如果任由三国“假装”向机构申报三国核潜艇合作情况，绑架秘书处使之沦为“洗白”三国核扩散行径、豁免三国核潜艇合作的“特洛伊木马”，将严重损害包括机构秘书处和全体成员国在内的国际社会共同利益。

二、机构总干事向九月理事会提交的关于 AUKUS 的首份报告

机构总干事在成员国多次呼吁下，首次就美英澳核潜艇合作问题提交了书面报告，就程序而言，这是正确的一步。但同时，相关报告片面引用机构文件，缺乏正当的法律依据，同时逾越责权、越俎代庖作出误导性结论。这些已违反总干事根据机构《规约》承担的相关职责。

（一）总干事不能凌驾于成员国、特别是作为其决策机构的理事会之上，开展未经成员国授权的活动。机构《规约》的第7条B款和F款、大会议事规则的第37条和39条、理事会议事规则的第8条和第10条，对秘书处及总干事的职责做了明确规定。鉴此，成员国与总干事之间的关系是明确的、清楚的。总干事不能以任何理由凌驾于作为主权国家的成员国、特别是作为其决策机构的理事会之上。总干事应该、也只能按照成员国的授权行事。

（二）总干事不能介入核扩散和推进军事目的的活动。三

国核潜艇合作是核武器国家首次公然向无核武器国家扩散核武器材料。机构是防扩散机构，不能成为核扩散机构，总干事和秘书处不能参与核扩散行为或支持推进军事目的的活动。如在上述问题上为三国行径合法性背书，将直接违反 NPT 和机构《规约》第 2 条、第 12 条。

（三）总干事不能沦为三国政治工具，作出误导性结论。
总干事在缺乏正当法律依据、缺乏成员国授权的情况下，越俎代庖，实质性卷入三国核潜艇合作，这超出了澳大利亚全面保障监督协定与机构的已有授权和职责，也违反了机构《规约》的目标。甚至在三国尚未申报有关核材料和核活动时，总干事就急于作出三国核潜艇合作适用全面保障监督协定这一保障监督安排的第 14 条等一系列结论。这既不合规，也不合法，十分荒唐，将严重误导成员国。

（四）CSA 第 14 条“例外条款”不适用核扩散活动。首先，谈 CSA 第 14 条，在法理上，就不能不谈 NPT 这一根本性母法。因为任何 CSA 条款都从 NPT 而来，故此自然不能凌驾或抵触 NPT 的母法地位。三国核潜艇合作涉及核武器材料非法扩散行径，不仅超出现有 CSA 范畴，更直接抵触 NPT 第一、二条。因此，三国核潜艇合作不适用 CSA 第 14 条。总干事报告割裂 CSA 与 NPT 的从属关系，抛开 NPT 援引 CSA 第 14 条豁免三国核扩散行径从程序上、实质上和法理上都是行不通的，否则，三国核潜艇合作将使保障监督体系成为核扩散行径的“保护伞”。

结论

中方认为，三国核潜艇合作违反 NPT、违反机构全面保障监督协定和附加议定书，是赤裸裸的核扩散行径，负面影响巨大，必须立即停止。如果三国不停止上述合作，机构全体成员国有责任、有义务通过政府间磋商进程以协商一致方式讨论解决三国核潜艇合作问题，并据此向机构理事会和大会提交建议报告，以指导三国如何行事。在机构成员国就相关解决方案达成共识前，三国不得推进其核潜艇合作项目，机构秘书处也不得在未经成员国授权的情况下擅自与三国就上述核潜艇合作谈判任何保障监督安排。

中方敦促三国立即停止相关核扩散行径；呼吁总干事继续就三国核潜艇合作问题作出公正、客观的报告。同时，中方也呼吁机构全体成员国在本次理事会及大会上，继续在中方提出的议题下参与讨论，包括讨论总干事报告。

China's Working Paper on the
Nuclear Submarine Cooperation under AUKUS
Vienna, 12 September 2022

The International Atomic Energy Agency has launched, since November 2021, an inter-governmental discussion process on the question “Transfer of the nuclear materials in the context of AUKUS and its safeguards in all aspects under the NPT” under a three-time consensual standalone agenda item adopted by its Board, in the wake of the pronounced decision, in September 2021, by the US, UK and Australia on their nuclear submarine cooperation under AUKUS.

Through these intergovernmental discussions at the Board, the international community and the Member States of the Agency have developed an increasingly thorough and profound understanding of the severely negative and far reaching implications of this trilateral nuclear submarine cooperation, in particular the grave proliferation risks it poses. They have come to realize the true nature of the trilateral cooperation as an instance of flagrant nuclear proliferation.

At the 10th NPT Review Conference, the US, UK and Australia submitted a working paper entitled Cooperation under AUKUS Partnership (NPT/CONF.2020/WP.66). They circulated another similar non-paper, on 9 September 2022, to the Agency’s Member States. The two documents are an obvious cover-up effort by the three countries to conceal the true nature of their trilateral nuclear submarine cooperation, which is nothing but an act of nuclear proliferation. They have made such attempts to mislead the international community to distorting facts and by trying to make this dangerous and illegal nuclear proliferative activity look innocuous and legitimate by referring to it as “naval nuclear propulsion”.

On 9th September, the Director-General of the Agency also presented his first report on the issue of trilateral nuclear submarine cooperation to the September Board.

In the meantime, a wide range of Member States have expressed their support for the concerns voiced in the 10th NPT Review Conference working paper (NPT/CONF.2020/WP.67) regarding cooperation among the three countries.

In this context, China, for its part, wishes to solemnly articulate its formal position on the sinister and illegal moves of the three countries and the flawed and self-serving arguments being advanced to justify them as well as the inappropriateness of the Director-General's report.

Three countries' serious violation of their respective obligations under NPT, the Australia's Comprehensive Safeguards Agreement and the Additional Protocol thereto with the Agency while concealing the true nature of the three countries' acts of sheer nuclear proliferation as a result of AUKUS

Firstly, the three countries have done its utmost to disguise, under the pretext of the “naval nuclear propulsion”, the “original sin” that their trilateral cooperation involves the transfer of nuclear weapon material from two Nuclear-Weapon-States to a NPT Non-Nuclear-Weapon-State. In stark contrast to the indigenous naval nuclear propulsion programmes of Brazil and other countries, the AUKUS partnership involves the illegal transfer of nuclear weapon materials, making it essentially an act of nuclear proliferation and in direct violation of Articles I and II of the NPT. At the same time, the imposition of provisions in the CSA breaches the objective set out in Article II of the IAEA Statute to the effect that no Agency safeguards shall be provided “in such a way as to further any military purpose”. Given the above, Article 14 of the CSA, as an “exceptional clause”, does not apply the naval nuclear propulsion under AUKUS. And moreover, no CSAs can not contradict, still less override the NPT, which is parent law.

Secondly, the three countries have deliberately confused legitimate military activities within a country's sovereignty with acts of nuclear proliferation. Rather than a simple matter of indigenous development by a sovereign state of nuclear material used in military vessels, the trilateral submarine cooperation under AUKUS is the very first time in history, that two Nuclear-Weapon-States, blatantly directly and illegally transfer tons and tons of nuclear weapon materials to a NPT Non-Nuclear-Weapon-State. This act of outright nuclear proliferation cannot be simply confused with a country's legitimate military activities within its sovereign rights. These two cases shall not be mixed up.

Thirdly, the three countries have misled the international community by claiming that “nuclear material would be sealed in the reactors” and “can not be directly used in nuclear weapons”. In fact, what is at issue is the proliferation nature of the nuclear weapon material transfer as a result of AUKUS, instead of how the nuclear material is disposed of. And the very essence of nuclear proliferation in the nuclear submarine cooperation under AUKUS simply can not be circumvented, let alone the attendant risks of nuclear safety, nuclear security and nuclear proliferation as a result of the relevant weapons-grade nuclear materials involved under AUKUS.

Fourthly, the three countries, especially Australia, have failed their reporting obligations required under their CSA and relevant protocols. Under the CSA modified Code 3.1, Australia, as a NPT Non-Nuclear-Weapon-State, shall submit timely and comprehensive reports, at all phases, to the Agency, its nuclear submarine cooperation, the commencement of construction of facilities, modification of the cooperation programmes, and the receipt of nuclear materials. And under the Article 2a(i) and Article 18 of its AP, Australia shall also submit timely reports to the Agency on information on its nuclear submarine bases and onshore security facilities. However, despite almost one year elapsed with the three countries’ pronouncement of their decision on AUKUS, Australia has hitherto failed to provide any substantive reports required under its CSA and AP. Such a breach of CSA and AP safeguards obligations shall be remedied without delay.

Fifthly, the three countries’ claim that they “are engaging the IAEA regularly with respect to the development of a suitable verification arrangement” is totally untenable. The trilateral nuclear submarine cooperation is the very first time in history that the two Nuclear-Weapon-States brazenly transfer nuclear weapon materials to a NPT Non-Nuclear-Weapon-State. Nuclear weapons material transfer and the concomitant proliferation risks go well beyond the existing safeguards and monitoring regime. It is, therefore, not an issue which can be settled bilaterally between the three countries and the Agency to the exclusion of other Member States of the Agency. Given IAEA as an inter-government organization, and pursuant with the Article VII of IAEA Statute, the Director-General “shall be under the authority of and subject to the control of the Board of Governors”, the Member States of the Agency must have a final say in this matter!

Sixthly, the three countries have undermined the non-proliferation functions and integrity of the Agency by taking hostage of the Secretariat

to engage in activities prohibited by the Statute. In essence, the three countries have been engaged in brazen political maneuvering, aimed at coercing the Secretariat into proposing a safeguards arrangement that legitimizes and gives legal cover to their nuclear submarine cooperation, and, on this basis, force the Board to approve it, by cynically relying on their voting advantage. This is tantamount to making the Agency to endorse their illegal proliferation practices. This would also virtually embroil the Secretariat in the nuclear proliferation acts of the three countries and in activities that further military purposes in violation of the Agency's very *raison d'être* as set out in the Statute. Should such attempts prevail, the Agency would be reduced to a "nuclear proliferation agency."

In addition, the three countries have consistently refused to report to the Agency on the substantive progress of nuclear submarine cooperation on the grounds that "no cooperation programme has been established". This has prevented the Director General and the Secretariat from making substantive reports, as required, on the three countries nuclear submarine cooperation under AUKUS to this Board meeting and from effectively fulfilling their reporting obligations under Article XII of the Statute. This delay is clearly aimed at prevent the Board from exercising its due and legitimate authority.

These are the "seven cardinal sins", as we see, of the trilateral nuclear submarine cooperation under AUKUS, its related fallacies and elaborate obfuscation scheme. In short, if the three countries are allowed to "pretend" to declare their nuclear submarine cooperation to the Agency on their terms, they will subsequently take hostage of the Secretariat and turn it into a "Trojan horse" to "whitewash" their nuclear proliferation acts and legitimize the three countries' nuclear submarine cooperation, to the detriment of the common interests of the international community, including the Agency's Secretariat and all its Member States.

The DG's First Report on AUKUS presented to the September Board

The Director General of the Agency submitted a written report for the first time on the issue of the nuclear submarine cooperation under AUKUS in response to repeated calls from Member States. This is a step in the right direction in terms of procedure. However, at the same time, the relevant report selectively quotes Agency's documents, lacks proper legal basis, and at the same time overstepped its responsibility and competence to make misleading conclusions. These may

have already constituted violations of the Director General's responsibilities, pursuant to the IAEA Statute.

Firstly, the Director General cannot override the Member States, especially the Board as their policy-making-organs and undertake activities without due mandates from Member States. The duties of the Secretariat and the Director-General are clearly defined in Article 7B and F of the Statute of the Agency, Rules 37 and 39 of the Rules of Procedure of the General Conference, and Rules 8 and 10 of the Rules of Procedure of the Board of Governors. In view of this, the relationship between the Member States and the Director-General is abundantly explicit and unambiguous. The Director-General cannot, for any reason, override or overrule the Member States as sovereign states, especially their policy-making-organs. He shall and can only act in accordance with the mandate of the Member States.

Secondly, the Director General cannot be involved in nuclear proliferation and the furtherance of military purposes. The trilateral nuclear submarine cooperation is for the first time in history that two Nuclear-Weapon-State have openly proliferated nuclear weapons material to a NPT Non-Nuclear-Weapon-State. As the Agency is a non-proliferation agency instead of a nuclear proliferation agency, and the Director General and Secretariat cannot be involved in acts of nuclear proliferation or support activities that further military purposes. To endorse the legality of the three countries' actions under AUKUS would be a direct violation of the NPT and Articles II and Article XII of the IAEA Statute.

Thirdly, the Director General cannot be reduced to a political tool of the three countries and be used to make misleading conclusions. In the absence of a legitimate legal basis and mandate from Member States, the Director General will, if not has already, overstep his authority and competence by having substantially engaged in the three countries' nuclear submarine cooperation under AUKUS, which goes beyond the existing mandate and competence of Australia's CSA with the Agency and in breach of the objective of the IAEA Statute. He ventured to make a series of conclusions such as the application of Article 14 of the CSA, a safeguard arrangement, to the nuclear submarine cooperation under AUKUS, even before the three countries' declaration required of their nuclear materials and nuclear activities in the first place. This is devoid of any legal basis, patently absurd and will seriously mislead the Member States.

Fourthly, Article 14, as the "exception clause", of the CSA does not apply to nuclear proliferation activities. First of all, it is impossible to talk about Article 14 of the CSA without talking about the NPT, which is the fundamental parent law in terms of jurisprudence. Because any CSA provision is derived from the NPT, it naturally cannot contradict, still less override the NPT's status as the parent law. The nuclear submarine cooperation under AUKUS involves the illegal proliferation of nuclear weapons materials, which is not only beyond the scope of the existing CSA, but also directly contradicts the Articles I and II of the NPT. Therefore, Article 14 of the CSA does not apply to the nuclear submarine cooperation under AUKUS. The Director General's report ignores the CSA's subordinate status vis-a-vis the NPT. It is procedurally, substantively and jurisprudentially untenable to invoke Article 14 of the CSA to permit nuclear proliferation by the three countries. If allowed to proceed, the AUKUS cooperation will turn the Agency's safeguards system into a "safe haven" for nuclear proliferation.

Conclusion

China maintains that the nuclear submarine cooperation under AUKUS violates the NPT, the CSA and the AP. It is a sheer act of nuclear proliferation with enormous negative impacts and the three countries should thus stop this cooperation without delay. If the three countries are bent in their own way by pushing ahead their cooperation, all Member States of the Agency have the responsibility and obligation to tell them what to do by working out, through the intergovernmental consultation process, an agreed formula to address this issue, and submit a report on recommendations to the Agency's Board of Governor and the General Conference accordingly. Pending the consensus among the Member States, the three countries should refrain from pushing ahead their nuclear submarine cooperation programmes, while the Agency's Secretariat, for its part, should not proceed further in its engagement with the three countries on any safeguard arrangement relating to the three countries' nuclear submarine cooperation under AUKUS in the absence of due mandate from Member States.

China urges the three countries to immediately stop relevant acts of nuclear proliferation, and calls on the Director General to continue to make impartial and objective reports on the issue of nuclear submarine cooperation under AUKUS.

At the same time, China also calls on all Member States of the Agency to continue to participate in the discussions on the subject under the agenda item proposed by China, as well as the Director General's report, at this Board meeting and the upcoming General Conference.